

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

██████████ CUSD ██████

District.

v.

Case No. 2019-DP-0199

█████, by and through his/her Parents,

Mary Jo Strusz
Impartial Hearing Officer

Respondent.

FINAL DETERMINATION AND ORDER

JURISDICTION

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

PROCEDURAL BACKGROUND

The Student is a 10-year- old male who is currently in the 4th grade. He qualifies for special education services under the disability category of Other Health Impairment (“OHI”) primary and specific learning disability in reading and writing (“SLD”) secondary.¹ The Student currently attends LTES,² a District general education elementary school.³

The District filed a Due Process Complaint Notice (“DPC”) on February 11, 2019 on an expedited basis seeking to remove Student from LTES and place him in an appropriate interim alternative educational setting due to escalating aggressive and dangerous behaviors.⁴ The parties participated in mediation on February 20, 2019, each party was accompanied by Counsel. The parties were unable to reach an agreement.⁵

¹ HO Exhibit 12-a.

² Personally identifiable information is in Appendix A.

³ HO Exhibit 1a.

⁴ HO Exhibit 1.

⁵ HO Exhibit 7-b.

Based upon the date of filing, the 20-school day timeline for the hearing began to run on February 11, 2019 and it was calculated that the hearing must take place before March 12, 2019. The ten school-day deadline for this Hearing Officer to render a decision is March 28, 2019.⁶

A status conference was held on February 15, 2019, and during the status conference the parties agreed to hearing dates on March 5 and 6, 2019.⁷

A prehearing conference (“PHC”) was held on February 22, 2019.⁸ The Prehearing Report and Order was issued the same day.

The due process hearing took place on March 5 and 6, 2019 at the School District Offices, in ██████████, Illinois. The District was represented by Darcy Kriha. ██████████ ██████████, the Director of Special Education, was the District Representative. Parents were represented by Michael Shea and Olga Pribyl from Equip for Equality. Parents were present during the hearing. An official court reporter was provided by the District for all hearing dates. The hearing was closed to the public. Both parties provided written closing arguments.⁹ The court reporter was instructed to include the written closing arguments, verbatim, into the transcript.

Parents presented six witnesses and the parties jointly presented eight witnesses.

The parties agreed that Exhibits P1, P2, P3, P4, SD1, SD2, SD3, SD4, SD5, SD7, SD8, SD15, SD21, SD22, SD23, SD24, SD26, SD27, and SD28 would be considered joint exhibits and were admitted into evidence.¹⁰ At the conclusion of the evidence presentation, the IHO admitted the following exhibits: District Exhibits SD 6, 10, 25, and Parent Exhibits through P 5, 6, 7, 9, 10, 11, 12, 13, 16, 17, 20,21, 22.¹¹

No written transcript has been provided and this decision is based on the IHO’s personal notes and recollection. In rendering this decision, the IHO has considered all documents entered into evidence, testimony by the parties’ witnesses, the parties’ opening statements and

⁶ 105 ILCS §5/14-8.02k. The impartial hearing officer shall issue a final written decision, including findings of fact and conclusion of law, within 10 school days after the conclusion of the hearing. This district was on spring break from March 15 to March 22, 2019.

⁷ HO Exhibit 3-i.

⁸ HO Exhibit 7.

⁹ HO Exhibits 14 and 15.

¹⁰ HO 12-b and c.

¹¹ Each exhibit is identified by “P” for Parents’ exhibits and “SD” for the District’s exhibits and includes the exhibit number and specific page in the exhibit.

closing arguments, the parties' suggested case law,¹² as well as independent research. This decision is issued within ten (10) school day after the hearing's conclusion, as required by Illinois law.¹³

ISSUE AND REMEDY REQUESTED

The District's DPC raised the following issues, and this IHO certified these issues at the PHC for adjudication at the due process hearing. The district must produce substantial evidence to prove this issue:

Issue One: Whether maintaining Student in the current placement is substantially likely to result in injury to Student or to others. 105 ILCS §5/14-8.02(b)(c)(ii).

And if the District meets its burden of proof on this issue, then it must show that:

Issue Two: The proposed 45-day interim alternative educational setting ("IAES") is proper based on the following factors:

1. Whether Student's current placement is appropriate;
- 2) Whether the District made reasonable efforts to minimize the risk of harm in Student's current placement, including the use of supplementary aids and services; and
- 3) Whether the IAES will permit full implementation of Student's IEP and includes services and modifications designed to prevent the undesired behavior from recurring. 23 Ill Admin Code §226.655(a)(b)

District Requests: If all conditions set forth are met, an Order be issued placing Student at an IAES for not more than forty-five (45) school days.

Parents' Position: Student's current IEP placement is appropriate. Student can be safely educated in the District school and the placement is not likely to result in injury to Student or to others. Student was doing well under the IEP and BIP prior to the BCBA's leaving for medical reasons on November 27, 2018, and a new BCBA has been identified by the Parent's who can implement the IEP and BIP.

¹² Copies of the supporting case law were provided to the IHO by the parties.

¹³ 105 ILCS 5/14-8.02a(g55)(5).

STIPULATED FACTS¹⁴

1. Student is a 10-year-old, 4th grade student who was born on June 26, 2008.
2. Student and his adoptive parents reside within the school boundaries of [REDACTED] Community Unit School District [REDACTED].
3. Student's home school is [REDACTED],¹⁵ which serves approximately 720 students in grades 3, 4, and 5.
4. Student was placed by the Department of Children and Family Services with his maternal great aunt and uncle shortly after he was born, and they adopted him when he was two and one-half years old. Student has a history of global developmental delays for which he received early intervention services. He also received two years of early childhood services, including speech therapy to address delays in expressive and receptive language. (SD15-4).
5. In her Final Decision and Order ("HO Determination") dated January 29, 2018 (SD15), ISBE Hearing Officer Mary Schwartz ordered the School District to:
 - a. Change Student's primary eligibility from Emotional Disorder (ED) and change it to Other Health Impairment (OHI) primary and specific learning disability in reading and writing (SLD) secondary (SD15-23).
 - b. Create an IEP for Student that implements an NCR ("non-contingent reinforcement") program with an enriched environment, as described by Dr. [REDACTED] as the Student's educational program. (SD15-23).
 - c. Hire a private Board-Certified Behavior Analyst or Board-Certified Behavior Analyst-Doctorate (PhD) who has experience working with and treating students similar to Student. the Board-Certified behavior analyst was ordered to work with the District to hire the behavioral therapist that would work directly with Student in the NCR enriched environment. (SD15-23).
 - d. Discuss with Parents the parameters of when restraint may be used with Student, and that information shall be memorialized in the IEP (SD15-23).
 - e. Provide protective gear for staff, if it did not already have such items, so that it was available if needed (SD15-23).
 - f. Convene an IEP team for Student when he was ready to move slowly from the NCR Program to plan his educational program in conjunction with the behavioral therapist and board-certified behavior analyst. (SD15-24).

¹⁴ HO Exhibit 12, noted in this decision as "SF - ____"

¹⁵ Personally identifiable information is in Appendix A.

6. The School District filed a timely appeal of IHO Schwartz’s Decision and Order in the United States District Court for the Central District of Illinois (Case No. ██████████ ██████████) before Judge Colin Stirling Bruce. This appeal is still pending.
7. BCBA¹⁶ is a licensed Board-Certified Behavior Analyst and is qualified to give an expert opinion on the design and implementation of behavior plans for students with disabilities.
8. Parent BCBA-D¹⁷ is a licensed Board-Certified Behavior Analyst-Doctor and is qualified to give an expert opinion on the design and implementation of behavior plans for students with disabilities.
9. Pediatrician¹⁸ is a licensed developmental and behavioral pediatrician and is qualified to give an expert opinion regarding the medical treatment of children with developmental disabilities.
10. Counselor¹⁹ is a licensed clinical professional counselor and is qualified to give an expert opinion on emotional regulation in children with mental health needs.

FINDINGS OF FACT

Background

1. Student has been diagnosed with Dysphagia, Epistaxis, Anxiety State, Oppositional Defiant Disorder, Disorder, Attention Deficit/Hyperactivity Disorder (combined type) (“ADHD-C”), and Sleep Disorder.²⁰ Additionally, he was diagnosed with Mild Neurocognitive Disorder, a specific learning disability in reading and written expression, and Intermittent Explosive Disorder.²¹
2. Pursuant to the HO Determination, Student’s current educational placement is in LTES.²² Student receives instruction, using the noncontingent reinforcement program (“NCR”)²³ through TS²⁴ (a privately contracted service), which provides

¹⁶ Personally identifiable information is in Appendix A.

¹⁷ Personally identifiable information is in Appendix A.

¹⁸ Personally identifiable information is in Appendix A.

¹⁹ Personally identifiable information is in Appendix A.

²⁰ P17-001.

²¹ Counselor and Mother testimony. P7-001 and SD3-25.

²² Testimony of GE teacher.

²³ See SD-5b.

²⁴ Personally identifiable information is in Appendix A.

- Student with a board certified behavioral analyst and registered behavior technicians.²⁵ A dedicated District paraprofessional is also assigned to Student.²⁶
3. Student is described as smart, funny, helpful, caring, energetic and artistic.²⁷ Student's Tutor states he is very smart and capable.²⁸ Math is a personal strength and he is a flexible thinker.²⁹ Student's Counselor described Student as a "goof ball" and loving.³⁰ Student's biggest challenge is communication, both receptive and expressive, and Student struggles to identify emotions.³¹ Student is described a being physically very strong, approximately four foot nine inches tall, and weighing one-hundred and fifty pounds.³²
 4. Due to extensive challenging behaviors, Student's present levels of academic achievement are difficult to ascertain, and it is estimated that he currently functions on a second grade level in both math and reading.³³
 5. In addition to IEP services and support, Student receives counselling, private occupational and speech therapy, and psychiatric services.³⁴
 6. Student began receiving instruction using the NCR program beginning May 1, 2018. Prior to November of 2018, the program appeared to be successfully assisting Student in making progress in the area of behavior reduction.³⁵ However, beginning in late November of 2018, Student's aggressive behaviors escalated.³⁶ Student has also eloped from the designated classroom/school areas and has locked himself in the bathroom³⁷
 7. At the January 24, 2019 IEP meeting, Student's participation in the NCR program was halted based on the BCBA's, recommendation that it was no longer safe or ethical to continue to implement the NCR program in the LTES setting.³⁸ Student has

²⁵ Testimony of BCBA and RBT. The registered behavior technician is responsible for the direct implementation of behavior services and does not design the intervention or assessment plans. BCBA and RBT testimony.

²⁶ Testimony of Sped Director.

²⁷ Testimony of Mother.

²⁸ Testimony of Tutor and SD1-41.

²⁹ SD1-4.

³⁰ Testimony of Counselor.

³¹ Testimony of Mother.

³² Testimony of RBT.

³³ SD1-4.

³⁴ Testimony of Mother.

³⁵ BCBA testimony.

³⁶ Testimony of BCBA, RBT, Sped Director, Principal.

³⁷ Mother, RBT-1, and Principal testimony.

³⁸ Sped Director testimony.

not attended LTES since the January 24, 2019 IEP meeting and is currently receiving home tutoring and related services provided by the District.³⁹

NCR Program

8. Dr. [REDACTED] Ph.D., BCBA-D in his report⁴⁰ observes that the District's previously implemented behavior management strategies included: "(a) large durations of wait-time following directives (e.g., to initiate work; comply with demands; transition); (b) avoiding "over-prompting" to prevent escalation of behavior and episodes requiring crisis management; (c) backing off/away from Student contingent on aggression, disruptive behavior, and/or noncompliance. Staff indicated they had been implementing a 2-3 minute prompt schedule (i.e., they were prompting him to do work every 2-3 minutes while also implementing the strategy in which they backed off/away contingent on aggression, disruptive behavior, and/or non-compliance)." ⁴¹ [Asst Principal]⁴² indicated that she is aware that the strategy of prompting him to work and then backing off is likely reinforcing Student's problem behavior with escape. She indicated that she has opted to utilize this strategy based on (a) Student's mother's preference and (b) the desire to avoid occasioning the escalation of Student's problem behavior which would likely result from continuing to push him to comply with directives."⁴³
9. Dr. [REDACTED] recommended that Student be provided with continuous, unrestricted access to high-preferred activities, high-quality attention, and, to the extent possible, no demands.⁴⁴ The stated purpose for the NCR/enriched environment is "to decrease, to the fullest extent possible, any motivation that may exist with regard to problem behavior (i.e., no demands are presented; thus, motivation to escape is abolished and behaviors that serve that function are consequently abated...)." ⁴⁵ Over time, as success is achieved, work activities and time in which access to preferred activities is restricted can be slowly and systematically be re-introduced in small increments until the appropriate parameters are achieved.⁴⁶ When academic work

³⁹ Mother testimony and Sped Director testimony.

⁴⁰ P20.

⁴¹ P20-003.

⁴² Asst. Principal was the behavioral interventionist for Student at time of Dr. [REDACTED] report.

⁴³ P20-003.

⁴⁴ P20-11.

⁴⁵ P20-11

⁴⁶ P20-12

and other demands are faded into his schedule, they should be implemented (to the extent possible) using a three-step prompting sequence (vocal prompt, model prompt, physical guidance) to minimize escape. Protective equipment should be utilized by staff in the case that aggression occurs as a result of staff-implemented physical guidance during periods of non-compliance and problem behavior during demands.⁴⁷

10. Dr. [REDACTED] specifies that there is an advantage to the use of NCR/enriched environment because the need for extinction is minimized to the highest extent possible over other function-based intervention options.⁴⁸ However, even in the use of NCR he acknowledges Student might engage in an “extinction burse,” which consists of an immediate escalation of problem behavior (both in rate and severity) before steady decreases in problem behavior are eventually observed.⁴⁹ “Further, if/when the extinction burst occurs, it will be vital that staff continue to implement the procedures with high fidelity and avoid ‘giving in’; otherwise not only will the behavior itself be reinforced but so will the increase in severity and rate; making future attempts at escape extinction more difficult.”⁵⁰
11. Dr. [REDACTED] report noted that the District is not implementing “restraint procedures under any circumstances in response to the wishes of Student’s mother and the recommendations provided by Pediatrician.”⁵¹ Although referring to other “not recommended” types of intervention, Dr. [REDACTED] raised the concern that “given the likelihood of escalation of Student’s behavior if staff implement extinction with high integrity, Student behavior may escalate to the point at which his and others’ safety will be in question in the absence of restraint.”⁵² He encouraged the parties to discuss the parameters of when restraint can and cannot be used, noting that “[this will be particularly important given the possible/likely need to implement function-based procedures that prevent the reinforcement of problem behavior (e.g., to eliminate his going home contingent on severe episodes of problem behavior and possible extinction bursts when this source of possible reinforcement is eliminated; situations that arise when work demands and breaks from preferred items are faded

⁴⁷ P20-012.

⁴⁸ Comparing to differential reinforcement of alternative behavior and differential reinforcement of compliance. P20-013.

⁴⁹ P20-13.

⁵⁰ P20-013 and 014.

⁵¹ P20-004. Personally identifiable information is provided in Exhibit A.

⁵² P20-014.

into the NCR/enriched environment arrangement) that may result in escalation of [Student's] behavior.”⁵³

12. Dr. [REDACTED] specified that a data collection system was vital and should be developed and adopted to track Student's more severe problem behaviors (i.e. aggression, disruption). He suggested operational definitions should be developed to allow staff to document the presence and absence of behavior consistently, and reliability checks should be conducted regularly to ensure accuracy of data collection. An example of a data collection system based on a 15-minute partial interval recording system was appended to the recommendation.⁵⁴
13. Dr. [REDACTED] provided the following recommendations for educational setting supports: a. current 1-to 1 staff-to-student ratio should continue; b. supervision of implementation of behavior management strategies provided by a Board Certified Behavior analyst (BCBA or BCBA-Doctoral (D)) with experience working with and treating behaviors similar in rate and intensity to those exhibited by Student⁵⁵; c. staff who work with Student should have a competency in knowledge of the core principles of ABA and best practices in behavior management strategies; d. implementation of behavior management strategies by staff with high integrity, as reflected via regular integrity checks to ensure that staff are implementing procedures correctly and as intended; e. ongoing feedback (both positive and corrective), training, and supervision of staff in the implementation of appropriate behavior management strategies provided by a BCBA or BCBA-D with experience successfully overseeing the implementation of effective behavioral interventions for problem behavior. Training, performance feedback (positive and corrective) and skill enhancement should consist of, but not necessarily be limited to didactic instruction, modeling, role-play, in-situ training and coaching, and review of video of the implementation of behavior management strategies, etc.⁵⁶ There were no specific recommendations that the BCBA must be associated with Dr. [REDACTED] or any of his associates.⁵⁷
14. With regard to placement, Dr. [REDACTED] gave consideration to the fact that the “current behavior management strategies [pre January 2018] appear to be

⁵³ P20-014.

⁵⁴ P20-015 and P20-021, P20-022, P20-023, P20-024, P20-025, P20-026, P20-027.

⁵⁵ The report did not name or recommend any specific individuals.

⁵⁶ P20-(015-016).

⁵⁷ P20.

supporting problem behavior instead of extinguishing it (thus, the current status of the behavior that may be informing decisions about placement, it appears to have been supported, facilitated, and reinforced via current and previous behavior management strategies in the current educational setting).”⁵⁸

Implementation of Dr. [REDACTED] recommended NCR program at the District.

15. After receipt of the January 2018 HO Determination, the District held an IEP meeting on February 7, 2018, where the team discussed beginning a search for a board certified behavior analyst who had experience implementing an NCR program.⁵⁹ The District purchased two sets of protective gear.⁶⁰ The IEP provided that Parents were to be given copies of resumes for all potential board certified behavior analysts.⁶¹
16. The District began the search with the Illinois state approved list and contacted a number of different agencies to find board certified behavior analyst and line therapists who were trained to implement the NCR program. The District located TS and was satisfied that this agency would be able to implement the IEP and NCR program within the District school as an outside contractor and provide the required staffing.⁶²
17. The District determined that TS’s BCBA had the qualification to implement the NCR program and understood how the program could work for Student in the LTES setting.⁶³ The Sped Director testified that the Parents were aware of the BCBA’s background, voiced no objection to the BCBA, and was hired by the District.⁶⁴
18. BCBA received her board certification in 2017 and has been employed by TS since that time. Beginning in 2005, BCBA was employed as a special education and general education teacher.⁶⁵ BCBA testified that her experience has been with challenging behavior and she has developed and implemented behavior intervention

⁵⁸ P20-016.

⁵⁹ Sped Director testimony.

⁶⁰ Sped Director testimony.

⁶¹ SD5-67.

⁶² Sped Director testimony.

⁶³ Sped Director testimony.

⁶⁴ Sped Directory testimony. Sped Director testified BCBA was hired jointly by the District and Parent. Student’s Mother denied receiving BCBA’s resume until after TS had been hired, does not believe she received the RBT’s resume (only saw the RBT’s certificate), and voiced concerns to TS staff and SPED Director about the qualifications of the BCBA. There is no documentary evidence of Mother’s concerns in the record.

⁶⁵ BCBA testimony and SD7.

- plans for students with challenging behaviors. BCBA has experience training and evaluating staff on the implementation of behavior programs and has supervisory experience. BCBA is QBS⁶⁶ certified. BCBA has supervised the implementation of an NCR program three times and has implemented behavior plans for numerous students over the years.⁶⁷
19. BCBA reviewed Dr. ██████████ report and drafted a Behavior Intervention Plan (“BIP”) implementing the NCR program consistent with his recommendations.⁶⁸ BCBA contacted Dr. ██████████ and learned that he could not assist her because he was not under contract to the District.⁶⁹ The BIP used Dr. ██████████ three-step model prompting sequence (vocal prompt, model prompt, physical guidance) to minimize escape.⁷⁰
 20. Student’s Pediatrician had previously advised the District that Student could not receive any physical management as,⁷¹ “use of restraints or in a seclusion room would create an unacceptable crisis of anxiety.”⁷² This opinion is predicated on Student’s Anxiety diagnosis and the use of physical restrains could cause a crisis.⁷³ Dr. ██████████ NCR program specifies the use of physical management, and Pediatrician’s directive negatively impacted the District’s ability to implement the NCR program.⁷⁴ BCBA testified she agreed with Dr. ██████████ that the NCR program could not be implemented without the use of restraint, as Student might reach a level of intensity where Student could possibly self-harm or do harm to others.⁷⁵ On March 2, 2018, BCBA wrote the Pediatrician a letter requesting him to reconsider his decision and allow physical restraint. BCBA provided her recommendations for physical management, specifically referencing the QBS training as it relates to the NCR program.⁷⁶ On March 28, 2018, Pediatrician responded to the request advising the District that he found BCBA’s recommendations to be carefully thought through and would now allow for the least

⁶⁶ BCBA and Pediatrician testified that QBS was less restrictive than RTI.

⁶⁷ BCBA testimony and SD7.

⁶⁸ BCBA testimony.

⁶⁹ BCBA testimony.

⁷⁰ BCBA, RBT-1 and Asst. Principal testimony.

⁷¹ Pediatrician and BCBA testimony.

⁷² P17-001.

⁷³ Pediatrician testimony.

⁷⁴ Testimony of BCBA and Sped Director.

⁷⁵ BCBA testimony.

⁷⁶ BCBA testimony and P17-002.

- application for force (restraint for the shortest amount of time for the situation), when no alternative is available for a safe environment for Student. Further, Pediatrician would support the use of restraint in an emergency situation only.⁷⁷ During testimony, Pediatrician hesitated to define emergency situation. However, he believes that Student should be given space to calm down on his own when he displays aggressive behavior.⁷⁸
21. BCBA trained LTES staff on the program. The staff was willing to listen, learn, and implement the NCR program. The staff was hopeful that the NCR program would work for Student.⁷⁹ The program was implemented for 121 days at a cost of \$1000 per day. Cost was never an issue.⁸⁰
 22. Student's NCR program began on May 1, 2018. As part of the NCR program, Student's behavior was recorded every day in ten minute increments by District staff.⁸¹ Three instances of intense physical aggression occurred toward the end of the 2018 school year.⁸²
 23. During the summer of 2018, Student participated in extended school year ("ESY") and the NCR program continued. Student was the only one in the program and had the full attention of two registered behavior technicians ("RBT") and the BCBA.⁸³ There were no other distractions at school. In accordance with the NCR program, Student did very little work (one minute of work followed by twenty minutes of free time). No demands were placed on Student, not even a request to go in the hall.⁸⁴ There were no behavior incidents during the summer program.⁸⁵
 24. BCBA supervised the RBTs working with Student. RBT-1⁸⁶ began working with Student in August of 2018. ⁸⁷ RBT-1 has worked with children with intense behaviors and autism since 2013, she received her bachelor degree from the University of Illinois in child development and was certified as an RBT in February 2018. She is

⁷⁷ BCBA and Pediatrician Testimony. P17-002.

⁷⁸ Pediatrician testimony.

⁷⁹ Sped Director testimony.

⁸⁰ Sped Director testimony.

⁸¹ BCBA testimony and SD 28 -(1-239). Behaviors recorded were: physical aggression toward objects; physical aggression toward staff; physical aggression toward peers; verbal aggression toward staff; verbal aggression toward peers; and disruptive behavior.

⁸² SD3-20.

⁸³ BCBA testimony.

⁸⁴ BCBA testimony.

⁸⁵ Testimony of BCBA, RBT, Sped Director. SD3-20.

⁸⁶ Personally identifiable information is in Appendix A.

⁸⁷ RBT-1 testimony.

trained in QBS. She was promoted to senior RBT in October of 2018.⁸⁸ At hearing, her qualifications were questioned by Parent, however, RBT-1 is determined to be qualified to work with Student.

Student's Behavior Intervention Plan

25. On August 17, 2018, an IEP meeting took place to review the implementation of NCR during the ESY, and to plan for the coming school year. At that meeting, BCBA recommended that Student begin the school year using a full school day in the special education classroom, with the opportunity to return to the general education classroom, the special education and general education teachers would coordinate on academics to allow a smooth transition.⁸⁹ Should Student choose to participate, Student would have access to peers during lunch, recess, PE and other non-academic activities, this was entirely Student's choice.⁹⁰ All service providers and academic subjects (to the extent possible) would be incorporated into the Student's daily routine/NCR schedule.⁹¹ BCBA indicated that accepting non-preferred activities and accepting "no" are areas that prove challenging for Student but are included in the treatment program.⁹² Student's current work schedule was 3 minutes of work time to 15 minutes of preferred activity with extinction.⁹³
26. Student's BIP was revised. The revised BIP provides an operational definition of aggression and disruptive behavior⁹⁴ The BIP provides goals for physical aggression and disruptive behavior and outlines compliance with demands.⁹⁵ Replacement behaviors are specified: "Differential reinforcement of compliance. Student will comply with demands without instances of problem behavior (physical aggression and disruptive behavior). Consequences: RESPONSE BLOCKING. When Student engages in problem behavior, including aggression and disruptive behavior (i.e. hitting, kicking, throwing objects, ripping items from wall, grabbing clothes, etc.) use response blocking and protective gear as necessary."⁹⁶ BCBA described response blocking as a positive technique used to prevent the problem behavior from

⁸⁸ RBT-1 testimony.

⁸⁹ Gen Ed and Sped Teachers, and SD3-20, SD3-36.

⁹⁰ SD3-20.

⁹¹ SD3-36.

⁹² SD3-20.

⁹³ SD3-36.

⁹⁴ Sd3-34

⁹⁵ SD3-35.

⁹⁶ SD3-37.

continuing.⁹⁷ Redirection: When Student has disengaged in problem behavior for approximately 10 seconds, re-direct him back to his highly preferred activity.⁹⁸

Escape extinction. Do not engage in conversation with Student or provide any verbal directives or attention, comments, responses to questions etc. during times of physical aggression or disruptive comments.⁹⁹

27. The BIP specifies the Therapist/Staff Protocol: 1) Student should arrive at school by 8:15 a.m. and be greeted by staff; 2) when bell rings, present choice demand to line up with peers or by himself; 3) upon entering classroom, present Student with choice of preferred tangible; 4) sit next to Student and engage with him and his preferred activity; 5) if Student engages in disruptive behavior, DO NOT [emphasis present] verbally respond or redirect until behavior has ceased for approximately 10 seconds and redirect Student to preferred item/activity.¹⁰⁰
28. The BIP further provides that if behavior escalates, and Student engages in physical aggression, use the following protocol:
 - a. Give teacher (or other adult in room) signal to exit room with students.
 - b. Clear immediate area to extent possible.
 - c. Use safety stance and response blocking to the extent possible (ex. [Student] tosses pencil at staff member without extreme force).
 - d. IF [STUDENT] ENGAGES IN A BEHAVIOR THAT IS INJURIOUS TO HIMSELF OR SOMEONE ELSE [emphasis present] (ex. Sticking an item in an outlet, breaking objects, hitting/kicking staff with force), USE THE APPROPRIATE QBS CRISIS PROCEDURE [emphasis present] (ex. 2-person stability hold).
 - e. Once [Student] has disengaged in the injurious behavior, release the hold and continue using response blocking. Follow these steps as necessary.
 - f. After [Student] stops engaging in challenging behaviors for 10 seconds, redirect [Student] to his preferred activity.
 - g. TS staff will implement all crisis procedures. School staff will use continuous recording to document observable behaviors during crisis management.
 - h. If crisis management is necessary outside of the classroom, TS and school staff will minimize attention brought to these behaviors to the extent possible. IF POSSIBLE [emphasis present] transport to reset room. After Student has disengaged in challenging behaviors for approximately 10-15 minutes (could be less or more as necessary-BCBA will advised if necessary), present demand from prior to engaging in challenging if appropriate. If not, redirect back to schedule and NCR program.¹⁰¹

August 2018-Winter Break implementation.

⁹⁷ BCBA testimony.

⁹⁸ SD3-38.

⁹⁹ SD3-38.

¹⁰⁰ SD3-39.

¹⁰¹ SD3-(39-40)

29. The school year started with Student being monitored by the BCBA, RBT-1, an additional RBT and a one-to-one staff member assigned as Student's service support aide ("SSA") for support and to gather behavioral data every ten minutes.¹⁰²
30. During the Fall of 2018, Student's private Counselor determined that Student had shown sustained success in behavioral outcomes at LTES as evidenced by consistent, full-day attendance without disciplinary action.¹⁰³ Student verbalized a positive attitude about school and spent much time talking about his friends at recess and the GE Teacher's classroom.¹⁰⁴
31. There was one major incident of Student aggression during the first quarter. The incident took place on September 21, 2018,¹⁰⁵ at approximately 1:00 p.m. and lasted for more than ninety minutes.¹⁰⁶ The record of the incident shows that Student refused to return to work at 1:01 p.m.¹⁰⁷ Other students in the classroom transitioned to the next class, and the incoming students were diverted to another location. While in the classroom Student began throwing objects (tiles, markers, and books) at staff, forcefully hitting the RBT,¹⁰⁸ scribbling with a marker on the floor and furniture.¹⁰⁹ Asst Principal¹¹⁰ contacted the BCBA who indicated that restraint should be used if the prompts to stop the behavior were not working. At 1:15 p.m., the RBTs placed Student in a two-person standing hold restraining Student's arms on both sides, in response, Student began aggressively kicking, stomping the RBT's feet, using obscenities, and demanding that his arm be let go.¹¹¹ This continued until 1:22 p.m., when Student took both RBTs to the ground¹¹² and a two person seated hold was initiated. Student continued to scream, began spitting at the RBT's faces and kicking. At 1:24 Student was prompted to calm down so the hold could be released, Student did not calm and proceeded to use additional obscenities, threats, head butting, crying and screaming. At 1:31 p.m. Student was again prompted by the RBT to calm down. The response was more kicking, obscenities, and head butting. At 1:35 p.m. a

¹⁰² Sped Director and BCBA testimony.

¹⁰³ P7-002.

¹⁰⁴ P8-002.

¹⁰⁵ BCBA, Asst Principal and Sped Teacher and SD26-(87-92), SD 26-(93-94), and SD28-127.

¹⁰⁶ SD 26-83.

¹⁰⁷ SD26-83.

¹⁰⁸ See FOF 28d, the BIP directs RBT to use the QBS crisis procedure in this situation.

¹⁰⁹ SD26-83.

¹¹⁰ Assistant Principal of LTES school since August of 2018. Previously she was employed by the District as a behavioral interventionist (2015-2018).

¹¹¹ SD26-93.

¹¹² SD 26-93.

reverse two person transfer to the reset room began, Student proceeded to kick lockers, stomp feet, and scream obscenities in the hallway. Between At 1:40 and 2:32 p.m., Student was alone in the reset room, Student's behavior ranged from "flipping off" staff, beating walls, hitting the floor, using obscenities, screaming, and pointing fingers in a gun position and stating "bam, bam, bam" (4 separate times). Ultimately Student left with Mother at 2:37 p.m.¹¹³ Asst Principal was concerned that being taken home by Mother prior to school letting out only reinforced the potential escape behavior.¹¹⁴ Minor injuries were reported by staff.¹¹⁵ Staff did not wear protective gear. There are twelve classrooms between the special education room and the reset room.¹¹⁶

32. At an IEP meeting on October 18, 2018, BCBA reported that overall, Student progressing and was completing 15 minutes of work to 10 minutes of break, this change began on Monday October 15, 2018.¹¹⁷ The team discussed Student's behavior on September 21, 2018, the BCBA felt Student did engage in a bit of extinction burst with negative comments but not with verbal and physical aggression.¹¹⁸ Adult attention from TS staff has been faded but is provided upon Student's request.¹¹⁹
33. Four disruptive incidents were reported on October 23, 2018, but no escalation was reported.¹²⁰ Two disruptive incidents were reported on November 1, 2018.¹²¹ One disruptive incident was reported on November 13, 2018.¹²² On November 14, 2018, there was one incident of physical aggression toward staff (no restraint required), seven incidents of verbal aggression toward staff, and six incidents of disruptive behavior.¹²³ These were the only incidents recorded during the period between September 21 and November 14, 2018.

¹¹³ SD26-(83-92)

¹¹⁴ SD26-94.

¹¹⁵ RBT-1 testimony and SD27-29.

¹¹⁶ SD26-94. Sped Director discussed moving Student's classroom closer to the reset room, this was not feasible.

¹¹⁷ SD2-3.

¹¹⁸ SD2-3.

¹¹⁹ SD2-3.

¹²⁰ SD28-(91-92).

¹²¹ SD 28-81.

¹²² SD28-65.

¹²³ SD28-63.

34. On November 7, 2018, Student transitioned to the general education classroom.¹²⁴
The transition appeared to be successful. Student had developed an attachment for the GE teacher and wanted her attention.¹²⁵
35. Beginning in mid-November, Student's private Counselor noted a change in Student's attitude toward school; Student was expressing dislike and frustration with the new schedule/transitions. Mother and Student advised her that Student's behavior resulted from an inconsistent schedule at school and lack of notice of transitions.¹²⁶ Counselor was unaware that the changes in Student's schedule were driven by Student's desire to be in the general education classroom and that he could choose his school schedule.¹²⁷
36. The week after Thanksgiving break, disruptive behaviors were reported every day. Four incidents of disruptive behavior were reported on November 26, 2018,¹²⁸ and seven incidents of disruptive behavior were reported on November 27, 2018.¹²⁹ Set forth below is a summary of Student's aggressive behavior during the rest of the week:
- a. On November 28, 2018 at 11:40 a.m., Student refused to enter the special education classroom. RBT-1 told Student to follow expectations, and Student responded to "shut-up." RBT used a full physical prompt to assist Student into the classroom and Student responded by kicking the Chromebook charger and ripping up his work on the table.¹³⁰ At 11:55 a.m. the RBTs did a 2- person hold and proceeded with a reverse transfer to the reset room, Student was kicking, raising his feet off the ground, and spitting on the RBTs.¹³¹ At 12:00 p.m., Student was released into the reset room. Student attacked the RBTs before they could get out the room and was screaming obscenities.¹³² While alone he ripped the thermostat cover off the wall¹³³ and beat the thermostat cover against the door glass with great force.¹³⁴ Student was also scratching at himself with a small piece of metal, tearing up baseboards, screaming obscenities,¹³⁵ kicking walls, the door and refusing to respond. This lasted until 2:16 p.m., when Student knocked on the door and requested a tissue, and stated he was ready to work. Student began reading a

¹²⁴ SD21-1.

¹²⁵ Sped Director and Asst. Principal testimony.

¹²⁶ P7-002. It should be noted that prior to the implementation of the NCR program, Mother expressed concerns that Student's visual schedule might be causing Student's anxiety. SD5-67.

¹²⁷ Testimony of Counselor.

¹²⁸ SD28-57.

¹²⁹ SD28-55.

¹³⁰ SD26-76.

¹³¹ SD26-76.

¹³² No staff injuries were reported resulting from this incident. SD27-25.

¹³³ SD6-30.

¹³⁴ SD26-76.

¹³⁵ SD26-(76-79).

book with the SSA and working on spelling words. A 3:00 p.m. Student packed up and went home.¹³⁶ RBT testified credibly that she was following the Student's BIP during this incident.

- b. On November 29, 2018¹³⁷ beginning at 10:55 a.m. Student refused to go to the special education classroom, initially, it appears that Student was de-escalating, and at 11:00 a.m. Student appears to be cooperative, gets his lunch card and walks toward the special education classroom. Then Student unexpectedly turned around, headed down the hallway, and ran into the bathroom. He slipped on the floor and hit his head on a paper towel dispenser. Student laid on the bathroom floor until 11:18 a.m. when he was prompted to enter the stall to use the restroom. At 11:21 a.m. while still in the stall Student started kicking the toilet paper holder and shaking the stall door while repeatedly screaming obscenities at staff. The police were called and arrived at 11:37 a.m.¹³⁸ At 11:47 a.m. Mother was called on the telephone. Mother spoke to Student and told him he needed to leave the stall with the RBT, Mother promised if Student went to the reset room he could color [a preferred activity].¹³⁹ Student left the stall and walked to the reset room at 11:50 a.m. At 11:51 a.m. Student was sitting on the reset room floor and was offered lunch by the RBT. Student demanded to color and did not respond to the lunch inquiry. By 12:05, Student had again started to escalate calling the RBT an idiot and refusing to eat. During the next 25 minutes he proceeded to "flip off" the staff and began taking outlet covers off of the outlets and throwing them at the door. Student began kicking the door at 12:26 p.m., over the next several minutes Student continued to escalate, pulled his hood up, screaming obscenities, kicking the door, and attempting to break the door glass. This behavior continued in varying levels of intensity until 2:16 p.m. when Student turned the lights out in the reset room. The incident appeared to start de-escalating about 2:21 when Student whined that he was thirsty, hungry, and needed a tissue. At 2:46 p.m. he was playing non-aggressively with the outlet covers, had tuned on the lights. At 3:00 he indicated he was ready to go home, returned the outlet covers to their original position, cleaned up his tissues, and waited to be dismissed.¹⁴⁰ BCBA testified that this behavior was concerning because Student went from calm to aggressive to calm to aggressive.¹⁴¹ Student is unable to tell others what is going on in his head and therefore cannot respond to management/self-help skills on a consistent basis.¹⁴²
- c. On November 30, 2018, the incident started at 9:40 a.m. when Student refused to do his work and put his head down.¹⁴³ At 9:45 and again at 9:47 a.m. RBT asks Student to tell her what is wrong so she can help him. Between 9:48 a.m. and 9:55 a.m. RBT attempts to discuss why Student is upset and receives no response.¹⁴⁴ After waiting fifteen minutes, RBT does a

¹³⁶ SD 26-62 and SD28-53.

¹³⁷ SD 26-(67-75).

¹³⁸ Principal testimony.

¹³⁹ SD26-70.

¹⁴⁰ SD 260(71-75).

¹⁴¹ BCBA testimony.

¹⁴² BCBA testimony.

¹⁴³ SD26-61.

¹⁴⁴ SD26-61.

full physical prompt and placed the pencil in Student's hand and tells him "its time to do his worksheet", Student says "no".¹⁴⁵ Student writes "funk you" all over the worksheet.¹⁴⁶ At 9:58 a.m. Student begins to work on the math worksheet. At 10:00 a.m. Student goes with the social worker without incident and then to lunch/recess on schedule.¹⁴⁷ At 12:00 p.m. Student return to the special education classroom and refuses to work. RBT goes through the prompts and then gives Student a physical prompt to have Student sit down at this desk, RBT testified that she put a hand on Student's back and arm to help him sit at his desk.¹⁴⁸ Student puts his hood up and begins to whine. When asked if he needs a break at 12:06 Student is described as growling. Student is given a two-minute break and a timer is set. After two minutes Student refuses to work and the classroom is cleared.¹⁴⁹ At 12:10 Student is crying and will not discuss what is happening. Student is prompted to work again at 12:15 p.m. and refuses. Student starts to scribble in his book and ripping out pages¹⁵⁰, at 12:18 p.m. he slams the book shut and throws it on the floor. At 12:20 RBT reads the instruction to Student and offers a break, Student responds by throwing his pencil. Student lays on the floor and receives a full physical prompt off of the floor while being told "its time to work."¹⁵¹ This is followed by a second full physical prompt, hand over hand helping Student find the page.¹⁵² No immediate aggressive response was recorded following these physical prompts. At 12:28 p.m. Student is given 15 minutes to color on his white board.¹⁵³ At 12:48 Student given the option of work or continuing to color. Student responds by putting his hood up and laying his head on desk.¹⁵⁴ At 12:55 p.m. prompted to work again and given 5 more minutes. At 1:00 p.m. RBT-1 offers to read to Student, he responds by aggressively yelling no, pushing the book away, and pulling up his hood [again]. RBT-1 takes his hood down and attempts to talk to him. At 1:03 RBT again asks "what's wrong?"¹⁵⁵ At 1:30 and again at 1:40 Student requests to call Mother. He offers no reason. He sits and colors at his desk. No further aggression that day and no work completed.¹⁵⁶

37. Counselor attributed the increased aggression to Student's fight or flight response¹⁵⁷ and testified that when Student's flight or fight response has kicked in Student can be dangerous.¹⁵⁸ Counselor testified that she does not see aggressive behaviors during

¹⁴⁵ SD26-62.

¹⁴⁶ SD26-62.

¹⁴⁷ SD26-62.

¹⁴⁸ RBT testimony and SD26-62.

¹⁴⁹ SD26-63.

¹⁵⁰ SD 26-63.

¹⁵¹ SD26-64.

¹⁵² RBT testimony and SD26-64.

¹⁵³ SD 26-65.

¹⁵⁴ SD26-65.

¹⁵⁵ SD 26-65.

¹⁵⁶ SD26-66.

¹⁵⁷ P7-002.

¹⁵⁸ Testimony of Counselor.

their sessions or in the office but stated that “she does not push Student in a direction he does not want to go”.¹⁵⁹ Although authorized to contact the school, Counselor has not observed Student in school or shared any of her successful strategies with Student with school personnel.¹⁶⁰

38. The following week, Student continued to display disruptive and aggressive behaviors over multiple days:

- a. On December 3, 2018, another incident began at 12:45 p.m., with Student refusing to work, pulling hood up his hood, and refusing to respond. At 1:00 the room was cleared and Student proceeded to kick the wall and chair. Staff left him alone from 1:10 to 1:23 p.m. to calm down. At 1:23 p.m. RBT attempts to talk to Student and he begins to escalate again kicking walls and a desk. Student is prompted to stop kicking walls at 1:25 p.m. and RBT uses a full physical prompt to move Student away from the walls, Student responds by hitting and kicking RBT. This is followed by a two-person restraint and transfer to the reset room at 1:30 p.m. Once in the reset room Student punches RBT-1 in the head, pulls conduit off the walls, cuts RBT-1 with the conduit, and slapped RBT-1. These actions resulted in RBT-1 receiving a bruise, scratch, and red mark.¹⁶¹ Student’s behavior continues until 2:30 p.m. when he asks to color. RBT discusses the incident and does a body check, Student is cooperative.¹⁶² One of the RBTs sustained a bruise on her arm¹⁶³ and face¹⁶⁴ and RBT-1 sustained a red mark and bruising to her facial area.¹⁶⁵
- b. December 6, 2018, a similar incident lasting from 12:18 p.m. to 2:51 p.m.¹⁶⁶ The incident began with Student refusing to work and putting up his hood. The classroom was cleared.¹⁶⁷ Student remains at his desk, tapping and pounding it and moving it back and forth aggressively.¹⁶⁸ At 12:39 p.m. Student begins hitting and kicking the walls repeatedly with great force. At 12:50 p.m. RBT-1 gives Student a model prompt to stop kicking, she places a hand on his leg, with the direction “I need you to stop.”¹⁶⁹ This is following by a full physical prompt to place Student on a chair away from the walls and Student getting on floor and kicking RBT-1 with great force.¹⁷⁰ At 12:53 the RBTs do a two person reverse transfer to the reset room, during the transfer, Student is kicking, attempting to trip RBTs, and pinching RBT-1.¹⁷¹ Student remained in the reset room, displaying various disruptive and dangerous behaviors until 2:34 p.m. when Student calmed to use the bathroom. During the incident at least fifteen incidents of physical aggression toward objects,

¹⁵⁹ Testimony of Counselor.

¹⁶⁰ Testimony of Counselor.

¹⁶¹ RBT-1 testimony and SD27-21.

¹⁶² SD26-60

¹⁶³ SD6-24.

¹⁶⁴ SD6-28.

¹⁶⁵ SD27-21 and SD6-25 (RBT-1 testified Student punched her in the face), and 6-(26-27).

¹⁶⁶ SD26-(49-56)

¹⁶⁷ SD26-49

¹⁶⁸ SD26-(49-50)

¹⁶⁹ RBT-1 testimony and SD26-50.

¹⁷⁰ SD26-50.

¹⁷¹ SD26-51.

two aggressions toward staff, nine incidents of verbal aggression, and nineteen incidents of disruptive behavior were recorded.¹⁷² Both RBTs received bruises¹⁷³ and scratches.¹⁷⁴

39. During the week of December 10, 2018, displays of aggression on multiple days were recorded,¹⁷⁵ including two on December 13, 2018 which resulted in Staff injuries:

- a. December 10, 2018, at 12:06 p.m. Student refuses to work on reading, putting up his hood, laying on the floor, crawling under a table, kicking the walls and kicking games off a 6 foot tall shelf. At 12:25 p.m. RBT-1 pulls Student out from under the table.¹⁷⁶ RBT offers to play UNO (a preferred activity) with Student in the reset room. Student walks with RBTs and the SSA to the reset room, and at 12:55 p.m. begins working with the SSA on reading.¹⁷⁷
- b. December 13, 2018, Student arrived at 8:40 a.m. and refused to go to class, he sits down with his hood up. At 8:52 a.m. RBT-1 asks if Student is upset about his Grandmother and encourages Student to go to reset room to talk.¹⁷⁸ Student runs down hallway to bathroom and locks himself in a stall. Student hits RBT in the face, kicking, and spitting. Principal goes under stall door to unlock it and RBTs enter the stall.¹⁷⁹ Student hits RBT-1 and crawls into another stall. At 9:01 a.m. a two person hold is used to move Student to the reset room. Along the way Student is kicking, spitting, and attempting to knock RBTs over. A two person hold is used to take Student to reset room.¹⁸⁰ Once in reset room, Student is forcefully kicking, making gun shoot noises, pounding on the door, “flipping off” staff, banging on the door and glass, and kicking walls. At 10:44 a.m. Student states “if I break this [trim around the door], Ill have something sharp.”¹⁸¹ This behavior continues until 11:00 a.m. when Student becomes calm uses the restroom and goes to lunch. At 12:00 p.m. Student is in the special ed room, Student escalates again, refusing to read.¹⁸² RBT prevents Student from kicking the wall and crawling under SSA’s desk.¹⁸³ At 12:15 Student is punching and kicking the RBTs (RBT-1 sustains an injury)¹⁸⁴, at 12:16 the hallways to the reset room are cleared and the RBTs use a two person reverse transport hold¹⁸⁵ to transfer Student to the reset room. Once there, Student begins punching the glass window in the door, attempting to get out, “flipping off” staff, kicking the wall with great force,

¹⁷² SD28-(43-44). The record counted not the number of incidents in a given 10 minute period, only that the aggressions were present during the 10 minute period.

¹⁷³ SD6-23.

¹⁷⁴ RBT-1 testimony and SD27-17.

¹⁷⁵ December 10, 2018, Student refuses to work but did not escalate after assistance of RBTs and staff. SD26-(45-48)

¹⁷⁶ SD26-46.

¹⁷⁷ SD26-48.

¹⁷⁸ SD26-31. Mother testified that Student’s grandmother moved into their home due to dementia in October 2018 and this impacted Student’s mornings.

¹⁷⁹ SD26-31.

¹⁸⁰ SD26-32.

¹⁸¹ SD26-39.

¹⁸² SD26-41.

¹⁸³ SD26-41.

¹⁸⁴ SD27-15.

¹⁸⁵ RBT described this as two persons holding one of a student’s arms and walking the student backwards.

kicking the metal utility bar¹⁸⁶ for the electrical plugs and conduit, ultimately disengaging the school alarm system.¹⁸⁷ Student de-escalates at 12:53 p.m. and finishes the class.¹⁸⁸ During the three and one-half hours of escalation the RBTs used two physical management holds for 3 minutes each.¹⁸⁹ RTB-1 testified that she sustained bruising on her left arm¹⁹⁰ which lasted for approximately three weeks.¹⁹¹ RBT-1 also sustained bruising on her leg.¹⁹² Student sustained a small scratch on the middle finger of the left hand.¹⁹³

40. On December 17, 2018, Student enters school angry at 8:25 a.m. and will not talk to anyone, Student appears to be sleepy.¹⁹⁴ Student has a note from a doctors visit and RBT-1 asks Student take the note to the office, at 8:40 a.m. RBT-1 does hand over hand and places paper in Student's hand, guides him to his feet and then the hall.¹⁹⁵ At 8:41 a.m. RBT-1 takes Student to the reset room and using a full physical prompt guides Student inside, Student grabbed metal door and held on.¹⁹⁶ Once in the reset room Student begins to beat on the glass with his hand, trying to open the door, "flipping off" staff, using obscenities directed toward staff, making gun noises and pointing his finger at staff as though aiming, kicks a hole in the wall,¹⁹⁷ breaking plaster out of the wall and using plaster to write on walls¹⁹⁸ and obscenities on the door. At 9:09 a.m. Student is screaming "I hope you all die" along with obscenities, and making machine gun noises, wiping bodily fluids on door, continuing to kick, and simulating that he is shooting staff with a gun.¹⁹⁹ This behavior continued almost constantly, until 10:31 a.m. the other students were transitioning in the hallway and Student began simulating that he was shooting a gun at them.²⁰⁰ At 10:57 Student calms sufficiently that RBT is able to enter the reset room and bring lunch, Student places lunch on the floor and lays next to it, eating and smearing food into the rug.²⁰¹ RBT takes the tray away at 11:21 a.m. but remains in the reset room while Student

¹⁸⁶ SD6-19.

¹⁸⁷ SD26-(42-43).

¹⁸⁸ SD26-(31-44).

¹⁸⁹ SD28-34.

¹⁹⁰ SD6-17

¹⁹¹ RBT-1 testimony.

¹⁹² SD6-18

¹⁹³ SD27-15 and SD6-21.

¹⁹⁴ Sd26-14

¹⁹⁵ SD26-14.

¹⁹⁶ SD26-15.

¹⁹⁷ SD26-15. SD6-12.

¹⁹⁸ SD6-(9-10), SD-(13-14).

¹⁹⁹ SD26-(18-22). SD26-23.

²⁰⁰ SD26-21.

²⁰¹ SD26-23.

- continues to crying loudly, repeatedly hitting and punching the window, door and glass and kicking the wall, these incidents continue until 12:45 p.m. when Student calmly asks for and receives a glass of water.²⁰² RBT-1 leaves the reset room and Student immediately escalates, exhibiting the same behavior as earlier. At 1:10 p.m. Student again requested water, RBT-1 advised Student to move to the other side of the room and he complied. Student received water and his medication, cleaned up the reset room and worked the rest of the day. Student injured his right hand sustaining a bruise.²⁰³ The incident completed at 1:14 p.m.²⁰⁴
41. Counselor reviewed Student's physical Management Documentation Form²⁰⁵ from December 17, 2018 and credibly testified that, in her opinion, during this incident, Student was mimicking the language and the actions presented by Student's video game named "Fortnight", which she believes is inappropriate for Student.²⁰⁶
 42. On December 18, 2018, there was a minor incident lasting 45 minutes. Student was refusing work, Student did not show aggression.²⁰⁷
 43. Following winter break, classes resumed the week of January 7, 2019 and Student's behavior continued.
 - a. January 7, 2019 at 12:15 p.m. Student refused to do his work and pulled his hood over his head, Student was encouraged to take a walk.²⁰⁸ At 12:20 p.m., there was not compliance and RBT used a full physical prompt to get Student to walk and calm down.²⁰⁹ At 12:23 Student entered the reset room and began to escalate. Student immediately begins kicking the hole in the wall²¹⁰ and making it bigger, punching the window, screaming obscenities, and throwing plaster from the wall.²¹¹ RBTs enter the room at 12:45 p.m. and use a two-person restraint, which RBT-1 describes as two persons with their backs to each other, each holds a student and student rests his weight on our thigh,²¹² this was done so a piece of metal can be retrieved from the room.²¹³ During the hold, Student is punching and kicking the RBTs, and they release Student.²¹⁴ At 12:46 p.m. Student retrieves a brick from the hole and is holding it like a weapon and pretending to shoot staff.²¹⁵ Student throws the

²⁰² SD 26-26.

²⁰³ SD6-15.

²⁰⁴ SD 26-30.

²⁰⁵ SD26-14.

²⁰⁶ Testimony of Counselor.

²⁰⁷ SD26-13.

²⁰⁸ SD26-9.

²⁰⁹ SD26-9 and SD27-6.

²¹⁰ SD6-7.

²¹¹ SD26-9.

²¹² Testimony of RBT and SD26-10 and SD27-7.

²¹³ SD6-(3-4) and SD6-6

²¹⁴ SD26-10.

²¹⁵ SD26-10.

brick at the glass attempting to break it,²¹⁶ “flipping off” staff, and using obscenities. At 12:56 p.m. the RBTs perform a second two person restraint so the Principal and Asst Principal can enter and remove the debris Student pulled from the wall to keep Student safe.²¹⁷ Student is forcefully fighting during the hold and attempting to kick the Principal.²¹⁸ At 12:59 the hold is released and Student pulls more bricks from the hole.²¹⁹ The RBTs are attempting to remove the bricks, and Student is punching them.²²⁰ From 1:08 p.m. until 1:45 p.m. Student continued to kick the wall and punch the glass.²²¹ At 1:46 Student calms and asks to use the restroom. At 1:50 the incident is over and Student sweeps the room and mops it.²²² RBT-1 does not report an injury at the time of the incident.²²³

- b. On January 9, 2019, at 12:40 p.m. Student refuses to listen to instruction or make corrections, Student is offered a break but refuses, five minutes later he crawls under the desk and RBT-1 uses a full physical prompt to stand Student up and put Student in his chair, he slides back onto the floor, this is followed by another full physical prompt at 12:47 p.m. and then a full physical prompt toward the reset room at 12:53 p.m., on the way Student eloped and threw a chair at the RBTs. Student went into the boys bathroom.²²⁴ Student began forcefully kicking the stall door and punching the toilet paper holder. Requests to come out were responded to with obscenities. Student was bleeding and the maintenance person was called out to remove the stall door.²²⁵ RBTs used a two person reverse hold to escort Student to reset room, he arrives at 1:05 p.m.²²⁶ Student then begins screaming for his Mother, kicking the wall, beating the glass, spitting on the floor, pulling building materials out of the hole, “flipping off” staff until 1:45 p.m.²²⁷ At 1:53 p.m. Student ripped off the baseboard.²²⁸ The incident ended with clean up at 2:24 p.m.²²⁹ When questioned about her use of the initial full physical prompts, RBT-1 testified she could not let Student just sit there because it was not his demand. During this incident, Student injured his right-hand middle finger knuckle.²³⁰

44. No disruptions were reported for January 10, 11, 14, or 16, 2019. One brief incident of disruptive behavior is noted for January 15, 2019.²³¹

²¹⁶ SD26-10, ultimately Student succeeds in chipping the glass.

²¹⁷ SD26-10 and SD27-7

²¹⁸ Testimony of RBT and SD26-(10-11).

²¹⁹ SD27-7 and SD6-5.

²²⁰ SD26-11.

²²¹ SD26-11.

²²² SD26-12.

²²³ SD27-5, See FOF 49.

²²⁴ SD26-5.

²²⁵ SD26-6.

²²⁶ SD26-7.

²²⁷ SD28-7.

²²⁸ SD26-8.

²²⁹ SD26-8

²³⁰ RBT-1 testimony and SD6-1 and SD27-3.

²³¹ SD28-11.

45. The final recorded incident took place on January 17, 2019, at 10:55 a.m. Student is in the reset room and was refusing to comply, at 11:04 a.m. Student is reported using physical aggression toward self, kicking the wall, and “flipping off” staff,²³² this behavior is reported over and over until 11:17 a.m., when Student calmed sufficiently to each lunch, drink his milk, take his meds, and use the restroom. Student began working again at 11:50 a.m.²³³ At 12:29 p.m. Student stops working, pulls up his hood and will not respond. At 12:40 RBT-1 helps Student sit up with a full physical prompt and Student elbows her in the leg. Student rolls around the floor making body function noises until 1:01 p.m., when he receives another directive to work, a full physical prompt to sit up, and an offer of help from RBT-1.²³⁴ RBT-1 had her hands on Student’s shoulders.²³⁵ Between 1:03-1:22 p.m. Student is kicking the wall, knocking on the door, yelling and kicking the door handle. At 1:33 p.m. Student is asleep. At 1:56 p.m. RBT-1 woke up Student, he replied “nooo” but complied, by 2:07 p.m. he was reading.²³⁶
46. Student has not been physically aggressive toward peers.²³⁷ However, other student’s in the building have been impacted by Student’s yelling threats, obscenities and cursing, pretending to shoot at them with guns, and evacuation from and loss of use of classrooms.²³⁸ Student’s behavior has impacted Student socially.²³⁹
47. BCBA was on medical leave from November 27, 2018 to January 7, 2019.²⁴⁰ RBT-1 testified that she was in constant contact with the BCBA, even when she was out for surgery/recovery by either telephone or text. Further, she testified that all documentation and notes were entered into the TS computer and automatically submitted to the BCBA. BCBA confirmed that she was in contact with RBT-1 and that she reviewed the computerized and email summaries.²⁴¹
48. RBT-1 credibly testified that, at all times, she followed the IEP and BIP hierarchy protocols, including the use of QBS holds only when called for by the hierarchy

²³² SD26-1.

²³³ SD26-2.

²³⁴ SD26-3.

²³⁵ SD26-3.

²³⁶ SD26-4.

²³⁷ BCBA, RBT-1, Sped Director, Asst. Principal, Principal, Mother, Counselor, and Pediatrician.

²³⁸ Asst Principal testimony.

²³⁹ SD1-29.

²⁴⁰ BCBA testimony. The medical leave was not related to this case. BCBA did not report any injuries received from Student.

²⁴¹ BCBA testimony.

- protocols or when necessary to prevent injury to the Student or others. The NCR program requires that Student not be let out of a demand, allowing a student to escape means NCR will not work. RBT-1 had a prearranged signal with the classroom teachers, so the room could be cleared of students, whenever a potential escalation was anticipated. This was done to protect other students and not to antagonize Student. Additionally, she credibly testified Student did not escalate in all incidents which involved a physical prompt. RBT-1 did not use the special education classroom as a form of punishment as it was determined that Student's behavior was escalating since choosing to enter the general education room more frequently.
49. Although unaware of the seriousness of the injury on the date it occurred, RBT-1 credibly testified she sustained a torn meniscus during one of Student's escalations.²⁴² RBT-1 did not produce any medical records.
50. The RBTs and BCBA do have access to protective clothing provided by the District,²⁴³ this equipment may have prevented or reduced the RBTs injuries. The RBTs did not use the protective gear when working with Student. RBT-1 was unaware of any protective gear that could be used with QBS holds. Further, RBT-1 testified that, in her opinion, Student would escalate too quickly for protective gear to be used and that she could not wear it all day every day.
51. TS uses standard computerized forms to track incidents of physical intervention,²⁴⁴ these forms are boilerplates, which are electronically completed with an individual's signature upon review and approval.²⁴⁵ When printed, the signature line states "Parent/guardian" rather than district representative.²⁴⁶ TS primarily contracts with individual parents and not school districts, and the forms are not altered to reflect a specific contractual relationship.²⁴⁷ Sped Director's testimony that she was unaware that her signature would be followed by the words Parent/guardian was credible.
52. Following a physical management of Student, the District did not notify the Parent, stating it was TS's obligation pursuant to their contracted protocol to notify the

²⁴² RBT-1 testimony and SD1-30.

²⁴³ Sped Director testimony.

²⁴⁴ Client incident Reports, SD27.

²⁴⁵ BCBA and RBT-1 testimony.

²⁴⁶ Testimony of Sped Director.

²⁴⁷ Testimony of Sped Director and SD 27-9 and 27-12.

Parents.²⁴⁸ The District's staff made the continuous recording of Student behavior every ten minutes in accordance with the NCR program.²⁴⁹

The January 24, 2019 IEP meeting

53. The BCBA reported that following Student's transition to the general education class, he began to exhibit refusal behavior, including refusal to transition, complete tasks and accept help from anyone other than the GE teacher.²⁵⁰ "Student's refusal to transition to the Sped classroom makes it impossible to meet his instructional needs." During weeks prior to the IEP meeting Student started exhibiting elopement behavior, which was very concerning to the BCBA.
54. BCBA explained that in accordance with Student's NCR program, [RBTs] did decrease time on task and backed off demands.²⁵¹ BCBA has been "unable to determine an environmental connection to aggression."²⁵² BCBA recommended Student receive an intense ACT or self-regulation training, more intense than what the school social worker could provide.²⁵³ In her final progress²⁵⁴ report on Student's behavior, BCBA noted a significant increase in Student's disruptive behavior after the transition.²⁵⁵
55. Mother is concerned that the reset room has not been secured for Student's safety. Mother suggested the District could lock the reset room door, which the District and TS staff adamantly opposed.²⁵⁶
56. BCBA concluded that in her professional opinion, "it is unethical and inappropriate to continue to have Student continue in this setting (at LTES)."²⁵⁷ Further the placement is not socially appropriate, safe or behaviorally appropriate for Student.²⁵⁸
57. Sped teacher credibly testified that when Student is escalated, he is not available for academics.
58. A manifestation determination review was completed by the IEP team and the team maintains that the IEP, including the BIP, was implemented with fidelity and further

²⁴⁸ Testimony of Sped Director.

²⁴⁹ Testimony of Sped Director.

²⁵⁰ SD1-27.

²⁵¹ SD1-28.

²⁵² SD1-29.

²⁵³ SD1-29.

²⁵⁴ SD21-1. This report is dated January 21, 2019.

²⁵⁵ SD21-3. It is noted that the date on this transition is listed as 11/7/19, which is clearly a typographical error.

²⁵⁶ SD1-29.

²⁵⁷ SD1-29 and SD1-31.

²⁵⁸ Sd1-29.

after reviewing the FBA/BIP the team determined that it was appropriate as written.²⁵⁹

59. The team concluded Student's current "stay put" placement is at LTES until the district court determines otherwise, as TS will no longer work with LTES to implement Student's NCR program in the current setting, the District considered available options.²⁶⁰

- a. The District has spoken with other board certified behavior analysts to attempt to implement the NCR program at LTES, and has been refused.²⁶¹ The District wants the board certified behavior analyst to be a neutral party not affiliated with the Parents.²⁶² Further, the District is concerned about the proximity of the Parent's proposed board certified behavior analyst to LTES, and prefers a board certified behavior analyst who can be physically present, noting that BCBA was present at least once a week.²⁶³
- b. The team determined that maintaining Student's current educational placement is substantially likely to result in injury to himself or others.²⁶⁴ Therefore, they discussed placing Student in an interim alternative educational setting. The recommendation was for a therapeutic day school, including PAV, or residential school.²⁶⁵
- c. Mother did sign authorization to release confidential information to PAV.²⁶⁶

District proposed IAES Therapeutic Day School Placement.

60. Prior to January 2019, the District had proposed therapeutic day school settings at the Parents are unwilling to accept that setting.²⁶⁷ Mother has toured PAV and is concerned about PAV student's displaying aggressive behaviors. Mother does not want Student exposed to attack behaviors from other students. Mother strongly disagrees with a residential placement.

²⁵⁹ SD1-32.

²⁶⁰ SD1-31.

²⁶¹ Sped Director testimony.

²⁶² Sped Director testimony. Parent's have suggested Parent's BCBA-D as an alternative.

²⁶³ Sped Director testimony.

²⁶⁴ SD1-31.

²⁶⁵ SD1-31.

²⁶⁶ Mother testimony.

²⁶⁷ Sped Director testimony.

61. Sped Director believes that the PAV²⁶⁸ therapeutic day school can implement the IEP and BIP as written. PAV is within close proximity to Student's home, provides a small quiet environment, small classes and an open thinking room.²⁶⁹ The District would be willing to pay for TS to fully implement the NCR program at PAV. Additionally, the District would be willing to provide any additional services required by Student and unavailable at PAV to Student either at PAV or elsewhere.²⁷⁰
62. PAV Principal testified that PAV has agreed to accept Student for a 45-day interim placement. PAV has a current staff of 25 and an enrollment of 59 students. PAV serves grades 1-12 and has six classrooms, there is a maximum of ten students per classroom. PAV has a full-time registered nurse on staff. PAV currently has a student position available in the grade 1-4 classroom.²⁷¹ PAV Principal has read Student's IEP and BIP and would be able to implement the Student's goals and objectives using PAV staff and outside contractors. PAV is not experienced in NCR behavior. PAV staff would provide social work minutes and has an outside provider for speech language therapy. The District would provide District personnel for occupational therapy. PAV would hire additional staff to cover Student's one-to-one paraprofessional, and would accept a BCBA team hired by the District.²⁷² PAV Principal testified that other students at PAV do exhibit aggressive behaviors, however these are infrequent, and that restraint is used only as a last resort. PAV Principal is credible.

Additional findings:

63. Parent BCBA-D²⁷³ reviewed Student's IEP and BIP and Dr. [REDACTED] FBA, she had the opportunity to observe Student at a tutoring session in the public library, in his home, and in public. She is familiar with NCR and has implemented NCR in 50-80 cases. She did not contact anyone at LTES or Student's BCBA. BCBA-D has seen NCR work successfully in a general education setting, she was unable to observe Student at LTES because Student was not attending during observations. BCBA-D noted that there were no behavioral concerns outside of the school setting. BCBA-D's

²⁶⁸ Identifiable information is located in Exhibit A.

²⁶⁹ Sped Director testimony.

²⁷⁰ Sped Director testimony.

²⁷¹ PAV principal was concerned that due to Student's age he would need to be in a higher level grade, however, prior to the conclusion of hearing District's counsel confirmed that Student was eligible for the lower grade class.

²⁷² PAV Principal testimony, later PAV confirmed it could also hire RBT through contractors.

²⁷³ BCBA-D holds a PhD from the University of Texas at Austin in autism and developmental disabilities. And is a Board-Certified Behavior Analyst. She resides in Texas. P1-001.

theory of the divergent behaviors was that Mother had established instructional control over Student. She raised concerns that Student's problem behaviors are being reinforced by being allowed to go home or miss school entirely. BCBA recommended that Student would benefit from acceptance commitment therapy ("ACT"), which was not part of Dr. ██████ FBA but she felt should have been added, she was unaware that the ACT program was already being used by school personnel. BCBA-D acknowledged that every student is different and that Student's BCBA had done quite a bit of work to get Student on the schedule he was using. BCBA-D recommended that the entire staff be trained in Student's BIP to insure fidelity to the BIP. In BCBA-D's opinion protective gear does not effect QBS hold, she specifically referred to the use of Kevlar sleeves. BCBA-D is willing to contract with District to implement Student's NCR program "with changes".²⁷⁴ BCBA envisioned that she would be able to train and monitor staff via teleconferencing and estimated she might be able to appear personally once or twice a month. BCBA-D did not believe Student would be a danger to himself or others.

64. Student's Tutor recalled only one incident of aggression during their tutoring sessions. Student refused to complete a math activity and Student lashed out in anger kicking the wall and study table. Student was screaming and crying. Tutor left the room and Mother spoke to Student they left together. Mother used incentives for good behavior, such as threats to remove video games or take away toys. Tutor did not know Student had a BIP. Tutor successfully uses age appropriate graphic novels to encourage Student to read.
65. Pediatrician admitted that he had never observed Student in school setting, had never requested to or spoken to any of Student's teachers, does not know Student's NCR prompt hierarchy, and obtains the information his opinions are based on solely from Student and his Mother.²⁷⁵ He opined that in his opinion, Student was not suicidal and was not a danger to others.²⁷⁶
66. Counselor has not observed Student in school and obtains the information her opinions are based on solely from Student and Mother.

²⁷⁴ Changes were described as the use of ACT, removal of physical prompts, changing Student's view of reset room so he sees it as fun-not punitive.

²⁷⁵ Pediatrician testimony.

²⁷⁶ Pediatrician testimony. Mother testified she gave Pediatrician an example of Student's records to review.

67. Student does his best work when he has the full attention of someone he likes.²⁷⁷ Student's District provided tutor, concludes "Student seems to work best in a quiet atmosphere with minimal distractions, while also presenting him with options for him to take authority over his own learning."²⁷⁸
68. Following Student's destruction of the school alarm system the District took steps to secure the alarm system in a new location²⁷⁹ and secure the damage in the reset room.
69. The District staff credibly believe that should Student remain at LTES he would pose a danger to himself and others.²⁸⁰ Mother admitted that Student could be a danger to others at school if he felt cornered or his space was invaded, then Student would fight back.

CONCLUSIONS OF LAW

Issue One: Whether maintaining Student in the current placement is substantially likely to result in injury to Student or to others.

The IDEA and the Illinois School Code authorize a school district to request an expedited hearing when the school district believes that maintaining the current placement of a child is substantially likely to result in injury to the child or others.²⁸¹ In this case, a free appropriate public education is not at issue.

Based on the above Stipulations and Findings of Fact, the undersigned makes the following Conclusions of Law as to Issue One:

1. The District in this case has met the burden of proof that maintaining Student in his current place at LTES is substantially likely to result in injury to Student or others, and therefore Student's current placement at LTES is not appropriate.
2. In January 2018, IDEA Hearing Officer Mary Schwartz in her HO Determination ordered the District to create an IEP for Student that implemented an NCR/enriched environment program, as designed by Dr. [REDACTED] to decrease motivations that

²⁷⁷ Sped Director testimony and P7-002.

²⁷⁸ P6-004.

²⁷⁹ Sped Ed Director and SD10-1.

²⁸⁰ Testimony of Principal, BCBA, RBT-1, Asst. Principal, Sped Director,

²⁸¹ 20 USC §1415(k)(1)(G)(3); 105 ILCS §5/14-8.02(b)(c)(ii).

- trigger a student's disruptive and aggressive behavior.²⁸² Student had engaged in disruptive behavior at LTES on occasions before January 2018.²⁸³
3. The District fully complied with the HO Determination.²⁸⁴ The District hired a BCBA with the qualifications to draft and implement Dr. ██████████ NCR program in the LTES setting.²⁸⁵ BCBA then reviewed Dr. ██████████ FBA and drafted an NCR program that incorporated not only his recommendations,²⁸⁶ but gave consideration to the Pediatrician and Parental concerns regarding restraint.²⁸⁷ The program was written into Student's BIP, which was revised and incorporated into Student's August 2018 IEP.²⁸⁸
 4. The District implemented the NCR program on May 1, 2018²⁸⁹ and the program continued during ESY,²⁹⁰ up until January 24, 2019,²⁹¹ for a period of 121 days.²⁹² The progress of the NCR program was reviewed and modified by the IEP team during IEP meetings on August 17²⁹³ and October 18, 2019.²⁹⁴ The NCR program was being continually monitored.²⁹⁵ Initially, the program appeared to be successful, during the Fall semester 2018 - only one major incident²⁹⁶ and several minor incidents were reported through November 14, 2018.²⁹⁷ During November, it appeared that Student was successfully transitioning to the general education program.²⁹⁸
 5. The uncontroverted evidence shows that Student's behaviors escalated in intensity and frequency beginning at the end of November 2018 and continuing through January 2019. Student began to exhibit refusals followed by periods of intense verbal and physical aggression.²⁹⁹ These incidents occurred on almost a daily basis and lasted for hours, and Student's violent and aggressive actions during these incidents -

²⁸² SF 5; FOF 9.

²⁸³ FOF 8, 14.

²⁸⁴ FOF 15, 17, 22,

²⁸⁵ FOF 13, 17.

²⁸⁶ FOF 19.

²⁸⁷ FOF 19.

²⁸⁸ FOF 25, 26, 27, 28.

²⁸⁹ FOF 22.

²⁹⁰ FOF 22.

²⁹¹ FOF 59.

²⁹² FOF 21.

²⁹³ FOF 25.

²⁹⁴ FOF32.

²⁹⁵ FOF 29.

²⁹⁶ FOF 31.

²⁹⁷ FOF 23, 33.

²⁹⁸ FOF 32.

²⁹⁹ FOF 36, 38, 39, 40, 43, 45.

- ripping up books, kicking and damaging walls and doors, screaming obscenities, and punching, kicking, and spitting on the RBTs – often resulted in Student’s classroom being cleared and physical injuries to Student and staff.³⁰⁰ Although other students were not physically injured, Student’s aggressive and abusive behavior has potentially impacted them and their education.³⁰¹
6. Parents have questioned the credentials of the BCBA to implement the NCR, pointing out that there are other board-certified behavior analysts who were more experienced with NCR. However, there is no documentation in the IEPs or email evidencing that Parent’s disagreed with the BCBA’s or RBT-1’s credentials or the hiring of TS.³⁰² Additionally, Parents stipulated that BCBA is qualified to give expert opinion on the design and implementation of behavior plans for children.³⁰³ Parent’s expert BCBA-D did not point out any major design defects in Student’s BIP, and her major proposed modification (to include ACT) was a modification that the BCBA had proposed during the January IEP meeting.³⁰⁴ Further, Parents question the credentials of RBT-1, alleging that she too lacked the experience to work with Student. However, the evidence shows that RBT-1 was certified and, after working with Student, was promoted to senior RBT in October 2018.³⁰⁵
 7. Parents argue that there are mitigating circumstances surrounding Student’s escalating behavior that must be considered. Initially, Parents have argued that the increase in behavior beginning at the end of November was associated with BCBA’s medical leave, alleging that by not being present, BCBA could not monitor Student’s behavior and “this was truly a time when direct observations and physical presence were warranted.”³⁰⁶ However, Both BCBA and RBT-1 testified that they were in almost constant communication by telephone and text.³⁰⁷ Further, this argument is not persuasive in light of Parent’s proposed BCBA-D replacement, who intends to monitor the NCR program from her location in Texas and be physically present at LTES only once or twice a month.³⁰⁸

³⁰⁰ FOF 38, 39, 40, 43.

³⁰¹ FOF 46.

³⁰² FOF 16, footnote and 63.

³⁰³ SF-7.

³⁰⁴ FOF 54 and 64.

³⁰⁵ FOF 24.

³⁰⁶ HO Exhibit 14-c (Parent closing argument).

³⁰⁷ FOF 47.

³⁰⁸ FOF 64.

8. Parent's also argue that the RBT-1's unchecked actions and consistent pattern of touching Student caused Student to escalate to physical aggression and receive restraint. There is substantial evidence, however, to show that RBT-1 was following the BIP's model prompt protocols when facing Student's potentially escalating behavior - the three step model³⁰⁹ that called for a vocal prompt, model prompt, followed by physical guidance to minimize Student's attempt to escape from a direction.³¹⁰ To assuage the Pediatricians concerns about physical restraint,³¹¹ the District implemented a less restrictive restraint program, QBS.³¹² TS staff used QBS holds.³¹³
9. There is also substantial evidence to show that Student's escalation resulted without touching. For example, the November 29, 2018 incident did not involve any physical prompts or touching by any RBT or staff. Student's aggressive behavior was directly related to the denial of being allowed to participate in a preferred activity.³¹⁴ Additionally, there were instances where physical prompting of Student did not result in escalation and aggression, rather, Student responded to the physical prompt and avoided escalation. On December 10, 2018, following a model prompt involving pulling student out from under a table, Student voluntarily accompanies RBT-1 to the reset room to play UNO.³¹⁵ Quite simply, the NCR program requires that Student not be allowed to escape a request, if there is a refusal a physical prompt is required, if the refusal escalates to aggression physical restraint is authorized. This has been clear since the NCR program was first proposed and then ordered through HO Determination.
10. Parent additionally argues that RBT-1 had too much power when choosing to evacuate a classroom, and that the standard for this hearing is not disruption, but injury. Parent's suggests that evacuation may have contributed to Student's escalation. Suggesting, however, that other students should be put at risk for physical injury in the event of a possible escalation of aggressive behaviors is misplaced. The BIP specifies that if behavior escalates, a signal should be given to

³⁰⁹ FOF 9, 27,28.

³¹⁰ FOF 36 (a), 36(c), 38,

³¹¹ FOF 20.

³¹² FOF 20.

³¹³ FOF 24.

³¹⁴ FOF 36 (b).

³¹⁵ FOF 39(a).

the classroom teacher to evacuate the students.³¹⁶ This procedure was being followed and was successful since no students have been injured.

Based on the above, it is determined that the District has demonstrated by substantial evidence (i.e. beyond a preponderance of the evidence) that maintaining Student's placement at LTES is substantially likely to result in injury to Student or to others. Student has shown increasingly aggressive behaviors which have resulted in injuries to Student and staff and potentially could result in injuries to other students. The District has met its burden.

Issue Two: Whether the proposed 45-day interim alternative educational setting ("IAES") is proper based on the following factors: 1) Whether Student's current placement is appropriate; 2) Whether the District made reasonable efforts to minimize the risk of harm in Student's current placement, including the use of supplementary aides and services; and 3) Whether the IAES will permit full implementation of the Student's IEP and includes services and modifications designed to prevent the undesired behavior from recurring. 23 Ill Admin Code §226.655(a)(b).

The District having met its burden on Issue One to prove that maintaining Student in the current placement at LTES is substantially likely to result in injury to Student or to others, the remaining factors specified in Issue Two must be considered:

The testimony and documentary evidence demonstrate that Student's current placement is not appropriate:

1. Student's current placement has allowed him to make the choice to participate in the general education classroom.³¹⁷ When Student's choice of the general education classroom appeared to be increasing Student's behaviors, and Student was redirected to the special education classroom or reset room, Student interpreted this redirection negatively, resulting in increased refusals and aggressive behavior. During these extended periods of aggressive behavior, Student is not available to participate in academics.³¹⁸ It is unlikely that Student would readily accept a placement to the special education classroom when Student's preferred choice of the general

³¹⁶ FOF 28a.

³¹⁷ FOF 25.

³¹⁸ FOF 57.

education classroom is nearby. It is determined that Student's current placement in LTES is inappropriate and District has met its burden on this factor.

The testimony and evidence demonstrates the District made reasonable efforts to minimize the risk of harm in Student's current placement:

1. Substantial evidence shows Student had the services of the special education and general education teachers coordinating his academics.³¹⁹ In addition, Student had a one-to-one aide assisting and monitoring him at all times,³²⁰ Student had two RBTs with him or monitoring him all day, and the BCBA monitoring his behavior, either in-person or by telephone.³²¹
2. The District provided protective gear that the RBTs, in their discretion, choose not to use.³²² The RBTs are not District employees and are not under District control. Additionally, there is no evidence that the protective gear would have prevented injury to the RBTs faces, upper arm areas, or knees. There is not evidence to show what effect RBTs wearing protective gear would have had on Student, and whether he would have seen this as threatening.
3. The reset room was adjusted based on Student's actions in an attempt to prevent Student injury.³²³ Parent has argued that more could have been done, however, it has not been shown that kicking down walls, removing baseboards and electric conduit, and destroying the alarm system was something the District should have anticipated and attempted to prevent before it actually took place.

The testimony and evidence presented shows the IAES will permit full implementation of the Student's IEP and includes services and modifications designed to prevent the undesired behavior from recurring:

1. At the January 24, 2019 IEP meeting, the team recommended that Student be placed in a therapeutic day school or residential school.³²⁴ The District has offered no evidence to support that a residential school would be an appropriate placement for the Student and therefore placement at a residential school cannot be established as being appropriate and cannot be ordered.

³¹⁹ FOF 25.

³²⁰ FOF 29.

³²¹ FOF 47.

³²² FOF 50.

³²³ FOF 31 (see footnote 114) and FOF 68.

³²⁴ FOF 59b.

2. However, it is found that the District has established that PAV, in conjunction with the District, can fully implement the Student's IEP. PAV has a placement in an appropriate age/grade level classroom for Student. PAV has agreed to hire additional personnel to provide a one-to-one aide and has agreed to access District personnel to cover services, such as occupational therapy, which it cannot provide. The District has agreed to provide those services. PAV has a counselor and speech pathologist who could provide the social work and speech language minutes required. PAV has agreed to contract with TS, at District cost, to continue to implement the BIP and NCR programs in the therapeutic environment. PAV has agreed to accept Student for the 45-day IDES placement.³²⁵

ORDER

Within five (5) school days of receipt of this Final Decision and Order, the District shall contract with PAV for a 45-day interim alternative educational setting placement at the therapeutic day school for Student.

Within 45 calendar days of receipt of this Order, the District shall submit proof of compliance to:

Illinois State Board of Education, Program Compliance Division
100 N. First St.
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 shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street., Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of

³²⁵ FOF 62.

Appendix A.

██████████, (“LTES”), is an elementary school run by the ██████████
██████████ CUSD ██████████.
██████████ (“TS”), ██████████, IL ██████████, contracted by the
District to provide behavior services, including BCBA and RBTs to ██████████.
██████████ (“PAV”), Private therapeutic day and residential school,
██████████ Illinois.

Joint Witnesses:

1. ██████████, (“BCBA”), board certified behavior analyst at TS, board certified behavior analyst at TS. She holds a Masters in Education Administration from Southern Illinois University, Edwardsville, Illinois. She holds an Illinois Type 10 (LBS1) license and was certified as a Board Certified Behavior analyst in 2017. She has worked in education since 2005. She has worked for ██████████ as a BCBA since 2017. She is QBS certified.
2. ██████████ (“RBT-1”), has a bachelor degree in child development and was certified as an RBT since February 9, 2018. She is trained in both QBS and Response to Intervention (RTI) physical behavior management. She was a senior RBT with TS and worked with children with intense behaviors and autism since 2013. At the time of hearing she had moved to Tennessee.
3. ██████████ (“GE teacher”), general education teacher at LTES.
4. ██████████, (“Sped Director”), special education director at LTES.
5. ██████████ (“Principal”), principal of LTES.
6. ██████████, (“PAV-Principal”), Principal of ██████████ School.
7. ██████████ (“Sped teacher”), special education teacher at LTES.
8. ██████████ (“Asst. Principal”), has a Certification in Behavior analysis Therapy from Southern Illinois University, Carbondale.

Parent witnesses:

1. ██████████ (“Tutor”).
2. ██████████ (“Pastor”), Student’s Pastor.
3. ██████████ (“Pediatrician”), Developmental and Behavioral Pediatrician, currently a clinical Professor of Pediatrics, University of Illinois college of Medicine at Urbana-Champaign.
4. ██████████ (“Counselor”), licensed Clinical Professional Counselor, she holds a Master of Science in Clinical counseling, Psychology, from Illinois State University, Normal, Illinois (2005).
5. Dr. ██████████ (“BCBA-D”), PhD, BCBA, holds a PhD from the University of Texas at Austin, in autism & Developmental Disabilities (2016); a M.S. from Saint Joseph’s University, in Applied Behavior analysis (2012) and is currently an Assistant Professor at Texas Tech University teaching graduate programming in Applied Behavior analysis through the Burkhard Center for Autism Education and Research, Teacher Training Institute.
6. ██████████ (“Mother”).

CERTIFICATE OF SERVICE BY EMAIL AND
CERTIFIED UNITED STATES POST OFFICE MAIL

I the undersigned, Mary Jo Strusz, certify that on March 22, 2019, a copy of the FINAL DETERMINATION AND ORDER, was served upon the following persons via email transmission by attached document in pdf format to the email addresses below and a copy of the printed documents with original signatures were placed in the United States Postal Service, Certified Mail and address to the parties at the addresses below:

Mike Shea, Esq.
Olga Pribyl, Esq.

[REDACTED]

Darcy L. Kriha, Esq.

[REDACTED]

Andrew Eulass
Due Process coordinator
Illinois State Board of Education
Division of special Education Services
100 N. 1st Street
Springfield, IL 62777

March 22, 2019

/S/ Mary Jo Strusz
Mary Jo Strusz, Impartial Hearing Officer

[REDACTED]