

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

████ a minor, by and through)
his parent/guardian, █████)
)
Petitioners,)
)
- v -)
)
██████████ SD █████)
)
Respondent.)

Case No. 2019-DP-0151

Alan G. Schuster
Hearing Officer

DECISION AND ORDER

I. JURISDICTION:

Jurisdiction to adjudicate the issues raised in Petitioner’s (████ or “Student”) Complaint is afforded under the Individuals with Disability Education Act (IDEA), 20 USC §1400, *et seq.* and the Illinois School Code, 105 ILCS 5/14-8.02a, *et seq.*

II. PROCEDURAL HISTORY:

On November 28, 2018 Petitioners served the █████ School District █████ (“Respondent” or “District” or “████ its Due Process Complaint Notice (“DPCN”) requesting the appointment of an impartial due process hearing officer to determine weather or not the District has denied the Petitioner the right to a Free Appropriate Public Education (“FAPE”) under IDEA. This Hearing Officer (“IHO”) was appointed to hear this matter on December 10, 2018. The Student is represented by and through his parent/guardian, █████ (“Parent”). The District is represented by one of its attorneys, Ms. Katie Ilijic, Esq.

¹ Personal identification information is provided in Appendix A.

² Student’s parent/guardian, █████ was in attendance each day of the Hearing.

On December 10, 2018 this IHO set the matter for an initial status conference on December 20, 2018 to learn of the status of the parties resolution efforts and to set a Prehearing Conference date.

On December 20, 2018 the matter was continued to January 24, 2019 to allow sufficient time for the parties to participate in the Illinois State Board of Education state-sponsored mediation program.

On January 24, 2019, this matter was continued to February 15, 2019 for a report on the parties ongoing settlement efforts and to set a Pre-hearing Conference. On this same date the parties' Joint Motion To Continue the 45-Day timeline was granted which extended the 45-Day timeline to March 15, 2019.

On February 15, 2019, the matter was continued to February 22, 2019 to allow additional time for the parties to complete their settlement efforts.

On February 22, 2019, the matter was continued to March 6, 2019 for a Pre-hearing Conference.

On February 23, 2019, the parties' Joint Motion To Continue was granted extending the 45-Day timeline to April 15, 2019.

On March 6, 2019, following a Prehearing Conference, the matter was set for a Hearing on April 23-24, 2019. The 45 day timeline was extended by agreement to May 8, 2019 to allow sufficient time to complete the Hearing and for this IHO to issue his written Decision.

Hearing of this matter commenced April 23, 2019. Following the testimony of the witnesses³, the parties offered their respective documents into evidence and any objections were heard and ruled upon. The Hearing was closed on April 24, 2019 following closing arguments.

³ Both parties were allowed to conduct both their respective direct and cross-examinations of each witness when initially called to avoid having to recall the same witnesses at a later time.

III. ISSUE PRESENTED FOR ADJUDICATION:

WHETHER OR NOT THE STUDENT’S CURRENT INDIVIDUALIZED EDUCATION PROGRAM (IEP) DENIES THE STUDENT A FREE APPROPRIATE PUBLIC EDUCATION (FAPE) BY PROVIDING FOR A PLACEMENT IN A THERAPEUTIC DAY SCHOOL WHICH THE PARENT CONTENDS IS NOT APPROPRIATE AND NOT IN THE LEAST RESTRICTIVE ENVIRONMENT.

IV. RELIEF REQUESTED BY PETITIONER:

THE STUDENT REQUEST THAT THIS IHO FIND THE DISTRICT HAS DENIED THE STUDENT A FAPE BY OFFERING A PLACEMENT WHICH IS NOT APPROPRIATE OR IN THE LEAST RESTRICTIVE ENVIRONMENT AND REQUEST THIS IHO TO ORDER THE DISTRICT TO CHANGE THE STUDENT’S PLACEMENT TO HIS STAY-PUT PLACEMENT AT THE [REDACTED] COMMUNITY ACADEMY.

V. RELIEF REQUESTED BY THE RESPONDENT:

THE DISTRICT DENIES IT HAS FAILED TO PROVIDE THE STUDENT A FAPE AND REQUESTS THIS IHO TO FIND THE DISTRICT’S PROPOSED PLACEMENT OF THE STUDENT IN A THERAPEUTIC DAY SCHOOL IS AN APPROPRIATE PLACEMENT AND IN THE LEAST RESTRICTIVE ENVIRONMENT.

VI. WITNESS PRESENTED FOR TESTIMONY AT HEARING:

On Behalf of Petitioner :

[REDACTED] Parent (“ [REDACTED]”)

On Behalf Of Respondent:

[REDACTED], [REDACTED] School Psychologist (“TN”)

[REDACTED], [REDACTED] Social Worker (“VF”)

[REDACTED], [REDACTED] Special Education Teacher- [REDACTED] Elementary (“SL”)

[REDACTED], Principal, [REDACTED] West (“AP”)

[REDACTED], [REDACTED] Case Manager (“SG”)

[REDACTED], [REDACTED] Special Education Teacher- [REDACTED] Elementary (“JK”)

VII. DOCUMENTS OFFERED AND ADMITTED INTO EVIDENCE:

Petitioner's Exhibits Nos.: None⁴.

District's Exhibits⁵ Nos.: 1, 5, 7-12, 14, 19-25.

VIII. BURDEN OF PERSUASION:

With respect to the Petitioner's request for a due process hearing, in general the Petitioner has the burden of persuasion concerning the issues presented for adjudication, *Schaffer v. Weast*, 546 U.S. 49, 56-62; 126 S.Ct. 528 (2005); 105 ILCS 5/14-8.02(b). Additionally, under Illinois law, the District must provide evidence that it has appropriately identified the Student's educational needs and that the special education and related services are adequate, appropriate, and available, however this does not shift the burden of proof to the District, [REDACTED] *Public School District* [REDACTED] 108 LRP 43065 (IL SEA, 2008); 105 ILCS § 14-8.02a(g).

IX. FINDINGS OF FACT:

This Hearing Officer did not have the benefit of having the official transcript of the Hearing proceedings 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 has considered the testimony of the witnesses presented and the documents introduced and admitted into evidence when rendering this final determination. After considering the evidence, as well as the arguments of both the District's counsel and the Parent, this Hearing Officer's Findings of Fact are as follows:

⁴ Petitioner offered into evidence a "Therapist Letter" dated 12/19/18 and Petitioner's "Written Notes," both of which were objected to by the District on grounds these documents were not identified or used as an Exhibit during the Hearing. The District also objected on the basis the District had no opportunity to cross-examine the author of document as to the content of the document. The District's objections were sustained and these Exhibits were not admitted into evidence.

⁵ Each of the District's Exhibit numbers are preceded with the designation "SD" to denote school district.

A. BACKGROUND INFORMATION:

1. ■ is a 9-year-old 3rd grade male student currently enrolled at the ■ Elementary Community Academy located in Chicago, Illinois (“■”) and has been attending the ■ school since the 1st grade. He is presently eligible to receive special education and related services under a disability classification of Autism. ■ has also been formally diagnosed with Attention Deficit Hyperactive Disorder (ADHD-hyperactive type). This diagnosis was given ■ following a 10 day partial hospitalization at Riveredge Hospital in October, 2018. This hospitalization resulted from behavioral concerns with ■ involving both verbal and physical threats of harm to himself and others, (SD Ex. 5, 11, 15; Test. ■ TN).

2. ■ has been receiving special education and related services since kindergarten (2015-2016 school year). His disability classification at that time was Developmental Delay. District staff also noted at this time ■ to be hyperactive, inattentive, impulsive, restless and safety concerns were also noted (removing scissors from teacher’s desk, classroom elopements). His Individualized Education Plan (“IEP”) provided for a one-to-one full-time paraprofessional aide to address attention and safety concerns. He also received direct social work services. District Staff notes ■ throughout his tenure at ■ required constant monitoring and constant redirection in order for him to attend to the task at hand and to assure his safety and the safety of others (both teachers and peers), (SD Ex. 1, 5, 8).

3. Testimony adduced at the Hearing as well as District staff notes indicates at the beginning of 3rd grade (2018-2019 school year) ■ behavioral difficulties escalated. ■ is noted to have become more aggressive and threatening with school staff and peers. These behaviors included physically threatening harm to staff and others with classroom objects such as pencils, refusing (in an aggressive manner) to follow school staff directives, threatening

elopement from the classroom setting when he did not want to comply with teacher directives, and acting out frightening scenes from the horror film series “Chucky.” At this time he also began exhibiting visual and auditory delusions and thoughts such as hearing voices, seeing shadows, engaging in self-talk and making unusual comments such as “my fingers fell off and grew back,” (Test. TN, VF, SL⁶; SD Ex. 7, 8).

4. Also noted at this time were [REDACTED] unusual obsessions and preservations. He is reported to be obsessed with pencil sharpeners. He is noted to decompensate into temper tantrums when denied access to the classroom pencil sharpener. The District reports the pencil sharpener had to be removed from the classroom because all [REDACTED] wanted to talk about in class was the classroom pencil sharpener. Another unusual obsession reported at this time was [REDACTED] fixation on the letters A, H, C and e and the numbers 0,2, 3,5, 6, and 9. When these letters and/or numbers were required to complete a spelling or math assignment, [REDACTED] is observed to erase and redraw these letters and numbers, repetitively, without any apparent reason to do so. Because of these insistent behaviors he is often unable to complete these assignments, (Test. VF, SL; SD Ex. 1, 8, 20).

B. TRIENNIAL EVALUATION:

5. At the beginning of 3rd grade, [REDACTED] was reevaluated by the District as part of his triennial evaluation and to determine his eligibility for ongoing special education and related services. As part of the reevaluation, the District, in September 2018, performed a Psychological Evaluation, Social Work Evaluation and records review, (Test. TN, VF; SD Ex. 5, 8).

⁶ SL has been employed by [REDACTED] since 2002 as a Special Education Teacher. She received a Master’s degree in Special Education (MA) from Loyola University in 2001 and has held a Learning Behavioral Specialist (LBS1) certification since that time.

6. The Psychological Evaluation was administered by TN a school psychologist employed by [REDACTED]. The assessments administered a part of the evaluation included, Wechsler Individual Achievement Test-Third Edition (WIAT-III), (a measure of academic skills in the domains of reading, writing and mathematics); the Reynolds Intelligence Screening Test (RIST), (a standardized measure of intelligence); the Gilliam Autism Ratings Scale-Third Edition (GARS-3), (an assessment of persons who have autism spectrum disorder (ASD)); the Vineland-3 (a standardized measure of adaptive behavior in daily functioning assessing various domains including communication, daily living skills, socialization, motor skills); Teacher and Student interviews; Classroom Observations and school records review, (Test. TN, SD Ex. 5).

7. The results of this evaluation indicates [REDACTED] has significant academic deficits in the areas of reading, math and spelling. He is functioning at a grade equivalent of 1.2 in Reading Comprehension, a grade equivalent of k.8 in Math Problem Solving, a grade equivalent of 1.5 in Word Reading, a grade equivalent of 1.4 in Pseudoword Decoding, a grade equivalent of k.9 in Numerical Operations and a grade equivalent of 1.4 in Spelling. On the measure of intellectual functioning [REDACTED] is shown to functioning on an age equivalent level of a 6 year-old, which is in the borderline range, placing him in the 4th percentile among his peers. Weaknesses are shown in [REDACTED] verbal and non-verbal development, verbal reasoning and comprehension. On the GARS-3 assessment, the results indicate [REDACTED] “Very Likely” meets the criteria for Autism. On the adaptive behavior ratings, all measures show [REDACTED] functioning at or below the 4th percentile rank of his peers. His Daily Living Skills assessment proved to be the weakest (percentile rank of 1). His

⁷ TN has been employed by [REDACTED] since 2006. He received his B.S. in Psychology from the University of Illinois-Champaign in 2000. He attended the Chicago School of Professional Psychology from 2001-2012 and received both a Master’s degree (M.A.) and a Doctorate degree in Psychology (Psy.D). TN has had a licensed clinical professional counselor license (LCPC) from the State of Illinois since 2014 and a Type 73 license since 2011, both of which are current.

Socialization domain also proved to be very weak (percentile rank of 2 among peers), (SD Ex. 5).

8. On September 14, 2018, VF⁸ performed a Social Work Evaluation as part of [REDACTED] triennial evaluation. This evaluation comprised a review of school records and interviews with [REDACTED] his parent and his teachers, (Test. VF; SD Ex. 8).

9. The records review reveals [REDACTED] behavior since kindergarten to be aggressive, hyperactive and at risk for elopement. He is noted to be sensitive to loud noises and wears headphones to mitigate loud noises at times of school transitions which he has difficulty with. He is noted to be easily distracted and requires constant redirection to the task at hand.

10. The interview of [REDACTED] special education teacher noted [REDACTED] to be “smart” and that he “understands concepts” when he is focused. He is reported to have difficulty maintaining focus even with the full-time assistance of a one-on-one paraprofessional aide. His teacher noted [REDACTED] fixation on certain objects in the classroom, and in particular pencil sharpeners (even when removed from the classroom). It was noted that [REDACTED] fixations with objects in the room had increased beginning in the 3rd grade. He is noted to have become more easily frustrated when unable to complete a task often resulting in aggressive behaviors including telling school staff he does not like them and to leave him alone. He is reported to have verbally threaten school staff with objects held in his hand, such as a pencil or a ruler. He is noted to have hit teachers with a ruler and has stabbed himself with a pencil. He is noted to have also threatened his peers. When upset he is noted to elope from the classroom without permission. [REDACTED] teachers also report [REDACTED] to be experiencing both visual and auditory delusions (hearing voices, seeing shadows), (Test. VF, SL; SD Ex. 8).

⁸ VF has been employed with [REDACTED] for the past 9 years as a Social Worker. She received a B.A. in Communications from DePaul University in 2006. She received a Masters in Social Work (MSW) from Aurora University in 2010. She has held a Type 73 license from the State of Illinois since 2007 which is current.

11. ■ teachers report he has not formed friendships with peers and describe his peer relationships as “strained.” He is noted to be a loner and not interested in what his peers are doing. It is reported that he does not initiate conversations with his peers and when approached by his peers he rejects their offer of engagement. Questionnaires completed by ■ special education teacher and paraprofessional reveal a significant change in ■ behavior year-over-year from a “very high” range to an “abnormal” range in areas of hyperactivity, conduct and emotionality, (Test. VF; SD Ex. 8).

12. The evaluation notes of the Parent Interview indicates ■ reports seeing a dramatic change in ■ since the beginning of 3rd grade. She describes ■ as being “emotionally distraught.” ■ attributes this to a change in ■ teachers (special education teacher and paraprofessional) as well as his new classroom environment and a change in his classroom hours. ■ reports ■ refused to attend school at the beginning of the year but that she is hopeful he will adapt to the changes in his teaching environment⁹. ■ reported ■ does become fixated on objects and that she is trying to use “rewards” to redirect his attention. ■ reported an increase in ■ aggressiveness with “throwing things,” and that she has managed this with reminding him of rules and the use of reminders and “first and then” intervention directives. ■ reports ■ does need constant supervision because when he is not attentive to the task at hand, he will wander off. ■ reports she feels ■ has improved academically, and that he has become more social with others noting when at a public park ■ will introduce himself to others and initiate play activity. She reports ■ is better able to calm himself when upset and better able to express his feelings why he is upset. ■ acknowledged ■ at time mimics things he sees on television such as scenes from the horror film “Chucky,” but that his reenactment of these scenes are not

⁹ School records indicate ■ has been absent from school 47 times and has been tardy to school 14 times.

done maliciously or to hurt others. ■ also voiced her concerns of the potential for ■ elopement when inattentive on a classroom field trip, (Test. ■ VF; SL, SD Ex. 8).

**C. ELIGIBILITY DETERMINATION
AND ■ INDIVIDUALIZED EDUCATION PROGRAM AND REVISIONS:**

13. On September 27, 2018 the IEP team met to review ■ evaluation and to determine ■ eligibility for special education and related services for the upcoming school year. The IEP team included ■ case manager, (SG), ■ special education teacher, (KK), his general education teacher, (AM), the District's instructional support leader, (FB), school psychologist, (TN), social worker (VF), and the Student's parent, ■ At this time the team determined ■ to remain eligible for special education and related services, under an Autism classification, due to his continuing need for services and supports in the areas of reading, math and language, (SD Ex. 9).

14. Following the eligibility determination, the same IEP team convened to formulate ■ IEP. The teams comments following a review of ■ evaluation and his school records noted ■ to be a smart, happy, lovable child and a student who enjoys helping his teachers. The team notes ■ is a visual learner, but that he is easily distracted which affects his ability to stay focused in the classroom. Also noted were significant deficits in ■ academic, developmental and functional performance, (SD Ex. 10).

15. In the area of Language Arts, the team noted ■ struggles with grade-level vocabulary words and comprehension questions. His reading is at a first grade level. He requires constant redirection which often involves verbal and visual cues and writing prompts in order for him to refocus to the task at hand. ■ is able to write a 2-4 word sentence with teacher prompting. He has difficulty writing 3-5 sentence paragraphs, (SD Ex 10).

16. In the area of mathematics, ■■■ is noted to have difficulty solving one and two step word problems with different orders of operation. Difficulty is also noted with ■■■ ability to solve subtraction problems without regrouping, (SD Ex. 10).

17. In terms of ■■■ Social/Emotional functioning, the IEP team noted since the beginning of the school year ■■■ behavior has become very aggressive when he does not get what he wants. ■■■ has been heard to say “I can do whatever I want to people that tell me what to do.” When not interested in the subject being taught, ■■■ is observed to hide underneath tables or elope from the classroom. When ■■■ does not want to follow classroom rules, he has been observed to threaten hurting staff, his peers or himself with classroom objects such as pencils or rulers. The team also noted ■■■ has difficulty transitioning to and from classes throughout the day particularly with respect to non-preferred activities, (SD Ex. 10).

18. Based upon ■■■ needs and functioning, an IEP was formulated which provided ■■■ special education instruction as follows: Language Arts/English/Reading-300 minutes per week (MPW); Mathematics-450 MPW, Social Work-30 MPW, Independent Functioning- 30 MPW. This instruction is provided to ■■■ with modifications or accommodations in a special education classroom outside of the general education classroom. The IEP also provides ■■■ to be in a general education classroom for the following subjects: Art, Biological & Physical Sciences, Physical Education and Health Education. This IEP provided for ■■■ to be in a general education setting with his peers 51% of the school day. ■■■ is provided a one-to one full time aide throughout the school day to assist with transitions and attention issues. ■■■ general education classroom setting has about 20 students, a general education teacher and ■■■ dedicated aide. His special education classroom has one special education teacher and one paraprofessional along with ■■■ dedicated aide, (SD Ex. 10).

19. On or about October 1, 2018, the District contacted the Illinois Department of Human Services Screening, Assessment and Support Services (SASS), for assistance¹⁰ in addressing the escalation of [REDACTED] aggressive behaviors. SASS recommended an outside evaluation be performed and therapy be provided to [REDACTED] (Test. SG; SD Ex. 1, 10).

20. On October 11, 2018, the IEP team convened to address the escalation of [REDACTED] aggressive behaviors. The team members included [REDACTED] case manager, SG¹¹, his special education teacher KK, his general education teacher, AM, his social worker, VF and [REDACTED] parent [REDACTED]. The purpose of the IEP meeting was to consider amending [REDACTED] placement and consider various accommodations and modifications to address concerns with [REDACTED] behavior. The IEP team noted a concern with the number of days [REDACTED] had been absent from school since the beginning of the school year. Since school began he has had difficulty transitioning to new teachers and his various school settings. He is noted to be overwhelmed when in his general education classroom setting because of the student and classroom size and distractions with objects found in the classroom. The team noted [REDACTED] often refuses to do any work. When overwhelmed, he often hides or elopes from the classroom. He is noted to run around the classroom screaming and yelling. He is noted to use pencils and rulers to threaten harm to others by stabbing them. In one instance he swung the cord of an electric pencil sharpener trying to “whip” the teachers and other students. In another instance he threw markers at his teacher. When he elopes from the classroom, he often locks himself in the bathroom and bangs his head on the bathroom stall door. The team noted that even with a full-time paraprofessional at his side, he continues to act-out in a manner which poses a risk of harm to himself or others. These

¹⁰ SASS is a crisis mental health service program for children and adolescents, who are experiencing a psychiatric emergency.

¹¹ SG has been employed with [REDACTED] since 2012 both as a Special Education Teacher and a Case Manager. She received her undergraduate degree from Northeastern University in 2012. She holds a Special Education teaching certificate (LBS-1) for grades k-12 from the State of Illinois since 2012, which is current.

behaviors are noted to have occurred frequently which often necessitates his teachers contacting school security for intervention purposes, (SD Ex. 12).

21. The team recommended changing [REDACTED] special education teacher to the teacher he had in the 1st and 2nd grade, namely SL, to address any transition issues [REDACTED] may have been having with his new teacher. The team also proposed to provide a more restrictive placement for [REDACTED] to address behavioral, academic and safety concerns by providing for all of his academics to be taught in a special education classroom setting with two special education teachers and three paraprofessionals (including his full-time aide). The team felt by [REDACTED] spending more time in a highly structured small classroom setting with additional teaching supports, both his attention and behavioral issues could be better managed which the team thought would facilitate his learning opportunities. This setting would also help to address the District's safety concerns and also alleviate learning disruptions his peers experienced at times when [REDACTED] exhibited aggression or acting out behaviors in the classroom, (Test. SG, SD Ex. 12).

22. [REDACTED] new placement was a cross-categorical special education classroom setting comprising about 17 students with varied disability classifications including autism, emotional disabilities, and learning disabilities. The classroom has two special education teachers and three paraprofessional aides, one dedicated to [REDACTED] made progress in this new setting until November, 2018 when his teacher reported [REDACTED] attention and focus worsened and he began regressing both academically and behaviorally, which his teacher, SL, had no explanation for. SL reported [REDACTED] attention difficulties limited his ability to remain on task to about 42% of the time. She reports he is unable to complete tasks involving the use of the letters A,C,H, E and the numbers 2,0,3,6,9 because he states he "hates" them¹². Delusional thoughts and comments such as "My fingers fell off and grew back," were again noted. Because of these behaviors, [REDACTED] was

¹² [REDACTED] is reported to draw these letters and numbers and then erase them, repeatedly, without a meaningful purpose.

not meeting his goals in language, spelling and math, and was failing in his classes, (Test. SL; SD Ex. 7).

23. On November 15, 2018, the IEP convened to review █████ progress in his new classroom setting and to revise his IEP as necessary. Team members included █████ case manager, SG, District Representative, IC, █████ special education teacher, SL, his social worker, VF, the school Principal, LH, and his parent █████ (SD Ex. 14).

24. The team noted that despite changing █████ placement to a smaller classroom with additional supports he was not showing any significant progress academically¹³ or behaviorally. The team reports this is due to his pervasive attention issues which denies him the ability to remain on task and interferes with his ability to learn or complete assignments. The team also noted that █████ continues to exhibit behaviors which pose a threat of harm to himself and others and that his delusional thinking and expressive thoughts were worsening¹⁴, (Test. SG, SL, JK¹⁵, SD Ex. 14).

25. On November 19, 2018, the District proposed a change to implement █████ IEP at █████ Academy Chicago West (█████ a therapeutic day school located in Chicago. █████

¹³ MA's 04/10/2019 IEP Report Card shows MA has failed to meet his goals in reading, writing and math, (SD Ex. 20).

¹⁴ It is reported █████ has said "My heart is tell me to do bad and evil things." He states his toys and pencils sharpeners at home talk to him and scare him. He requested one of the classroom aides to remove the classroom furniture so that he can paint the classroom blue and move his bedroom into the classroom where he feels safer. He continues to talk about the horror film "Chucky," and that Chuck kills people and talks about hearing voices, seeing teachers at his home, that shadows follow him from home to school and that sometimes he locks himself in the bathroom so he can see the monsters in the vent.

¹⁵ JK has been employed with █████ as a Special Education Teacher since 2014. She received a bachelors degree (BA) in psychology from Grinnell College in 2001 and received a Masters degree (MA) in Psychology from the University of Massachusetts in 2008. She holds licensures in Elementary Education, Early Childhood, Special Education, and English As A Second Language since 2018, all of which are current.

¹⁶ █████ is an approved Illinois State Board of Education therapeutic day school. It serves students with behavioral issues. Classroom size is about 10 students. Staffing includes certified special education teachers and aides and its program offers related and wrap-around services. █████ offers specific programming for students with Autism. Students on average attend its program 1-1/2 years and are then are reintegrated back to the student's home school, (Test. AP).

disagreed with the District's proposal and on November 28, 2018 serve the District her DPCN requesting the implementation of [REDACTED] IEP to remain at [REDACTED] (SD Ex. 19).

26. The most recent standardized test scores of [REDACTED] shows that his academics are far below grade level and that he is currently unable to complete grade level work. His present behavioral functioning shows a slight improvement in that he is able to sit for longer periods of time, however, his attention, distractibility and aggression deficits remain problematic, and he remains disengaged from his peers, (Test. TN, SL, KF; SD Ex. 22-25).

27. The District is of the opinion a therapeutic day school is a proper Placement to implement [REDACTED] IEP because [REDACTED] needs cannot be served at [REDACTED]. The District has implemented [REDACTED] IEP in the most restrictive environment it has at [REDACTED] without much success. The District is of the opinion [REDACTED] needs a more highly structured smaller student classroom size for him to progress academically and to manage his attention and behavioral difficulties. The District is of the opinion a therapeutic day school has programming and staff specially trained to address the type of aggressive behaviors and delusions such as [REDACTED] (Test. TN, SL, SD, VF, JK)¹⁷. [REDACTED] is of the opinion [REDACTED] is the appropriate Placement to implement [REDACTED] IEP so long as he is provided a one-to one aide, (Test. [REDACTED]).

X. CONCLUSIONS OF LAW:

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

A. APPLICABLE LEGAL PRINCIPALS:

28. The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a Free Appropriate Public Education (FAPE) that emphasizes special

¹⁷ Each of the opinion witnesses offered by the District are found to be credible, knowledgeable of the Student, and qualified by way of educational background and work experience, to render the opinions given.

education and related services designed to meet their unique needs and prepare them for further education, employment and independent living; and (2) to ensure that the rights of children with disabilities and their parents are protected, (20 U.S.C. § 1400(d)(1)).

29. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child, (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511).

30. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP, (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17). Special education is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. §1401(29); 34 C.F.R. § 300.39). Related services are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34).

31. In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel, that describes the child's needs, academic and functional goals related to those needs, and specifies the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A)).

B. HAS THE DISTRICT DENIED THE STUDENT A FAPE:

32. A FAPE required by the IDEA must be tailored to the unique needs of a particular child, *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 553 IDELR 656 (U.S. 1982).

33. Further, a district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances, *Andrew F. v. Douglas County Sch. Dist. RE-1*, 137 S.Ct. 988, 69 IDELR 174 (U.S. 2017).

34. In the instant matter, the due process complaint filed by ■■■ does not allege procedural or substantive violations of the Student's IEP, only that the IEP does not provide the Student with educational opportunities in the least restrictive environment (LRE). In order to determine whether or not implementation of the special education and related services offered under ■■■ IEP in a therapeutic day school setting is in the least restrictive environment, an understanding of ■■■ present level of academic and functional performance is important to understand.

**A) PRESENT LEVELS OF ACADEMIC ACHIEVEMENT
AND FUNCTIONAL PERFORMANCE:**

35. The testimony adduced at Hearing is replete with evidence that ■■■ is currently struggling both academically and functionally. There is no dispute that academically ■■■ is behind his peers by 1-2 grade levels in speech, language and math as reported by both his teachers and as evidenced by his standardized test scores. Since the beginning of the start of 3rd grade, ■■■ has regressed academically. ■■■ academic deficits have been explained as being caused by pervasive attention issues and distractions in his classroom environment and more recently due to fleeting visual and auditory thoughts and delusions. His difficulty in completing many of his written and math assignments is explained by obsessions he is having with certain

letters and numbers which blocks him and prevents him from the completion of many of his classroom assignments.

36. When [REDACTED] is overwhelmed or frustrated with assigned tasks, he rebels against his teachers and others or attempts to withdraw or elope from the classroom setting. His acting out behaviors are shown to be sometimes physically threatening to his safety and the safety of his teachers and peers.

37. The testimony reveals [REDACTED] is a visual learner and his ability to progress requires him to be constantly redirected to refocus on completing the task at hand. His ability to learn requires full-time supports to help [REDACTED] maintain focus.

38. The evidence also reveals [REDACTED] has difficulty transitioning when his classroom environment is changed or when introduced to new instructors.

B) [REDACTED] NEEDS:

39. The District's witnesses¹⁸ are of the opinion [REDACTED] needs a highly structured small student classroom with intensive supports to facilitate his ability to learn. This type of environment would tend to mitigate distractions and provide the supports to help maintain [REDACTED] focus on academic tasks and address his acting out behaviors when frustrated. The District is also of the opinion a therapeutic day school is better suited to manage [REDACTED] behavioral and emotional needs due to the expertise of its staff and the programming used to manage students exhibiting behavioral disorders.

40. This IHO is persuaded by the District's witnesses opinions and the basis for their opinions. The evidence overwhelmingly shows, and the District readily admits, that it has exhausted the recourses at its disposal and is now not able to implement [REDACTED] IEP at [REDACTED] in a

¹⁸ Most of whom are also members of [REDACTED] IEP team.

manner in which █ would be able to make progress both academically and socially¹⁹. The facts show █ has not made progress this school year academically and in fact shows academic regression since the beginning of the school year.

41. █ contends █ can make progress at █ provided he is provided a full-time one-on-one paraprofessional aide. However, █ has failed to offer any evidence at Hearing to support this contention. To the contrary, the facts clearly show that despite █ having been supported with a full-time one-to-one aide along with a special education teacher and additional classroom supports, █ has shown little or no progress in meeting his current goals, academically or socially.

C. DOES A THERAPEUTIC DAY SCHOOL SETTING PROVIDE THE STUDENT AN APPROPRIATE PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT?

42. █ contends █ is the more appropriate Placement for █ because it satisfies the Least Restrictive Environment (LRE) mandate under IDEA. IDEA requires *“To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily,”* 20 USC 1412 (5); 34 CFR § 300.114(2)(i, ii). This requires [Districts] to educate handicapped children with nonhandicapped children whenever possible, *Board of Educ. –v- Rowley*, 458 US 176, 102 S.Ct. 3034. The District has an obligation to educate a student to the greatest extent appropriate with his nondisabled peers, *Board of*

¹⁹ █ does not offer a more restrictive self-contained classroom setting in order to implement █ IEP, (Test. SG).

Education of Township District No. 211 v. Ross, 486 F.3d 267, 277 (7th Cir. 2007); *Beth B. v. Van Clay*, 282 F.3d 493 (7th Cir. 2002). When reconciling the LRE requirements of IDEA with its primary goal of providing disabled students with an appropriate education, “where necessary for educational reasons, mainstreaming assumes a subordinate role in formulating an educational program,” *Carter –v- Florence County School Dist. Four*, 950 F.2d 156, (4th Cir. 1991), citing *Rowley*, supra at 181.

43. The Illinois School Code and implementing regulations also require that to the maximum extent appropriate a child with a disability must be educated in the least restrictive environment with children who are not disabled. 105 ILCS 5/10-22.41; Ill. Admin. Code 226.240. The Seventh Circuit has declined to adopt any sort of multi-factor test for assessing whether a child must remain in a regular school, *Ross, supra*, See also *Beth B., supra*. "The ultimate question is whether the education in the conventional school was satisfactory, and if not, whether reasonable measures would have made it so. *Id.* The disruptive impact a student has on other students is a relevant consideration when determining if the education was "satisfactory," *Alex R. v. Forrestville Community Unit School District*, 375 F.3d 603 (7th Cir. 2004). Further, as a matter of law, the District is not required to place a student in a regular classroom setting when the student threatens the safety of other students or poses a danger to himself, *Clyde K. –v- Puyallup School Dist. 21*, 21 IDELR 664 (9th cir. 1994) or where the student engages in significantly disruptive behavior that interferes with the education of classmates, *School Board of Independent School District No. 11, Anoka-Hennepin –v- Renollett*, 45 IDELR 117 (8th cir. 2006).

44. There is little dispute that [REDACTED] has shown little initiative in engaging with his peers at [REDACTED]. The testimony given indicates that even when his peers reach out to engage him [REDACTED] often

withdraws or outright rejects them, sometimes with aggression. Because of this, little if any educational benefit is now being received by ■■■ when in a general education setting along with his non-disabled peers.

45. "A school district's IEP team is required to assess whether the student's disability-related behavior impedes his or her learning or that of others. *Id.* The District may change a student's placement to a more restrictive setting or maintain that placement if the student would not make adequate progress in the less restrictive placement, *Ross citing Beth B. v. Van Clay*, 282 F.3d 493, 499 (7th Cir. 2002). Courts have consistently held that the progress must be more than minimal, *Polk v. Central Susquehanna Intermediate Unit 16*, IDELR 130 (3rd Cir. 1988). When a student is unable to benefit by being with nondisabled peers, has not made sufficient social emotional progress and requires a smaller classroom with trained personnel allowing for more rapid interventions, Illinois courts have upheld a school district's recommendation and continued placement in a therapeutic setting, *Hiawatha School District No. 426*, 58 IDELR 269 (Feb. 27, 2012).

46. Given ■■■ present levels of academic and functional performance, the extensive supports he needs to him keep him on task and to complete assignments, the disruptive conduct he has shown in class, the safety concerns resulting from his elopements and acting out behaviors directed toward staff, peers, and himself, and the present lack of social engagement with his non-disabled peers, this IHO gives deference to the District's witnesses who are of the opinion a therapeutic day school is an appropriate placement for ■■■ in order for him to make educational progress. This type of setting should provide ■■■ learning resources so that in the future MA may return to ■■■ and be mainstreamed with his peers, once shown he has acquired the skills to better manage his behaviors and engage with his peers in a more appropriate manner.

47. Therefore this IHO finds that due to the severity and nature of [REDACTED] disabilities, his present academic and behavioral functioning, inclusion of [REDACTED] in a classroom setting at [REDACTED] even with full-time support, would not be appropriate or provide him with any meaningful educational benefit. The appropriate LRE for [REDACTED] at this stage of his development is a self-contained small classroom size therapeutic day school setting with more structured and intensive programming, to better address [REDACTED] present needs.

X. CONCLUSIONS OF LAW:

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

1. Implementation of [REDACTED] IEP in a therapeutic day school setting is an appropriate Placement setting, in the least restrictive environment.
2. The implementation of [REDACTED] IEP in a therapeutic day school setting does not deny [REDACTED] a FAPE.

XI. ORDER:

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

1. Petitioner's request for this IHO to order [REDACTED] IEP be implemented at the [REDACTED] Community Academy is denied;
2. The parties are to fully cooperate in determining an agreed upon therapeutic day school for purposes of implementing [REDACTED] IEP, within 15 school days;
3. In the event the parties are unable to reach agreement on a therapeutic day school, the District shall make the final determination on the therapeutic day school to implement [REDACTED] IEP;
4. Within 10 school days of the determination of the therapeutic day school, the District is directed to convene a meeting to include the IEP team from [REDACTED] the IEP team from the

receiving therapeutic day school and the Student's parent [REDACTED] to discuss and to formulate a transition plan for [REDACTED] to address any transition issues which may be anticipated;

5. Within 45 calendar days of receipt of this Order, the [REDACTED] Public Schools District [REDACTED] shall submit proof of compliance with this Order to:

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

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 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: May 3, 2019


[REDACTED]
Hearing Officer

Alan G. Schuster,

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

APPENDIX A

█ -v- █ SD █
Case No: 2019-DP-0151

█	█-Student
█	█-Parent
KK	█ - Special Education Teacher
AM	█ - General Education Teacher
FB	█ - Instructional Support Leader
IC	█ - District Representative
LH	█ - School Principal

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

██████████, a minor, by and through)
his parent, ██████████,)
)
Petitioners,)
)
- v -)
)
██████████ SD ██████████)
)
Respondent.)

Case No. 2019-DP-0151

Alan G. Schuster
Hearing Officer

CERTIFICATE OF SERVICE

I, Alan G. Schuster, certify that on May 3, 2019 a copy of my Decision And Order was served upon the following persons in the manner indicated:

Sent via Email and Certified Mail

Ms. ██████████
██████████
██████████

Sent via Email and Certified Mail

Ms. Katie Ilijic, Esq.
██
██████████

Sent via Email Only

Illinois State Board Of Education

Andrew Eulass
aeulass@isbe.net

Wanda Schoneweis
wschonew@isbe.net

Dated: May 3, 2019

Alan G. Schuster
██
██████████
██████████


██
Hearing Officer