

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

Student, by and through her Parents t¹

v.

Case No. 2019-0120

District²

Leah Trinkala
Impartial Hearing Officer

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 5/148.02a et.seq.

PROCEDURAL BACKGROUND.

On October 10, 2018, the Petitioner (Parents) filed a due process complaint (Complaint) against the District on behalf of their sixteen year old son (Student) with a disability.³ The Student has been eligible for an IEP under the category of Autism. The Parents filed this Complaint alleging a therapeutic day school is not the least restrictive environment for the Student.⁴

The Parents were initially represented by Charles P. Fox and Julie Welsh of the Law Offices of Charles Fox. The Parents' Counsels withdrew their appearances prior to the scheduled hearing. The Parents represented themselves pro se at the hearing. The Parents' Counsels provided the Parents assistance with their exhibit books. The District is represented by Neal Takiff of Whitted Takiff, LLC. On October 18, 2018, the Illinois State Board of Education (ISBE) appointed the undersigned as the Independent Hearing Officer (IHO) in this case.⁵ On October 21, 2018, the undersigned issued a

¹ Personally identifiable information is found in Appendix A.

² Personally identifiable information is found in Appendix A.

³ IHO Ex. 1.

⁴ IHO Ex. 1.

⁵ IHO Ex.2.

Preliminary, Order, Rights of Parties, Hearing Process Guidelines and a Standing Order.⁶

On October 24, 2018, the District filed a Motion for Insufficiency.⁷ On October 26, 2018, the IHO issued an Interim Order: Sufficiency Determination which found the Complaint was insufficient and granted the Parents leave to file an amended due process complaint until November 7, 2018.⁸ On November 7, 2018, the Parents filed an amended due process complaint (Amended Complaint).⁹ The District filed its response to the Amended Complaint on November 16, 2018.¹⁰

The first telephonic status conference call occurred on November 15, 2018.¹¹ The parties waived the resolution meeting and agreed to proceed with mediation on November 19, 2018.¹² A status call was scheduled for November 28, 2018 after the conclusion of the mediation.¹³ A resolution of this case was not reached at the November 19, 2018 mediation session.¹⁴

A second telephonic status conference occurred on November 28, 2018. The parties requested a continuance of the Prehearing Conference and the 45-day timeline due to scheduling conflicts and filed a joint motion to continue.¹⁵ The motion was granted and the Prehearing Conference was scheduled for January 21, 2019.¹⁶ Hearing dates were set for April 15, 2019 through April 17, 2019.¹⁷ The parties were on the waiting list for hearing dates of February 19, 2019 through February 21, 2019.¹⁸ The Notice of Prehearing Conference was issued on December 1, 2018.¹⁹

The parties filed their prehearing disclosures on January 18, 2019.²⁰ A Prehearing Conference took place on January 21, 2019.²¹ The hearing dates were rescheduled for February 19, 2019 through February 21, 2019 due to a change in the IHO's hearing schedule.²² The initial Prehearing Report and Order was issued on January 24, 2019.²³ On January 27, 2019, the District requested changes be made to

⁶ IHO Ex. 3.

⁷ IHO Ex. 4.

⁸ IHO Ex. 5.

⁹ IHO Ex. 6.

¹⁰ IHO Ex. 8.

¹¹ IHO Ex.9.

¹² IHO Ex.9 and 13.

¹³ IHO Ex. 9.

¹⁴ IHO Ex. 14.

¹⁵ IHO Ex. 11.

¹⁶ IHO Ex. 11.

¹⁷ IHO Ex. 11.

¹⁸ IHO Ex. 11.

¹⁹ IHO Ex. 12.

²⁰ IHO Ex. 15.

²¹ IHO Ex. 16.

²² IHO Ex. 16.

²³ IHO Ex.16.

the Prehearing Report and Order.²⁴ A Revised Prehearing Report and Order was issued on January 30, 2019.²⁵

A third telephonic conference occurred on February 8, 2019.²⁶ The Parents and the District were involved in settlement discussion and the Parents decided to proceed with a hearing and not settle the case.²⁷ As a result, the Parents' Counsels withdrew their appearances.²⁸ The Parents requested a continuance of the scheduled hearing dates and the 45-day timeline because the Parents needed additional time to prepare for the hearing since the Parents would be proceeding pro se at the hearing.²⁹ The District objected to the continuance due to the Student's alleged disruptive behavior.³⁰ The motion to continue was granted and the hearing was rescheduled for March 19, 2019 through March 22, 2019.³¹

A fourth telephonic conference call occurred on February 26, 2019.³² The purpose of the conference call was to discuss the hearing procedures with the Parents and the availability of the witnesses.³³

The last telephonic status conference was held on March 11, 2019 to discuss the hearing schedule and the Parents final witness list.³⁴ The District indicated objections would be filed to the Parents' witnesses.³⁵

The parties exchanged their 5 business day hearing disclosures on March 12, 2019. Then, on March 15, 2019, the District filed its objection to one of the Parents' Witnesses – the Autism Consultant.³⁶

The hearing took place on March 19, 2019 through March 22, 2019 at the District's administrative offices.³⁷ The IHO heard arguments on the District's objection to the Parents' Autism Consultant testifying at this hearing. The District argued the Autism Consultant did not provide a written report, did not attend an IEP meeting, and did not observe the Student in a classroom. The District further contended the District is only responsible for acting on information at the time of the creation of the IEP. In response, the Parents argued the Autism Consultant reviewed the Student's IEP and had suggestions of additional supports that should have been implemented by the District to enable the Student to remain in his current placement. The IHO denied the District's

²⁴ IHO Ex. 17.

²⁵ IHO Ex. 18.

²⁶ IHO Ex. 20.

²⁷ IHO Ex. 20.

²⁸ IHO Ex. 20.

²⁹ IHO Ex. 20.

³⁰ IHO Ex. 20.

³¹ IHO Ex. 20.

³² IHO Ex. 23.

³³ IHO Ex. 23.

³⁴ IHO Ex. 35.

³⁵ IHO Ex. 35.

³⁶ IHO Ex. 38. Personally identifiable information is found in Appendix A.

³⁷ Personally identifiable information is found in Appendix A.

request to strike this witness. At this proceeding, the Parents called twelve primary witnesses and the District called two primary witnesses to testify.³⁸

Admitted into the record were the following Parents' exhibits: PD 9- 1 - PD 9-2, PD 12-1, PD 15-1, PD 16-1 –PD 16-3, PD 51-1 – PD 51-2, PD 52-1 and PD 53-1.

Admitted into the record were the following District's exhibits: R 1-1 – R 1-13, R 2-1 – R 2-45, R 3-1 – R 3-27, R 6-1 – R 6-32, R 7-1 – R 7-32, R 8-1 – R 8-1 – R 8-36. R 9-1 – R 9-39, R 10-1 – R 10-40, R 12-1 – R 12-55, R 13-1 – R 13-46, R 14-1 – 14-48. R 15-1 – R 15- 53, R 17-1 – R 17-4, R 18-1 – R 18-4, R 20-5 to R 20-40, R 21-1 – R 21-101, R 22-1 – R 22-57, R 35-1 – R 35-3, R 43-1 – R 43-2. R 44-1 – R 44-5, R 45-1 – R 45-3, R 47-1, R 48-1, R 49-1, R 50-1, R 51-1, R 52-1 – R 52-2, R 53-1 – R 53-3, R 54-1 – R 54-3, R 56-1, R 58-1 – R 58-4, R 80-1 – R 80-2, R 82-1, R 83-1, R 84-1 – R 84-2, R 85-1 – R 85-2, R 86-1 – R 86-2 and R 87-1 – R 87-3. The District provided courtesy copies of its case law and regulations to the IHO and the Parents. Additionally, the parties provided the IHO with copies of their closing arguments.

The decision of the IHO is due within 10 calendar days of the conclusion of the hearing excluding Saturdays, Sundays and any state holidays.³⁹ As such, the IHO did not have the benefit of a transcript and one was not needed. This decision is based on the IHO's copious personal notes and recollection of the testimony provided at the hearing. In rendering this decision, the IHO considered all the documents admitted into evidence, the testimony of the witnesses, the parties' closing arguments, the parties' suggested case law and statutes, as well as the IHO's own independent research. This decision was issued within ten calendar days excluding Saturdays, Sundays and any state holidays of the conclusion of the hearing as required by Illinois law.⁴⁰

ISSUES AND REQUESTED REMEDIES

The issue to be determined is as follows:

1. Whether the District allegedly failed to develop an appropriate IEP on October 4, 2018 for the Student because the proposed placement in a therapeutic day school is not the least restrictive environment to meet the needs of the Student and thus denied the Student a FAPE?⁴¹

The Parents remedies are as follows:

³⁸ Personally identifiable information is found in Appendix A.

³⁹ 105 ILCS 5/14-8.02a(g55)(5).

⁴⁰ 105 ILCS 5/14-8.02a(g55)(5).

⁴¹ IHO Ex. 18.

1. Order the District to hire a mutually agreeable behaviorist with experience working with students on the Autism Spectrum to undertake an FBA and write a new Behavior Intervention Plan.⁴²
2. Order the District to write a new IEP that incorporates the FBA and provides supports, accommodations, and related services to address his needs and contains meaningful appropriate goals to address the Student's areas of need, especially communication, receptive/expressive language, sensory integration and emotional regulation.⁴³

The District's remedies are as follows:

1. Find the District's proposed placement in the October 4, 2018 IEP is the least restrictive environment for the Student to obtain a FAPE. The reason for the requested change is that the District's proposed placement is in both a therapeutic day school and classes at the high school.⁴⁴
2. Find the Student's October 4, 2018 should be implemented immediately in order for the Student to receive the supports and services needed to receive an educational benefit.⁴⁵

FINDINGS OF FACT.

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

A. BACKGROUND OF THE STUDENT.

1. The Student is currently sixteen years old and is in the 11th grade at ■ High School.⁴⁶ The Student is eligible for special education services under the category of Autism.⁴⁷ The Student receives special education services and supports to address his receptive language, expressive language and social language skills which are below the level of his peers.⁴⁸ As part of the Student's disability, the Student has difficulty initiating conversations with peers and school staff.⁴⁹

⁴² IHO Ex. 18.

⁴³ IHO Ex. 18

⁴⁴ IHO Ex. 18

⁴⁵ IHO Ex. 18.

⁴⁶ Personally identifiable information is found in Appendix A. R 15-1.

⁴⁷ R 15-7.

⁴⁸ R 2-26. R 10-9.

⁴⁹ R 10-9.

2. The Parents want the Student to be independent and to be able to support himself after he graduates from high school.⁵⁰ The Parents support the Student to improve his social skills and independence. The Student participates in extracurricular activities which includes karate classes, basketball, private guitar lessons and Telegu language classes.⁵¹ The Student also participates in ABA therapy at home and in group sessions.⁵² The Student also attends volunteer events which include Feed My Starving Children where the Student helps with packing the bags and interacts with other students from high school.⁵³
3. For the 2014-2015 school year, the Student attended the 7th grade at [REDACTED] Junior High School in District [REDACTED].⁵⁴ The Student's placement was in a self contained classroom with less than 40% of the time inside the general education.⁵⁵
4. For the 2015-2016 school year, the Student was enrolled in the 8th grade at [REDACTED] High School in Community District [REDACTED].⁵⁶ The placement was in an instructional classroom with 40% or less of the instruction in a regular education setting.⁵⁷ This District's team wanted the Student placed in the Autism Instructional Classroom.⁵⁸ The Student was placed in the instructional program due to the Parents' request.⁵⁹
5. During the 2015-2016 school year, the Student engaged in self injurious behaviors which included pulling his eyelashes out, stabbing a pencil in his cheek, choking himself and banging his head.⁶⁰ The Student had a functional behavioral assessment (FBA) and a behavior intervention plan (BIP) completed on October 8, 2015.⁶¹ The BIP addressed the Student's self injurious behaviors. The Student had difficulty being regulated and managing his emotions in the supportive environment at [REDACTED].⁶²
6. The Student required consistent support to follow directions and to keep the Student focused on his instruction and transitions.⁶³ Sensory breaks and verbal and visual cues were provided to the Student.⁶⁴ Other accommodations

⁵⁰ Testimony of Parents.

⁵¹ Testimony of Parents.

⁵² Testimony of Parents.

⁵³ Testimony of Father.

⁵⁴ R 1-1.

⁵⁵ R 1-1 and R 1-13.

⁵⁶ R 2-1.

⁵⁷ R 2-7 and R 2-24.

⁵⁸ R 2-24.

⁵⁹ R 2-24.

⁶⁰ R 2-8. Testimony of Department Chair.

⁶¹ R 2-33.

⁶² Testimony of Department Chair.

⁶³ R 2-8.

⁶⁴ R 2-8/

provided to the Student were extended time, sensory breaks, fidget items, movement breaks which included seat cushions, space to pace and a quiet spot.⁶⁵

7. At the April 20, 2016, IEP meeting, the District IEP team and the Parents agreed to have the Student attend █ Day School, a therapeutic day school located in the current district for the summer session.⁶⁶ The District IEP team agreed the Student would remain at █ Day School for the 9th grade in the 2016-2017 school year.⁶⁷ The Parents were not in agreement with the placement for the 2016-2017 school year and requested that the District reconvene to assess the Student's progress in the summer program.⁶⁸

B. THE STUDENT'S 2016-2017 SCHOOL YEAR AT █ DAY SCHOOL AND █ HIGH SCHOOL.

1. The Student attended █ Day School for the extended school year.
2. The █ Day School has been in existence for four years.⁶⁹ The █ Day School's program was designed to support more students in the District who fall under the autism spectrum disorder.⁷⁰ The school was designed to be as close to the high school experience as possible and includes two high school classrooms and provides the students with a daily schedule.⁷¹ This school provides an environment where the students can function independently and one on one teaching assistants are not necessary.⁷² The students are enrolled in the general studies curriculum which is available at the high school and the curriculum can be modified for students to enroll in other courses such as college prep classes.⁷³
3. The █ Day School has approximately 17 students in the high school and the class size is 6 to 9 students per class.⁷⁴ The majority of the students are on the autism spectrum.⁷⁵ The classrooms are designed for students on the autism spectrum.⁷⁶ There are idea boards for the student to write down their ideas, white boards instead of chalk boards, adjustable lighting, Apple TVs, rooms painted with calming colors and carpeting so there are no loud noises from items being dropped.⁷⁷

⁶⁵ R 2-8.

⁶⁶ R 3-25. Personally identifiable information is located in Appendix A.

⁶⁷ R 3-25.

⁶⁸ R 3-25.

⁶⁹ Testimony of Assistant Director.

⁷⁰ Testimony of Assistant Director.

⁷¹ Testimony of Assistant Director.

⁷² Testimony of Assistant Director.

⁷³ Testimony of Assistant Director.

⁷⁴ Testimony of Special Ed Teacher 2.

⁷⁵ Testimony of Special Ed Teacher 2.

⁷⁶ Testimony of Special Ed Teacher 2.

⁷⁷ Testimony of Special Ed Teacher 2.

4. At the █ Day School, the students are taught social skills through a social skill group session every day and there are two school psychologists to teach the students how to interact with each other.⁷⁸ The school psychologists only have approximately 32 student they are assisting while the school psychologist at █ High School has about 2500 students to assist.⁷⁹ The staff redirects the students' behavior and there is a positive behavior system where the students earn points for positive behavior.⁸⁰ █ Day School also focuses on the academic learning of the students.⁸¹ The school does accommodate students who are at higher levels of learning and some of the students possess good communication skills.⁸² This school offers general study classes, biology, chemistry and earth science.⁸³
5. █ Day School offers other activities for the students to participate in. The school has an art club and has after school clubs.⁸⁴ The students are able to participate in activities in their home schools.⁸⁵ The school offers service learning activities quarterly where the students participate in volunteer work.⁸⁶ There are skill building activities where the students prepare for selling brownies and popcorns and take inventory and shop for supplies for their small business.⁸⁷ The students interact with customers and learn job building skills.⁸⁸ The school offers fun Fridays for the students who earn points to participate in a fun activity.⁸⁹
6. The Special Ed Teacher 2 found the Student to be a good fit in their program.⁹⁰ The Student required the services provided at █ Day School because he greatly needed assistance with social skills and communication.⁹¹ The curriculum was appropriate for the Student and the Student was able to participate in the curriculum without a teaching assistant.⁹² The curriculum has social thinking and everyday living skills embedded in the program.⁹³ The staff is able to determine the roots of a student's problem and the student can see a school psychologist.⁹⁴ Find the Special Ed Teacher 2's testimony credible because she worked with the Student and as the Department Chair hired to start the program at █ Day School, she is very familiar with the programming at █ Day School.⁹⁵

⁷⁸ Testimony of Special Ed Teacher 2.

⁷⁹ Testimony of Special Ed Teacher 2.

⁸⁰ Testimony of Special Ed Teacher 2.

⁸¹ Testimony of Special Ed Teacher 2.

⁸² Testimony of Special Ed Teacher 2.

⁸³ Testimony of Special Ed Teacher 2.

⁸⁴ Testimony of Special Ed Teacher 2.

⁸⁵ Testimony of Special Ed Teacher 2.

⁸⁶ Testimony of Special Ed Teacher 2.

⁸⁷ Testimony of Special Ed Teacher 2.

⁸⁸ Testimony of Special Ed Teacher 2.

⁸⁹ Testimony of Special Ed Teacher 2.

⁹⁰ Testimony of Special Ed Teacher 2.

⁹¹ Testimony of Special Ed Teacher 2.

⁹² Testimony of Special Ed Teacher 2.

⁹³ Testimony of Special Ed Teacher 2.

⁹⁴ Testimony of Special Ed Teacher 2.

⁹⁵ Testimony of Special Ed Teacher 2.

7. In the opinion of the Special Education Teacher 2, ■ Day School is better able to work with students who are insubordinate and do not want to cooperate with school work.⁹⁶ ■ Day School can provide more support and more related services and there is a smaller teacher to student ratio.⁹⁷ Difficult for students in the general education classes even with a one on one aide to obtain the support they need to address these issues.⁹⁸

8. On December 15, 2016, an IEP meeting was held to discuss the reintegration of the Student into ■ High School.⁹⁹ The District IEP team believed the Student was performing well this semester due to the placement at ■ Day School. In the Department Chair's opinion, the Student performed well at ■ Day School because the program has smaller classes with approximately 8 students, has social needs embedded in the program and the students do not have one on one aides.¹⁰⁰ Find the Department Chair's testimony to be credible. There was only one report of self-injurious behavior.¹⁰¹ The Student was using the sensory room, participating in class, accepting assistance and completing his assignments timely.¹⁰² The Student was enrolled in classes at the General Studies level and also participating in daily instruction of Life and Learning Strategies.¹⁰³

9. In order to work with the Parents, the IEP team agreed to have the Student attend ■ High School for two classes, English class and one resource period.¹⁰⁴ The IEP team adopted the Student's FBA and FIP from District 54.¹⁰⁵

10. Another IEP meeting was held on January 13, 2017 at the Parents' request.¹⁰⁶ The purpose of this meeting was to discuss the split in classes between ■ Day School and ■ High School. The Parents insisted the Student should be in more regular or general education classes.¹⁰⁷ The Parents wanted the Student to return to ■ High School for the 8th period.¹⁰⁸ The Student was currently taking two classes in the morning at ■ High School.¹⁰⁹ The Parents did not believe the placement had an impact on the Student and wanted the Student to have more rigor in his day and were concerned about the peers at ■ Day School.¹¹⁰ The Student was learning bad language from his peers at ■ Day School.¹¹¹ The Parents indicated the self-injurious behavior stopped due to the Student seeing a psychiatrist and

⁹⁶ Testimony of Special Ed Teacher 2.

⁹⁷ Testimony of Special Ed Teacher 2.

⁹⁸ Testimony of Special Ed Teacher 2.

⁹⁹ Personally identifiable information is located in Appendix A.

¹⁰⁰ Testimony of Department Chair.

¹⁰¹ R 6-5

¹⁰² R 6-5

¹⁰³ R 6-5.

¹⁰⁴ R 6-30.

¹⁰⁵ R 6-30.

¹⁰⁶ R 7-1.

¹⁰⁷ R 7-4.

¹⁰⁸ R 7-4.

¹⁰⁹ R 7-4.

¹¹⁰ R 7-4. Testimony of Department Chair.

¹¹¹ Testimony of Parents.

being on a new medication, Zoloft.¹¹² The Department Chair believed the self-injurious behavior stopped due to the placement at █ Day School.¹¹³ Find the Parents to be credible because the Student did not exhibit any self-injurious behavior when the Student attended █ High School full time. The District still believes the placement at █ Day School is responsible for the self-injurious behavior no longer occurring. The District agreed to have the Student return at █ High School for the 8th period for the resource room.¹¹⁴

11. The IEP team reconvened on April 6, 2017 to discuss the Student's placement for the 2017-2018 school year. The District IEP team agreed the Student would attend █ High School for Physical Education, Read 180 and an elective, Small Engines.¹¹⁵ The Student would attend █ Day School for the rest of his classes.¹¹⁶ At this meeting, the Parents requested the Student be placed at █ High School full time.¹¹⁷
12. Since the placement issue was not resolved, another IEP meeting was held on August 9, 2017 to discuss the Student's placement for the 2017-2018 school year.¹¹⁸ The District IEP team reported the Student had no disciplinary infractions and no self-injury behaviors.¹¹⁹ The staff believed the Student was making progress due to the programming at █ Day School due to the smaller school and class size, the flexibility to the sensory support and the ability to address social communication as teachable moments and academically appropriate curriculum.¹²⁰ The District IEP team recommended a split schedule for four periods at each school for the 2017-2018 school year.¹²¹ The Parents disagreed and still wanted a full time placement at █ High School.¹²² The team in collaboration with the Parents agreed to the Student's full time placement at █ High School and the Student would spend less than 40% of his time in the regular education classroom.¹²³ The District IEP team had concerns about placing the Student at █ High School full time.¹²⁴

C. THE STUDENT'S 2017-2018 SCHOOL YEAR AT █ HIGH SCHOOL FULL TIME.

1. For the 2017-2018 school year, the Student was placed at █ High School full time in order to work collaboratively with the Parents.

¹¹² Testimony of Parents.

¹¹³ Testimony of Department Chair.

¹¹⁴ Testimony of Department Chair.

¹¹⁵ R 8-34.

¹¹⁶ R 8-34.

¹¹⁷ R 8-34.

¹¹⁸ R 8-34.

¹¹⁹ R 8-34.

¹²⁰ R 9-34. Testimony of Department Chair.

¹²¹ R 9-34

¹²² R 9-34.

¹²³ R 9-34 and R 9- 32. R 20-14.

¹²⁴ Testimony of Department Chair.

2. ■ High School has approximately 2500 students and the cafeteria can have 600 students in there at a time and this is an unstructured environment.¹²⁵ The general education classes have about 32 to 45 students.¹²⁶ The size of the special education classrooms is not clear. The Department Chair indicated the special education classrooms can have approximately 16 students.¹²⁷ The TA 2 indicated the special education classrooms can have 7 to 9 students.¹²⁸
3. The ■ High School has three teams - white, red and blue. Each team contains a guidance counselor, social worker and school psychologist.¹²⁹ These resources are available for the students to seek assistance when needed.¹³⁰
4. The IEP team provided supports to assist the Student in accessing his education at ■ High School. The Student has a 1:1 teaching assistant assigned to assist the Student at ■ High School.¹³¹ The teaching assistants assist the Student with navigating ■ High School and ensure the Student knows where he is going during hallway and transitional times.¹³² At the beginning of the school year, the Student was able to navigate ■ High School and his teaching assistants were able to trail the Student in order to provide the Student with some independence.¹³³
5. Other supports were offered to the Student to enable the Student to access his education at ■ High School. The Student received 250 minutes per week of resource services in Life and Learning Strategies (LLS) to support the Student for his executive functioning, social skills, communication, organization and problem solving needs.¹³⁴ The Student was also required to receive 30 minutes per week of counseling services, 200 minutes per month of speech and language services and 60 minutes per month of occupational therapy consultant services.¹³⁵ The Student also received 250 minutes of instructional services in the general studies program for English, Math and Reading to support his learning needs in basic reading, reading comprehension, written expression and math concepts.¹³⁶
6. The purpose of LLS is to pre-teach social skills, to look at behaviors for the week and to pre-teach concepts.¹³⁷ The students practice in a group and participate in

¹²⁵ Testimony of Department Chair.

¹²⁶ Testimony of Department Chair.

¹²⁷ Testimony of Department Chair.

¹²⁸ Testimony of TA 2.

¹²⁹ Testimony of Assistant Principal.

¹³⁰ Testimony of Assistant Principal.

¹³¹ Testimony of TA 1 and TA 2.

¹³² Testimony of TA 1 and TA 2.

¹³³ R 10-19.

¹³⁴ R 10-6.

¹³⁵ R 9-30.

¹³⁶ R 10-6.

¹³⁷ Testimony of School Psychologist.

group and paired activities.¹³⁸ LLS includes role playing for the students to demonstrate appropriate and inappropriate behaviors.¹³⁹ LLS uses Michelle Garcia Winters Social Think Program which is designed for students on the autism spectrum.¹⁴⁰

7. New behavioral concerns began to develop for the Student while being integrated into ■ High School full time which had not occurred when the Student had a split schedule between ■ Day School and ■ High School. Some of the Student's behavior involved bullying other students. On October 4, 2017, the Student posted a video on YouTube which stated the Student hated another student and showed a picture of this student.¹⁴¹ This video was made in the cafeteria at ■ High School and the Student and the other students in the video were swearing.¹⁴² The Student's support team met with the Student and reviewed appropriate and inappropriate behavior and had the Student do a social story and remove the video.¹⁴³ The Student also received two lunch detentions.¹⁴⁴
8. Then, on October 27, 2017, the Student attempted to take photos of other students in the cafeteria without their permission and the Student's cell phone was a distraction in the school.¹⁴⁵ The Assistant Principal and Special Ed Teacher 1 reviewed expected behaviors concerning electronic devices and the Student's camera was disabled.¹⁴⁶ The IEP team devised a plan to reduce the Student's cell phone distraction.¹⁴⁷
9. After these two incidents, the Student's behavior problems persisted and raised safety concerns to the other students at ■ High School. On November 16, 2017, the Student grabbed another student's arms who was sitting in a chair and pushed this student whose chair began to fall backwards.¹⁴⁸ The Student indicated he knew this student from elementary school and was just playing with the student.¹⁴⁹ The Student was suspended for one day.¹⁵⁰ The team reviewed a social map with the Student to review appropriate behavior.¹⁵¹ The IEP team was to conduct a FBA of his behavior.¹⁵² In the Department Chair's opinion the Student's behavior is a safety concern and this behavior is occurring because the Student is trying to understand the world around him and the environment at the

¹³⁸ Testimony of School Psychologist.

¹³⁹ Testimony of School Psychologist.

¹⁴⁰ Testimony of School Psychologist.

¹⁴¹ R 10-11.

¹⁴² Testimony of Assistant Principal.

¹⁴³ Testimony of Assistant Principal.

¹⁴⁴ Testimony of Assistant Principal.

¹⁴⁵ R 10-11.

¹⁴⁶ R 20-14.

¹⁴⁷ R 20-14.

¹⁴⁸ R 10-11. R 20-13. Testimony of TA 1.

¹⁴⁹ R 20-13.

¹⁵⁰ R 20-13.

¹⁵¹ Testimony of Assistant Principal.

¹⁵² Testimony of Assistant Principal.

high school is too stimulating for the Student and this is why this behavior is occurring.¹⁵³ Find the Department Chair's testimony credible. The Department Chair is familiar with the Student, is a behavioral specialist and has taught and worked with children with autism, special learning disabilities and has a Masters Degree in teaching with a focus in special education.¹⁵⁴

10. After the Student's transition to the high school full time, the Student started having toileting accidents which had not occurred when he had a split schedule between █ Day School and █ High School.¹⁵⁵ The Parents believed this was from stress and anxiety and in the Department's Chair's opinion the stress was caused from the environment at █ High School.¹⁵⁶
11. As of result of these behaviors, the IEP team was proactive and held a meeting on December 4, 2017 to review and revise the Student's current BIP.¹⁵⁷ The Student has a BIP in order to address the Student's difficulty to adapt to change and to address his sensory needs.¹⁵⁸ The Student becomes over stimulated with too much noise and other students in the environment.¹⁵⁹ The IEP team added additional interventions and supports for the Student which included a social behavior mapping form, advance notice of changes, communication and social skills group.¹⁶⁰ Other supports included sensory support through occupational therapy, scheduled toileting breaks, scheduled sensory circuit, communication with home through communication logs, calendar of expected/unexpected behaviors connected with rewards, positive reinforcement through verbal praise, Strides, Zones Regulation, and a power card.¹⁶¹
12. The Zones of Regulation was implemented for the Student to identify which zone he is in and identify a coping strategy with staff in order to return to the correct zone.¹⁶² The Zones of Regulation has four zones, blue, green, yellow and red. The green zone means the Student is ready to work.¹⁶³ This tool was taught to the Student and the Student's teachers.¹⁶⁴ The teachers would learn which zone the Student was in and then determine how to get the Student back in the green zone.¹⁶⁵ Some of the tools used were sensory breaks, fidgets, exercises, drinks of water.¹⁶⁶ The IEP team also created a sensory circuit for the Student. At the beginning or the end of each period, they used this tool for the Student to get out

¹⁵³ Testimony of Department Chair.

¹⁵⁴ Testimony of Department Chair.

¹⁵⁵ Testimony of Department Chair.

¹⁵⁶ Testimony of Department Chair.

¹⁵⁷ R 10-1. Testimony of Department Chair.

¹⁵⁸ R 10-11.

¹⁵⁹ R 10-11.

¹⁶⁰ R 10-12.

¹⁶¹ R 10-12.

¹⁶² R 10-12.

¹⁶³ R 85-1.

¹⁶⁴ Testimony of Department Chair.

¹⁶⁵ Testimony of Occupational Therapist.

¹⁶⁶ R 85-1.

his excess energy such as taking trips up and down the hallway, and doing pushups.¹⁶⁷ The Occupational Therapist works with the Student, the teaching assistants and the Speech/Language Pathologist to make sure the sensory needs of the Student are being met and to provide strategies for the Student to return to the green zone when he is the yellow zone.¹⁶⁸

13. The IEP team reviewed the Student's progress at this meeting. The Student's unofficial grades were B for Art, A for Math, B for English/Reading, A- for PE , A+ for LLS and A for Computer Literacy.¹⁶⁹ The Student does receive a modified curriculum.¹⁷⁰ The general education curriculum at ■ Day School and ■ High School are the same with modifications.¹⁷¹
14. After this IEP meeting and the implementation of different interventions for the Student, additional behavioral issues arose with the Student. On February 8, 2018, the Student was observed searching for guns on his iPad.¹⁷² The Assistant Principal deleted the search history and revoked the internet browser from the Student's iPad.¹⁷³
15. Additionally, the Student began being insubordinate with his teaching assistants. These concerns were not an issue when the Student had a split schedule between ■ Day School and ■ High School. On March 8, 2018, the TA 2 tried to assist the Student in the cafeteria line because the Student had his head down and seemed confused and had not placed his food order even though there were no longer other students in the cafeteria line.¹⁷⁴ The Student said "no help" and then pushed and kicked the TA 2 while saying, "you go away."¹⁷⁵ TA 2 tried to turn this into a teaching moment while the Student was eating and made sure the incident did not end with his inappropriate remarks.¹⁷⁶
16. Then, on March 14, 2018, the Student ran down the hallway and did not stay next to the TA 1 and began yelling at the TA 1. The Student falsely accused TA 1 of touching him when she did not touch the Student.¹⁷⁷ TA 1 communicated with the Student regarding this false statement and the Student adjusted his statement.¹⁷⁸
17. Subsequently, on March 16, 2018, the Student was not listening to the verbal prompts to pay attention in class and was making noise by moving the pencils in

¹⁶⁷ Testimony of Department Chair.

¹⁶⁸ Testimony of Occupational Therapist.

¹⁶⁹ R 10-6.

¹⁷⁰ Testimony

¹⁷¹ Testimony of Assistant Director.

¹⁷² R 20-12 and R 20-13.

¹⁷³ R 20-13.

¹⁷⁴ Testimony of TA 2. See also, R 20-12.

¹⁷⁵ R 20-12. Testimony of TA 2.

¹⁷⁶ Testimony of TA 2. See also, R 20-12.

¹⁷⁷ Testimony of TA 2. See also, R 20-12.

¹⁷⁸ Testimony of TA1. See also, R 20-11.

the pencil box.¹⁷⁹ The TA 2 put her arm on the pencil box and told the Student the teacher needs him to pay attention in class.¹⁸⁰ The Student grabbed her arm and refused to let go of her arm until the teacher confiscated the pencil box.¹⁸¹ After the incident, the Student admitted his behavior was inappropriate and the Student was required to complete a social story mapping with his teaching assistant to review expected behaviors.¹⁸²

18. These new behaviors were addressed at the March 16, 2018 IEP meeting. At this IEP meeting, the IEP team reviewed the Student's IEP and FBA/BIP, reviewed the Student's triennial evaluation and conducted the Student's annual review.¹⁸³ At the time of this meeting, the Student had acquired six disciplinary referrals for bullying, technology violation, harassment, iPad violations, disrespect and insubordination.¹⁸⁴ The Assistant Principal reported the Student is having an increase in patterns of behaviors where the Student is interacting inappropriately with his peers and not following directions and making physical contact with staff members.¹⁸⁵ The implementation of the December, 2017 BIP was not effective and the Student was dismissive and disrespectful of his teaching assistant.¹⁸⁶ The IEP team added two more verbal reinforcements to the BIP which included visual supports of the Student's lanyard or in his backpack to share emotions and daily visual/verbal reminders of his goal to being appropriate in order to earn his iPad back.¹⁸⁷ The IEP also increased the Student's counseling minutes to help regulate the Student's behavior.¹⁸⁸ Additional toileting breaks were also added.¹⁸⁹
19. At this meeting, the Student's grades were an A in Art, B+ in Math, B+ in English and Reading, B+ in PE, A in LLS, and a B in Computer Literacy.¹⁹⁰ These grades are not an accurate reflection of the Student's independent work because the Student received modified tests and was given assistance from other staff members.¹⁹¹
20. Behavioral issues resumed after the March 16, 2018 IEP meeting. On April 20, 2018, the Student had an incident with his TA 1.¹⁹² The Student was instructed to turn back when he turned around to face another student who was working in class.¹⁹³ The Student called the TA 1 a bitch under his breath.¹⁹⁴ The TA 1

¹⁷⁹ R 20-11.

¹⁸⁰ R 20-11.

¹⁸¹ R 20-11.

¹⁸² R 20-11.

¹⁸³ R 12-1.

¹⁸⁴ R 12-13.

¹⁸⁵ R 12-13.

¹⁸⁶ Testimony of Department Chair.

¹⁸⁷ R 12-15.

¹⁸⁸ Testimony of Department Chair.

¹⁸⁹ Testimony of Department Chair.

¹⁹⁰ R 12-7.

¹⁹¹ Testimony of Assistant Director.

¹⁹² Testimony of TA 1. R 20-9 and R 20-10.

¹⁹³ R 20-10.

¹⁹⁴ Testimony of TA 1 and R 20-10.

reviewed unexpected and expected behaviors with the Student.¹⁹⁵ The Student did apologize and wrote down that he had called the TA 1 this name.¹⁹⁶

21. On April 25, 2018, TA 1 and TA 2 prepared an email to the team to inform the team of the Student 's insubordination.¹⁹⁷ The Student's hallway behavior had gotten worse during this school year because the Student continuously ran away from them in the hallway and did not want to be near them.¹⁹⁸

22. On May 2, 2018, during a fire drill, the Student ran away from his TA 2 the entire time which included the unsafe behavior of running out into the parking lot.¹⁹⁹ When the Student returned into the building, the Student ran down the hallway.²⁰⁰ After this incident, the team agreed strategies needed to be developed for the Student to address fire drills and lock down drills.²⁰¹ On the same date, the Student when returning from the fire drill also tried to lunge at and swat another classmate.²⁰² The TA 2 and another student intervened, however, the Student went around them and tried to reach the other classmate and another student intervened and the classmate was able to walk away from the Student.²⁰³ The staff met with the Student to review this incident.²⁰⁴

23. Members of the IEP team where proactive and sought to work with the Student's outside providers to try to further support the Student at ■ High School. On May 4, 2018, the School Psychologist reached out to speak to the Student's private BCBA and sent several emails.²⁰⁵ The Student's current BCBA left the practice and the School Psychologist followed up with the new BCBA to discuss the Student.²⁰⁶ The School Psychologist finally spoke to the new BCBA on May 21, 2018.²⁰⁷ The School Psychologist shared information regarding the supports being offered to the Student.²⁰⁸ The BCBA did not provide any information about the supports being used by the BCBA.²⁰⁹ The BCBA was suppose to follow up with the Parents.²¹⁰ The BCBA never reached out to the School Psychologist again.²¹¹

24. The Student's insubordination continued in this environment. On May 22, 2018, the Student refused to obey his instructor and put his cell phone away during

¹⁹⁵ Testimony of TA 1 and R 20-10.

¹⁹⁶ Testimony of TA 1 and R 20-10.

¹⁹⁷ PD 16-1.

¹⁹⁸ PD 16-1.

¹⁹⁹ R 20-9.

²⁰⁰ R 20-9.

²⁰¹ R 20-9.

²⁰² R 20-8 and R 20-9..

²⁰³ R 20-8 and R 20-9.

²⁰⁴ R 20-8 and R 20-9.

²⁰⁵ See R 45-1- R 45-3, R 47-1, R48-1, R 49-1, and R 50-1.

²⁰⁶ Testimony of School Psychologist.

²⁰⁷ Testimony of School Psychologist.

²⁰⁸ Testimony of School Psychologist.

²⁰⁹ Testimony of School Psychologist.

²¹⁰ R 52-1 and R 52-2.

²¹¹ Testimony of School Psychologist.

math class.²¹² The Student was reading text messages on his cell phone.²¹³ The Student was instructed several times to put the cell phone in his backpack or in his pocket.²¹⁴ The Student went into the corner of the room to read a text message.²¹⁵ The Student was instructed again to put the cell phone away and then the Student began pacing the room.²¹⁶ The math teacher intervened to assist TA 2 for the Student to bring the cell phone to the office or put the cell phone in his backpack.²¹⁷ The Student shouted no to TA 2 and got into her face.²¹⁸ The cell phone was finally put away upon the instructions of the math teacher.²¹⁹ The Student did not follow the directions of his TA 2.²²⁰ The cell phone was subsequently confiscated from the Student and the Student's Father was suppose to pick up the cell phone.²²¹

25. On May 24, 2018, another IEP meeting was held to review the Student's IEP, progress and FBA/FIP.²²² At the time of this meeting, the Student had thirteen behavioral referrals which was an increase of seven referrals since the March, 2018 meeting.²²³ The Student was more dismissive in the classroom and needed more redirection in order to access the curriculum at ■ High School.²²⁴ The Student required additional interventions to address his conduct.²²⁵ The Parents shared the Student's toileting accidents have also occurred in the home.²²⁶ The Parents requested peer mediation for the Student and other classmate the Student has been harassing in school.²²⁷ The other classmate did not wish to participate.²²⁸

26. At the time of this meeting, the Student continued to have toileting accidents at home and school due to anxiety.²²⁹ There were six documented bathroom incidents where the Student had to change his clothes.²³⁰ The Mother informed the IEP team that the Student does not want to have a teaching assistant and wants to be like the other classmates.²³¹ The IEP team obtained consent to speak

²¹² R 20-7.

²¹³ R 20-7.

²¹⁴ R 20-7.

²¹⁵ R 20-7.

²¹⁶ R 20-7.

²¹⁷ R 20-7.

²¹⁸ R 20-7.

²¹⁹ R 20-8.

²²⁰ R 20-7 and R 20-8.

²²¹ R 20-8.

²²² R 13-1.

²²³ Testimony of Department Chair.

²²⁴ Testimony of Department Chair.

²²⁵ Testimony of Department Chair.

²²⁶ R 13-6.

²²⁷ R 13-6.

²²⁸ R 13-6.

²²⁹ R 13-9.

²³⁰ R 13-10.

²³¹ R 13-9.

to the Student's outside ABA therapist.²³² The Student is working with an ABA therapist three times a week and the sessions are in the home for approximately one to two hours.²³³

27. The Student's sensory seeking movements have increased during this school year.²³⁴ The team had the Student stay three minutes after bell rings to have the Student complete exercises and added more cushions, fidgets and a weighted lap pad.²³⁵ The Student needs to be cued to use these supports.²³⁶ Visual supports have also been increased.²³⁷
28. At the time of this meeting, the Student had five disciplinary referrals related to peer interactions which included making physical contact and harassing peers.²³⁸ The Student also was found to possess a photo of another student where he scratched out the picture of the student and wrote a name of a student on his iPad.²³⁹ These incidents were rated a nine in intensity because the Student's behavior interferes with him accessing his educational instruction and affects the safety of himself and others.²⁴⁰
29. The team reported that since March 2018, the Student has had difficulty following staff directions and has engaged in physical contact with staff.²⁴¹ The Student had six disciplinary referrals for running away, using profanity and making physical contact with staff.²⁴²
30. The IEP team added additional interventions which included alternatives to detention, conferences with teacher and administrator, lunch detention, loss of computer privileges, referral to PST, out of school suspension, daily behavioral chart with opportunity for positive reinforcement, increased counseling minutes, role modeling/role play of expected behaviors, allowance for additional time before leaving classroom for sensory circuit and sensory needs, one-on-one discussion and increasing the Student's sensory diet.²⁴³
31. The IEP team also included more positive supports to assist the Student in the school environment. Their supports included adding more bathroom breaks, obtaining consent to speak to the Student's ABA therapist, immediate social-behavior mapping forms, a separate evacuation plan, use of visual aids for safety

²³² R 13-9.

²³³ R 13-9.

²³⁴ R 13-10.

²³⁵ R 13-10.

²³⁶ R 13-10.

²³⁷ R 13-10.

²³⁸ R 13-12.

²³⁹ R 13-12.

²⁴⁰ R 13-12.

²⁴¹ R 13-12.

²⁴² R 13-12.

²⁴³ R 13-17.

drills and the practice of safety drills with the Student.²⁴⁴ The IEP team also added additional structure for the Student when he leaves the classroom which included a sensory circuit during a four minute waiting period, asking the Student which zone he is in before leaving the classroom and reminding the Student of the daily chart so that the Student can earn rewards for his positive behavior in the school day.²⁴⁵

32. The Student's counseling minutes were increased to 200 minutes per month.²⁴⁶ At this time, the District IEP team recommended the Student be placed at ■ Day School full time, however, the Parents still wanted the Student in the instructional program at the ■ High School for 50 to 64% of the time.²⁴⁷

D. THE STUDENT'S 2018-2019 SCHOOL YEAR AT ■ HIGH SCHOOL FULL TIME

1. For the 2018-2019 school year, the Student again attended ■ High School full time.
2. The school staff commenced the school year with a modified transitioning schedule for the Student due to the behaviors from the 2017-2018 school year and has continued using the communication log to keep the Parents informed of the Student's activities at school.²⁴⁸ The Student is using a sensory circuit and this is used after every class.²⁴⁹ There are four bathroom breaks in the Student's schedule.²⁵⁰ In LSS, the Student reviews expected behaviors daily.²⁵¹
3. The District continued to be proactive to find additional methods to assist the Student. In August 2018, the School Psychologist meet with a NSSEO Autism Coach along with the Student's teaching assistants, case manager, Department Chair, and the Speech/Language Pathologist and had the NSSEO Autism Coach review the Student's IEP.²⁵² According to the School Psychologist, the Autism Coach believed the team was doing a lot for the Student and suggested the addition of a visual social map to help the Student with transitions in the building.²⁵³ No other recommendations were made.²⁵⁴

²⁴⁴ R 13-18.

²⁴⁵ R 13-18.

²⁴⁶ R 13-36.

²⁴⁷ R 13-39 and R 13-40.

²⁴⁸ R 14-8. See R 21-1 to R 21-101 and R 22-1 – R22-57.

²⁴⁹ R 14-8.

²⁵⁰ R 14-8.

²⁵¹ R 14-8.

²⁵² Testimony of School Psychologist

²⁵³ Testimony of School Psychologist

²⁵⁴ Testimony of School Psychologist.

4. As a result of this meeting, the team created a visual contingency map for the Student and implemented the map.²⁵⁵ This map is a visual item to show the Student how to interact with his peers.²⁵⁶
5. This school year continued with the Student having behavioral issues despite the additional modifications to the Student's BIP. On August 8, 2018, the Student had a incident with the same student from the 2017-2018 school year.²⁵⁷ This time the Student ran from the staff and grabbed this student's backpack and tried to shake the student.²⁵⁸ A teaching assistant was able to separate them.²⁵⁹ The Student informed the staff that he wanted to give the other student a note to get the student in trouble.²⁶⁰ In response to this incident, the Student was suspended for one day and the Student's schedule was changed to reduce the Student's chance of interacting with this student.²⁶¹ The Student no longer transitions to another class until the hallways are clear and is escorted by a teaching assistant.²⁶² The Student has a teaching assistant in all of his classes and a one on one escort whenever the Student is in the hallway.²⁶³
6. The District engaged in more attempts to work with the Student's outside providers. On August 24, 2018, the School Psychologist reached out to speak to the Student's new BCBA.²⁶⁴ The School Psychologist was able to speak to the BCBA on August 27, 2018.²⁶⁵ The School Psychologist informed the BCBA that the Student had attempted to get another student in trouble by writing a note using the student's name.²⁶⁶ The BCBA recommended lying to the Student that the other student had gotten in trouble from writing the notes.²⁶⁷ The School Psychologist found the conversation was not helpful because the recommendation from the BCBA would reinforce the Student's negative behavior and this suggested action was inappropriate.²⁶⁸
7. An IEP meeting was held on September 6, 2018 to review existing data, the Student's progress and the FBA/BIP.²⁶⁹ At the time of this meeting, the Student's grades were a B+ for English and Reading, an A for PE, an A for Math, an A+ for History, a B-1 for Tech. Apps., and an A for LLC.²⁷⁰ Again

²⁵⁵ Testimony of School Psychologist. R 86-1.

²⁵⁶ Testimony of School Psychologist. R 86-1.

²⁵⁷ R 14-8.

²⁵⁸ R 14-8. R 20-7.

²⁵⁹ R 14-8

²⁶⁰ R 14-8.

²⁶¹ R 14-8. R 20-7.

²⁶² Testimony of Assistant Principal and TA 1.

²⁶³ R 1408.

²⁶⁴ Testimony of School Psychologist. R 53-1.

²⁶⁵ Testimony of School Psychologist.

²⁶⁶ Testimony of School Psychologist.

²⁶⁷ Testimony of School Psychologist.

²⁶⁸ Testimony of School Psychologist.

²⁶⁹ R 14-1.

²⁷⁰ R 14-6.

these scores are based upon modified tests and work and the Student received assistance from the teaching assistants and staff.²⁷¹

8. At this meeting, the Student was reported to not be complying with staff directions and needs two to seven prompts to comply with directions.²⁷² The Student also wrote a note pretending the note was from another student in order to get the student in trouble.²⁷³ The Student was also refusing to use some of his sensory supports saying they are for junior high.²⁷⁴
9. The Student's BIP was modified again to address the Student's conduct. Another intervention added to the Student's BIP was to have the staff at the start of the each class to review the Zone of Regulation Chart with the Student to ask the Student to indicate which zone he is in and provide assistance to the Student to determine a coping skill to move the Student back to the green zone.²⁷⁵ The Student was also given the opportunity to earn gift cards as a positive reward for appropriate behavior.²⁷⁶
10. The District continued to reach out to the Student's outside providers. On September 17, 2018, the School Psychologist spoke to the Student's group therapist at Advanced Behavioral Solutions.²⁷⁷ The Student attends the group sessions approximately two times a month.²⁷⁸ The Student is there with four to six students and is working with students aged thirteen to seventeen years of age.²⁷⁹ The Student has become more verbal in these sessions.²⁸⁰ The Student has exhibited some anxiety which impacts the Student's psychomotor agitation and causes the Student to shut down.²⁸¹ The Parents have reported this behavior to this therapist.²⁸² The Student has also fixated on individuals in this group.²⁸³ The Parents had testified that the Student was not fixating on other students outside the high school.²⁸⁴ The Student struggles with maintaining conversations.²⁸⁵ The School Psychologist shared the supports being used to assist the Student at ■ High School.²⁸⁶
11. Behavioral issues continued with the Student after this IEP meeting and the Student became insubordinate with the staff. On September 20, 2018, the

²⁷¹ Testimony of Assistant Director.

²⁷² R 14-8.

²⁷³ R 14-8.

²⁷⁴ R 14-8.

²⁷⁵ R 14-17.

²⁷⁶ R 14-18.

²⁷⁷ Testimony of School Psychologist. See also, R 58-1 – R 58-3.

²⁷⁸ Testimony of School Psychologist. See also, R 58-1 – R 58-3.

²⁷⁹ Testimony of School Psychologist. See also, R 58-1 – R 58-3.

²⁸⁰ Testimony of School Psychologist. See also, R 58-1 – R 58-3.

²⁸¹ Testimony of School Psychologist. See also, R 58-1 – R 58-3.

²⁸² Testimony of School Psychologist. See also, R 58-1 – R 58-3.

²⁸³ Testimony of School Psychologist. See also, R 58-1 – R 58-3.

²⁸⁴ Testimony of Parents.

²⁸⁵ Testimony of School Psychologist. See also, R 58-1 – R 58-3.

²⁸⁶ Testimony of School Psychologist. See also, R 58-1 – R 58-3.

Student in history class was not following the history notes in class and was drawing over an image of a car.²⁸⁷ The Student refused to pay attention and ran to the other side of the classroom with his iPad.²⁸⁸ TA 2 went over to the Student and the Student ran to the other side of the room.²⁸⁹

12. On September 21, 2018, this behavior persisted.²⁹⁰ At the beginning of class, the Student was laying on two desks.²⁹¹ TA 2 directed the Student to sit up and get ready for class.²⁹² The Student swatted and kicked his foot toward the TA 2 and said “no” and “go away.”²⁹³ The Student ran to the opposite side of the room.²⁹⁴ TA 2 offered the Student a choice to take a walk or talk to the team in the red team room.²⁹⁵ The red room usually helps the Student to de-escalate.²⁹⁶ The Student ran back to his desk and refused to go.²⁹⁷ The Student was in the yellow zone and TA 2 was trying to get the Student back in the green zone.²⁹⁸ The Student was too agitated to be in class.²⁹⁹ The Student told the TA 2 to stay away from him or else.³⁰⁰ The Student was directed to leave and go to the red team room.³⁰¹ The Student refused and the other classmates were removed from the classroom and the red team was called into the room to offer assistance.³⁰² The Student may have been trying to mimic another student in the classroom who was not behaving.³⁰³ As a result, the Student was suspended for two days.³⁰⁴ The School Psychologist worked with an outside specialist to assess why the behaviors were occurring.³⁰⁵

E. THE STUDENT’S OCTOBER 4, 2018 IEP MEETING.

1. On October 4, 2018, an IEP meeting was held for a manifestation determination and a review of existing data, the Student’s progress and the Student’s IEP and FBA/BIP.³⁰⁶ The IEP team reviewed the September 21,

²⁸⁷ R 20-6.

²⁸⁸ R 20-6.

²⁸⁹ R 20-6.

²⁹⁰ R 20-5

²⁹¹ R 20-5

²⁹² R 20-5.

²⁹³ R 20-5. Testimony of TA 2.

²⁹⁴ R 20-5.

²⁹⁵ R 20-5.

²⁹⁶ Testimony of TA 2.

²⁹⁷ R 20-5.

²⁹⁸ Testimony of TA 2.

²⁹⁹ Testimony of TA 2.

³⁰⁰ R 20-5.

³⁰¹ R 20-5. Testimony of TA 2.

³⁰² R 20-5. Testimony of TA 2.

³⁰³ Testimony of TA 2.

³⁰⁴ R 20-5.

³⁰⁵ Testimony of Assistant Principal.

³⁰⁶ R 15-1.

2018 incident and determined the Student's behavior was a manifestation of the Student's disability.³⁰⁷

2. At the time of this meeting, the Student had five disciplinary referrals for dangerous behavior, disturbance, insubordination, iPad Violation and unauthorized use of his iPad for the first thirty six days of school.³⁰⁸ The IEP team has introduced ten additional interventions since December 2017 to the Student's BIP.³⁰⁹ The Student continued to demonstrate an increasing pattern of behaviors of failing to follow the staff's directions.³¹⁰
3. The District staff provided reports on the Student's progress at this meeting. The Student is not making sufficient progress with his communication skills. The Speech/Language Pathologist has increased her minutes with the Student because the Student was not making progress.³¹¹ The Student's IEP has 200 minutes of services per month, however, the Speech/Language Pathologist has increased the Student's minutes and some months the Student has received between 300 to 400 minutes a month.³¹² The Speech/Language Pathologist works to improve the Student's communication skills because of his disability the Student struggles to read and understand verbal and non verbal cues when communicating with others.³¹³
4. The Student has not met his speech/language goals. The Student's goal is to further develop his speech language skills needed for success in educational, vocational and community settings.³¹⁴ The Student from August to October was able to answer questions based on a social cue picture using a complete sentence with approximately a 62% average.³¹⁵ The goal for the Student is 72%.³¹⁶ The Student has made progress but has not met his goal.³¹⁷ The Student is heavily dependent on prompting and modeling to have a meaningful conversation.³¹⁸
5. The Student's performance in the classes with his Special Ed Teacher 1 has declined. For the resource class, the Student has difficulty understanding social language, pragmatics and expected conversational skills. The Student typically does not engage with his peers unless it is a structured social activity.³¹⁹ The Student needs help to complete his work in LLS except for

³⁰⁷ Testimony of Assistant Principal. See also, R 15-15.

³⁰⁸ R 15-19.

³⁰⁹ R 15-19.

³¹⁰ R 15-20.

³¹¹ Testimony of Speech/Language Pathologist.

³¹² R 84-1 and R 84-2. Testimony of Speech/Language Pathologist.

³¹³ Testimony of Speech/Language Pathologist.

³¹⁴ R 17-3.

³¹⁵ R 17-3. Testimony of Speech/Language Pathologist.

³¹⁶ R 17-3. Testimony of Speech/Language Pathologist.

³¹⁷ R 17-3.

³¹⁸ Testimony of Speech/Language Pathologist.

³¹⁹ R 15-8.

Math.³²⁰ In English class, the Student is reading between the 1st and 7th grade level.³²¹ The Student receives 1st and 2nd grade material that has been modified for him.³²² The Student's reading fluency has digressed and the Student could previously finish a book within one to two days.³²³ The Student is reading much slower now and taking three weeks to read a book.³²⁴ The teaching assistants have to scaffold their questions to assist the Student in answering their questions. The Student was earning a C+ in Reading and English.³²⁵ Based on the Read 180 program assessments, the Student's reading ability was 379 which increased from the prior year but is below the class average.³²⁶ The Student scored a 57% on his Skills Workshop Test 1 which was below the class average of 76%.³²⁷

6. The Student was reported to be doing well in his consumer mathematics class and completes his assignments and does extra homework problems.³²⁸ The consumer mathematics teacher will intervene when the Student becomes defiant with the teaching assistant.³²⁹ The Student needs the most support with staying focused on task and may need redirected to understand the directions of the assignment.³³⁰
7. The Student's coursework has been modified in his classes for the Student to perform well. The history teacher indicated the Student scored a C on a modified test for the final assessment.³³¹ The first two assessments were modified so the Student would be successful.³³² In the Computer lab, the Student receives instructions in his class and needs the teaching assistant to break down the instructions for him and is provided additional time to complete the tests.³³³
8. A change of placement for the Student was recommended at this meeting for the remainder of the 2018-2019 school year. The District IEP team was in agreement the Student should be placed at [REDACTED] Day School full time.³³⁴ The Parents disagreed and wanted the Student to remain at [REDACTED] High School.³³⁵ To continue to work collaboratively with the Parents, the District IEP Team

³²⁰ R 15-8.

³²¹ R 15-8.

³²² R 15-8.

³²³ R 15-8.

³²⁴ R 15-8. Testimony of TA 1.

³²⁵ R 15-7.

³²⁶ R 15-7.

³²⁷ R 15-7.

³²⁸ R 15-8.

³²⁹ R 15-8.

³³⁰ R 15-8.

³³¹ R 15-8.

³³² R 15-8.

³³³ Testimony of Computer Teacher.

³³⁴ R 15-44.

³³⁵ R 15-44.

agreed to have the Student take two classes at ■ High School – the LLS class and a Computer Tech class at the end of the day.³³⁶

9. To work with Parents, the Assistant Director offered other private day schools and received consent from the Parents to share the Student’s IEP with other schools.³³⁷ The Assistant Director also offered the Parents an opportunity to tour ■ Day School and the Parents refused to tour the school.³³⁸

F. CHANGE OF PLACEMENT FOR THE STUDENT FOR THE REMAINDER OF THE 2018-2019 SCHOOL YEAR.

1. The IEP team and the District staff that work with the Student are in agreement the Student should attend ■ Day School full time because ■ High School is not the appropriate placement for the Student.
2. The ■ High school is not an appropriate placement for the Student because the environment is too over stimulating for the Student and the Student is not benefiting from being with his peers. The Speech/Language Pathologist, School Psychologist, Assistant Director and Department Chair are in agreement the environment is over stimulating.³³⁹ The Student is no longer available for learning because the Student is over stimulated and as a result has not been the best problem solver.³⁴⁰ The Student is not engaging or communicating with his peers in the regular education classes.³⁴¹ The Student is having sensory difficulties and toileting accidents.³⁴²
3. The ■ High School is also not an appropriate placement for the Student because the Student is not learning how to be independent in the common areas and during the classroom instruction. The Department Chair, Computer Teacher, TA 1 and TA2 and Special Ed Teacher 1 and Assistant Director all concur the Student is not being independent in the school environment and is not accessing his education.³⁴³ The Student is required to have a one on one aide at all times due to his unsafe behavior.³⁴⁴ The Student is not allowed to be in the hallways without a teaching assistant at all times since the Student has engaged in unsafe behaviors with his peers and has been insubordinate with the staff.³⁴⁵ The Student needs to be prompted in his classes to complete his work and to participate in class.³⁴⁶ TA 1 reported the Student needs nine to

³³⁶ R 15-44.

³³⁷ Testimony of Assistant Director. R 80-1 and R 80-2.

³³⁸ Testimony of Assistant Director.

³³⁹ Testimony of Assistant Director, Speech/Language Pathologist, School Psychologist and Department Chair.

³⁴⁰ Testimony of Assistant Director.

³⁴¹ Testimony of Computer Teacher.

³⁴² Testimony of Department Chair, TA 2, and School Psychologist.

³⁴³ Testimony of TA 1, TA 2, Department Chair, Computer Teacher, Special Ed Teacher 2 and Assistant Director.

³⁴⁴ Testimony of TA 1, TA 2, Department Chair, Special Ed Teacher 2, Assistant Principal and Assistant Director.

³⁴⁵ Testimony of Assistant Directory, TA 1, TA 2, Department Chair.

³⁴⁶ Testimony of Computer Teacher and Special Ed Teacher 1.

ten prompts to focus on a task and the Student is not able to follow classroom instructions and the prompting of the Student in class is disruptive to the other students in the classroom.³⁴⁷ The Student needs the teaching assistants to break down the instructions for him.³⁴⁸ The Special Ed Teacher 1 explained the Student also must be prompted to stay on the page or work on a lesson.³⁴⁹

4. The Staff and IEP team have implemented many interventions and supports in order for the Student to be successful at the ■ High School and these supports have failed to enable the Student to become independent and to fully access his education. The Parents testified more interventions could be implemented to assist the Student to remain at ■ High School full time, however, this is disputed by the IEP Team and District Staff. The Assistant Director indicated the IEP team has tried to make the Student's world smaller and smaller and cannot think of any other layers to add to assist the Student to access his education.³⁵⁰ The team has talked to their Autism Coach and outside consultants and has done pre-teaching and teachable moments with the Student at the time of the incidents.³⁵¹ The Michelle Garcia Winters program which is designed for students on the autism spectrum and which is normally effective is not working with this Student.³⁵² The Occupational Therapist does not believe an increase in occupational therapy minutes will be beneficial for the Student because the Student receives the most sensory support than any other student at the high school and is still engaging in negative behaviors.³⁵³ The Special Ed Teacher 1 explained the Student has declined in using his available sensory tools and less willing to follow directions and stay regulated.³⁵⁴
5. The Autism Consultant recommended additional interventions could be implemented for the Student to stay at ■ High School full time. The teaching assistants could be trained to work with autistic children, social work services could be provided to the Student and the staff could implement social skills training which includes role playing and video modeling.³⁵⁵ The Autism Consultant believed the Sensory Breaks and Zones of Regulation were punitive on the Student and that the school staff did not understand the Student's needs.³⁵⁶ In the Autism Consultant's opinion, if the Student received the correct visual supports, appropriate social work services and proper identification of his sensory needs, the Student would thrive at ■ High School.³⁵⁷ Find the Autism Consultant's opinion is not credible. The

³⁴⁷ Testimony of TA 1.

³⁴⁸ Testimony of Computer Teacher.

³⁴⁹ Testimony of Special Ed Teacher 1.

³⁵⁰ Testimony of Assistant Director.

³⁵¹ Testimony of Assistant Director.

³⁵² Testimony of School Psychologist.

³⁵³ Testimony of Occupational Therapist.

³⁵⁴ Testimony of Special Ed Teacher 1.

³⁵⁵ Testimony of Autism Consultant.

³⁵⁶ Testimony of Autism Consultant.

³⁵⁷ Testimony of Autism Consultant.

Autism Consultant did not review the Student's complete file.³⁵⁸ The Autism Consultant only reviewed three IEPs for the Student and thought an email was an evaluation.³⁵⁹ The Autism Consultant has never met the Student and has not observed the Student in a classroom.³⁶⁰ When the Autism Consultant made her recommendations she did know the Student was in fact receiving counseling minutes from the School Psychologist, was not aware of TA 1 and TA 2's extensive training, was not aware social stories and roll playing were being used with the Student and was not aware the school had been utilizing [REDACTED] social thinking program that she recommended.³⁶¹ TA 1 has a Masters Degree in School Psychology and is working on her Masters Degree in Special Education.³⁶² TA 2 has a B.A. in Psychology, a Masters Degree in School Social Work and an ABA therapy certificate.³⁶³ TA 2 has prior experience working with autistic children.³⁶⁴ The Autism Consultant also failed to meet and speak with any of the staff at the District before providing her opinion.³⁶⁵

CONCLUSIONS OF LAW AND DISCUSSION OF THE ISSUES.

1. Whether the District allegedly failed to develop an appropriate IEP on October 4, 2018 for the Student because the proposed placement in a therapeutic day school is not the least restrictive environment to meet the needs of the Student and thus denied the Student a FAPE?

A school district must provide children with disabilities with a free appropriate public education ("FAPE") and to the "maximum extent appropriate with nondisabled children.³⁶⁶" Children with disabilities shall only be removed from the regular educational environment "when the nature or the severity of the disability is such that the education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.³⁶⁷ IDEA creates a strong preference in favor of mainstreaming handicapped children by educating them in the least restrictive

³⁵⁸ Testimony of Autism Consultant.

³⁵⁹ Testimony of Autism Consultant.

³⁶⁰ Testimony of Autism Consultant.

³⁶¹ Testimony of Autism Consultant.

³⁶² Testimony of TA 1.

³⁶³ Testimony of TA 1.

³⁶⁴ Testimony of TA 1.

³⁶⁵ Testimony of Autism Consultant.

³⁶⁶ *Beth B. v Van Clay*, 282 F.2d 493 (7th Cir.2002). See also, 20 U.S.C. § 1412(a)(1) and 1412(a)(5).

³⁶⁷ 20 U.S. C §1412(a)(5).

environment.³⁶⁸ Regular classes, however, may not be the least restrictive environment for every child who possesses a disability.³⁶⁹

The test is twofold. The first determination is whether the State complied with the procedures set forth in the Act.³⁷⁰ The second determination is whether the individualized educational program developed through the Act's procedures is reasonably calculated to enable the child to receive educational benefits.³⁷¹ The Supreme Court in *Endrew F. v. Douglas County School District* further clarified the standard previously provided in the Rowley case, and requires the school district to “offer an IEP reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances” in order to meet the substantive obligations under the IDEA.³⁷²

Additionally, under the Illinois Code the IEP shall include the behavioral intervention plan for the student who has a behavioral issue.³⁷³ The IEP team is required to consider and if necessary to provide a FAPE include appropriate behavioral goals and objectives and services and support in the IEPs of children whose behavior impedes their own learning and the learning of their peers.³⁷⁴ The IDEA, however, does not provide substantive requirements for behavioral intervention plans.³⁷⁵ The appropriateness of an IEP “can only be judged by examining what was objectively reasonable at the time [the team created the IEP.]”³⁷⁶ An IEP may not be determined to be inadequate based upon testimony and evidence that were not before the school district when the IEP was developed.³⁷⁷

A placement decision is to be based on the IEP and is to be determined annually.³⁷⁸ The placement decision is to be made “by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data and the placement options.”³⁷⁹ The federal regulations and the Illinois Code require the school district to provide a continuum of alternative places to meet the needs of the child with a disability for special education and related services.³⁸⁰ Under

³⁶⁸ *S. v. Reedsburg School District* 302 F. Supp. 2d 959 (W.D. Wis. 2003).

³⁶⁹ *Questions and Answers on Endrew F. v. Douglas County School District Re-1*, 71 IDELR 68 (U. S. Dept. of Education, Dec. 2017).

³⁷⁰ *Bd. of Education v. Rowley* 458 US 176, 206-207, See also, *Beth B. v Van Clay* 282 F.2d 493 (7th Cir.2002).

³⁷¹ *Bd. of Education v. Rowley* 458 US 176, 206-207.

³⁷² *Endrew F. v. Douglas County School District RE-1*, 375 S. Ct. 988 (2017)

³⁷³ 23 ILL Admin. Code Sec. 226.230(b).

³⁷⁴ *Questions and Answers on Endrew F. v. Douglas County School District Re-1*, 71 IDELR 68 (U. S. Dept. of Education, Dec. 2017).

³⁷⁵ *D. W. v. Milwaukee Public Schools*, 61 IDELR 32 (7th Cir. 2013).

³⁷⁶ *B. G. v. City of Chicago Sch. Dist.* 299, 69 IDELR 177 (N. D. Ill, 2017) (quoting *M. B. v. ex rel. Berns v. Hamilton Southeastern Schools*, 668 F. 3d 851, 863 (7th Cir., 2011) (internal citations omitted.). See also, *District of Columbia v. Walker*, 54 IDELR 271, 109 F. Supp.3d 58 (D.C. D.C. 2015).

³⁷⁷ *A. G. and JG v. Bd. of Ed. Of Arlington Cen. Sch. Dist.*, 69 IDELR 210 (S. D. NY). See also, *B.L. v. New Britain Bd. of Ed.*, 394 F. Supp.2d 522 (D. C. Conn. 2005)

³⁷⁸ 34 C.F. R. § 300.116(b).

³⁷⁹ 34 C.F.R §300.116(a)

³⁸⁰ 34 C.F.R. §300.115. 23 Ill. Adm. Code § 226.300.

34 CFR § 300.551(b)(1), the school district must maintain a continuum of program options which range from regular classrooms with supplementary aids to separate schools and residential facilities.³⁸¹ The federal regulations indicate a child should not be removed from a regular classroom “solely because of needed modifications in the general education curriculum.”³⁸²

The parents do not have a right though to force the school district to provide a special program or methodology.³⁸³ The Act provides the state and the local educational agencies with the cooperation of the parents with the role of formulating the child’s education.³⁸⁴ The school district, however, has the right to provide children with an education the school district considers more appropriate than the proposed education provided by the parents.³⁸⁵

The Seventh Circuit has not adopted any multifactor test for determining whether a child must remain in a regular school.³⁸⁶ To determine if the placement is in the least restrictive environment, the inquiry is whether the child’s education in the conventional school was satisfactory and if not whether reasonable measures would have made the child’s education satisfactory.³⁸⁷ The preference for mainstreaming must be balanced against the benefits that can be derived from the services that can be provided in a segregated setting.³⁸⁸ In determining the least restrictive environment, consideration must be given to any potential harmful effects the placement may have on the child.³⁸⁹ Behavior of the child is a permissible factor in determining the least restrictive environment for the child’s education and a school district is not required to place a child in a regular classroom where the child’s behavioral problems interferes with the ability of the other students to learn or threatens the safety of the other students.³⁹⁰

In the instant case, the Parents have not raised any procedural or substantive violations of the IDEA. The sole allegation in this case is that a therapeutic day school is not the least restrictive environment for the Student as recommended by the District in the Student’s current October 4, 2018 IEP. The Parents contend the District should provide additional interventions and modifications to the Student’s BIP for the Student to remain full time at ■ High School. Here, we can assess how the Student benefited from his education in different settings and do not have to speculate which placement on the continuum of alternative placements is the least restrictive environment for the

³⁸¹ 34 CFR § 300.551(b)(1).

³⁸² 34 C.F.R. § 300.116(e).

³⁸³ See, *Lachman v. Maine Township*, 852 F.2d 290 (7th Cir. 1988).

³⁸⁴ See, *Lachman v. Maine Township*, 852 F.2d 290 (7th Cir. 1988).

³⁸⁵ *Beth B. v Van Clay*, 282 F.2d 493 (7th Cir. 2002).

³⁸⁶ *Bd. of Ed. Of Township High School District No. 211 v. Ross*, 47 IDELR 241 (7th Cir. 2007). See also, *Beth B. v. Van Clay*, 282 F.3d 493, 499 (7th Cir. 2002).

³⁸⁷ *Bd. of Ed. Of Township High School District No. 211 v. Ross*, 47 IDELR 241 (7th Cir. 2007).

³⁸⁸ *MR v. Lincolnwood Bd. of Ed., District 74*, 843 F. Supp. 1236, 20 IDELR 1323 (N. D. IL, 1994).

³⁸⁹ 34 C.F. R. § 300.116(d).

³⁹⁰ *In re: Student with a Disability*, 117 LRP 20573 (ISEA, 2017). See also., *Clyde K and Sheila K v. Puyallup School Districts*, 21 IDELR 664 (9th Cir., 1994).

Student. The Findings of Fact clearly demonstrate the Student was receiving an educational benefit while attending ■ Day School full time and was making progress in light of the Student's circumstances.³⁹¹ The Findings of Fact also unequivocally demonstrate the Student was still performing well and did not have any disciplinary infractions when the Student had a split schedule between ■ High School and ■ Day School.³⁹² The Student was able to access his education being with similar peers in a smaller environment, was willing to employ the sensory room and the program had social needs embedded in the curriculum.³⁹³ The tools gained from the ■ Day School enabled the Student to access his education at ■ High School.³⁹⁴

The District in an effort to work collaboratively with the Parents placed the Student at ■ High School full time.³⁹⁵ Understandably, the Parents want the Student educated in his home school with non-disabled peers. Unfortunately, the transition of the Student to full time status at ■ High School was not satisfactory for the Student and reasonable measures implemented by the District for the Student to remain at ■ High School full time have undeniably failed. The Parents contend the District could revise the Student's BIP and hire an outside BCBA to review the BIP. The Findings of Fact uncontrovertibly show the District provided a BIP to the Student as required under the Illinois Code when a student has a behavioral issue.³⁹⁶ Moreover, the District proactively held five IEP meetings from December 2017 through October 4, 2018 to review and revise the Student's BIP in order to assist the Student in accessing his education at ■ High School.³⁹⁷ The IEP team increased his service minutes, added additional interventions and positive supports for the Student and consulted with an Autism Coach and outside providers.³⁹⁸ The Parents contend the teaching assistants for the Student are not properly trained but this is not supported by the evidence.³⁹⁹ The Parents called an Autism Consultant to offer suggested modifications to the Student's BIP, however, the Autism Consultant's testimony was not reliable because the Autism Consultant made her recommendations without knowing the services being offered to the Student and without meeting any District staff and the Student.⁴⁰⁰

The Parents are striving for the Student to be independent and be able to support himself when he graduates. Unfortunately, the environment at ■ High School has proven to be too over stimulating for the Student and the Student is unable to independently access the common areas of the high school and access his education.⁴⁰¹

³⁹¹ FOF B6, B7 and B8.

³⁹² FOF B12.

³⁹³ FOF B12.

³⁹⁴ FOF B12.

³⁹⁵ FOF B12.

³⁹⁶ FOF B9.

³⁹⁷ FOF C11, C18, C25, D7 and E1.

³⁹⁸ FOF C11, C12, C18, C23, C27, C30, C31, C32, D2, D3, D4, D6, D9 and D10.

³⁹⁹ FOF F5.

⁴⁰⁰ FOF F5.

⁴⁰¹ FOF C12, D6, E 5, E6, E7, F2, F3 and F4.

The Student's behavior has been unsafe and disruptive which had not been a concern when the Student's schedule was split between ■ Day School and ■ High School.⁴⁰² Under the case law, this District can consider this Student's behavior in determining the least restrictive environment for the Student. The Findings of Fact show the Student now has disciplinary infractions and the stress and anxiety from the environment is causing toileting accidents.⁴⁰³ The Student undeniably is now exhibiting unsafe behaviors, insubordination and disruptive behaviors in the classroom which is impeding his learning and the learning of his peers and threatens the safety of the other students.⁴⁰⁴ Moreover, the Student is not making progress at ■ High School.⁴⁰⁵ The District has done everything in its means to actively revise the Student's BIP in order to enable the s Student to remain at ■ High School full time and these interventions have failed.⁴⁰⁶

The District is now requesting the Student be placed at a therapeutic day school full time and the IHO agrees. All of the District staff are in agreement the Student needs to attend ■ Day School full time because attending ■ High School is not an appropriate or satisfactory placement for the Student to receive an educational benefit. The Student has regressed in this placement and is not accessing his education without one on one support.⁴⁰⁷ The Student needs to return to the environment at ■ Day School which is designed for students on the autism spectrum and will work with this Student to relearn the tools necessary for him to function again in a split environment where the Student can access his education, be independent in his learning and be independent outside the school environment.⁴⁰⁸ Therefore, the least restrictive environment for the Student to receive a FAPE is full time placement in a therapeutic day school.

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

1. The least restrictive environment for the Student to obtain a FAPE is full time placement at a therapeutic day school such as ■ Day School.
2. The Student's October 4, 2018 IEP shall be implemented within 5 school days of the date of this Final Determination and Order in order for the Student to receive the supports and services needed to receive an educational benefit.⁴⁰⁹

⁴⁰² FOF C7, C9, C17, C18, C22, C24, C32, D5, D11 and D12.

⁴⁰³ FOF C7, C9, C10, C18, C25, C26, C28 and E1.

⁴⁰⁴ FOF C7, C8, C9, C15, C16, C17, C18, C20, C22, C25, C28, C29, D5, D8, D11, D12 and E2.

⁴⁰⁵ FOF E3, E4, E5 and E6.

⁴⁰⁶ FOF F2, F3 and F4.

⁴⁰⁷ FOF 2, F3 and F4.

⁴⁰⁸ FOF B2, B3, B4 and B7.

⁴⁰⁹ IHO Ex. 18.

3. The Parents' claim and requested relief are hereby denied.

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

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

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 must specify the portions of the decision for which clarification is sought. A copy of the request must 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 2, 2019

Leah Trinkala
Impartial Hearing Officer

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

APPENDIX A

[REDACTED] v. [REDACTED] HSD [REDACTED]

ISBE Case No. 2019-0120

Child/Student	[REDACTED]
Location of the Hearing	District's Administrative Offices
	[REDACTED]
	[REDACTED] Illinois [REDACTED]
Child's Parents/Petitioners/Mother/Father	[REDACTED]
[REDACTED] High School	[REDACTED] High School (Current Placement)
[REDACTED] Day School	[REDACTED] - Therapeutic Day School
Speech/Language Pathologist	[REDACTED]
Assistant Principal	[REDACTED]
Autism Consultant	[REDACTED]
Special Ed Teacher 1	[REDACTED]
Occupational Therapist	[REDACTED]
Department Chair	[REDACTED]
Assistant Director	[REDACTED]
TA 2	[REDACTED]
Special Ed Teacher 2	[REDACTED] at [REDACTED]
School Psychologist	[REDACTED]
Computer Teacher	[REDACTED]
TA 1	[REDACTED]

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the Final Decision and Order was sent to the Parties through their respective counsel identified below and to ISBE by UPS (signature required) and electronic mail and a true and copy of the Final Decision and Order was mailed to the Parents by UPS (signature required) and directed to:

Mr. Neal Takiff, Esq.
Whitted Takiff, LCC

[REDACTED]
[REDACTED]
[REDACTED]

and

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

and

Andy Eulass
Due Process Coordinator
Illinois State Board of Education
100 N. First Street
Springfield, IL 62777-0001
Electronic Mail: aeulass@isbe.net

On April 2, 2019

Leah M. Trinkala
Impartial Hearing Officer

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