

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

██████████,

Student,

Case No: 2019 DP 0213

v.

Kathleen C. Fuhrmann, Impartial Hearing Officer

██████████ School District ██████,

School District.

FINAL DETERMINATION AND ORDER

JURISDICTION

The undersigned has subject matter 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.* The personal jurisdiction in this matter of the undersigned is limited to the parties to this matter, specifically Student, Mother, Father, and the ██████████ School District 34. The standard of proof in impartial hearings under the IDEA is a preponderance of the evidence. 20 U.S.C. § 1415(i)(2)(C)(iii). Under this standard, the party seeking relief must establish that the fact sought to be proved is more probable than not.¹

BACKGROUND

██████████, Petitioner is the mother of ██████████ (“Student”), a twelve-year-old, 6th grade student with a disability who is eligible for IDEA services under the category Other Health Impairment. Currently, Student is enrolled in ██████ Middle School where she receives significant amounts of specialized instruction (830 minutes/week outside general education

¹ *Schaffer v Weast*, 546 U.S. 49, 62 (2006).

setting), direct 1:1 support, comprehensive behavior support and 90 minutes per week of social work support.

On February 27, 2019, Ms. [REDACTED] (“Mother”), pro se petitioner, filed a Due Process Complaint (“Complaint”) against the [REDACTED] School District [REDACTED] (“District”) pursuant to the Individuals with Disabilities Education Act (“IDEA”). This Hearing Officer was appointed to preside over this case on March 6, 2019. The District was initially represented by Kriha Law of [REDACTED], Illinois.

On March 11, 2019 the District filed its Response to the Due Process Complaint. Thereafter, the District filed School District [REDACTED] Motion For Sufficiency on March 12, 2019.

On March 15, 2019, District’s counsel Kriha Law was substituted and Laura Sinars, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd. entered her appearance as counsel for the District. In addition, the District’s Motion for Sufficiency was granted, and Ms. [REDACTED] was granted leave to file an Amended Due Process Complaint (“ADPC”) by March 21, 2019.

On March 21, 2019 an Initial Status Conference was convened by telephone conference call. Ms. [REDACTED] requested and was granted additional time to file her ADPC. The ADPC due date was moved to March 29, 2019. On March 25, 2019, Ms. [REDACTED] filed an ADPC against the Glenview School District 34 with the undersigned. The ADPC was allowed by Order of March 27, 2019. An Order was issued setting forth the amended timeline. The District filed its Response to Parent’s Amended Due Process Complaint Notice on April 4, 2019. The 45-day deadline was June 8, 2019.

A status conference was convened by telephone on April 1, 2019 to discuss the resolution requirement and how the parties will fulfill it. Next status conference was convened on April 29, 2019 and the parties scheduled the prehearing conference. On May 1, 2019, the parties waived the resolution requirement in writing.

On May 14, 2019, an in-person prehearing conference was held in the above matter at the [REDACTED] School District [REDACTED] Administrative Offices. Participating in the conference were: Kathleen C. Fuhrmann, Hearing Officer; [REDACTED] [REDACTED] Mother/Petitioner; Dr. [REDACTED] [REDACTED], Father; and, [REDACTED], Executive Director of Student Services and Laura Sinars, Esq. of Robbins, Schwartz Nicholas, Lifton & Taylor, Ltd. for District/Respondent.

The parties jointly requested an extension of the 45-day deadline on May 24, 2019. The same day, the request was granted, and the 45-day deadline was extended to July 12, 2019 to enable the parties to complete the hearing and for the issuance of a decision after the hearing in this matter.

The District tendered its Five-Day disclosure of witness lists and documentary exhibits on June 4, 2019 through electronic submission and provided “hard copies” of the witness list and exhibits to Parents on June 5, 2019 as required in the Prehearing Report and Order issued on May 17, 2019. Ms. [REDACTED] did not tender Five Day disclosure of witness lists and documentary exhibits on June 4, 2019 through electronic submission. Dr. [REDACTED] did not dispute the District’s propose placement for Student and did not present a case in this matter.

On June 7, 2019, a status conference was convened by telephone to deal with any preliminary concerns related to the Five-Day Disclosures. Ms. [REDACTED] and Ms. Sinars participated in the telephone conference call. Ms. [REDACTED] confirmed that she had not tendered Five-Day disclosures and did not intend to call any witnesses or tender any documentary evidence. The hearing officer noted to the District that Dr. [REDACTED] curriculum vitae was not found in the District’s Five-Day Disclosures. The hearing officer noted that production of a curriculum vitae for each professional who would testify was ordered and that it must be produced pursuant to the order. The District indicated that it was not available from Dr. [REDACTED] at the time of the disclosures, but it should be available on Monday. The hearing officer also requested that the District review pages 51 to 56 of Exhibit R8 because the copies sent in the disclosures contained highlighted sections that were not legible. The District agreed to do so and if needed to provide legible copy on the first day of hearing.

The closed hearing was conducted at the [REDACTED] School District No. [REDACTED] Administrative Offices, located at [REDACTED], IL [REDACTED] on June 11 and 12, 2019. Ms. [REDACTED] pro se, participated in the hearing as the Petitioner. Dr. [REDACTED] pro se parent, participated in the hearing without joining the Petitioner in the due process complaint. The District was represented by Laura Sinars, Esq. of Robbins, Schwartz Nicholas, Lifton & Taylor, Ltd. and [REDACTED], Executive Director of Student Services participated as the District Representative. Helen Miller of Lake-Cook Reporting, Ltd. was the court reporter for this hearing.

Testimony was received from: [REDACTED] Parent, [REDACTED], Student Services Administrator, [REDACTED], Special Education teacher, [REDACTED], Science teacher,

██████████, Social Studies teacher, ██████████, Special Education ELP teacher, ██████████, Assistant to Principal, Dr. ██████████ ██████████ Parent, ██████████, School Social Worker, ██████████, School Psychologist, ██████████, M.D., Psychiatrist, and ██████████ ██████████, Student Services Administrator.

IHO Exhibits A to W were admitted into evidence. Ms. ██████████ and/or Dr. ██████████ did not offer any documentary evidence during the hearing. District Exhibits R 2 to 4, 6 to 13, 13a, 20 to 21, 23 to 24, 30, 38, 43 to 45, and 47 to 52 were admitted into evidence. The parties presented oral closing argument.

ISSUES

The issues to be determined are as follows:

- A. Issue One: Whether the District's Propose placement of Student in the SOAR program (February 22, 2019 IEP) will provide her with a free appropriate public education in the least restrictive environment?
- B. Issue Two: Whether the nature and severity of Student's disability is such that education in the regular classes with the use of supplementary aides and services cannot be achieved satisfactorily?
- C. Petitioner seeks the following remedies: Placement at ██████████ with academic instruction in social studies and science in the general education classroom with support.
- D. Respondent raises the following defenses: District's IEP team recommended in Student's February 22, 2019 IEP that she be placed in the SOAR program (40% in general education, with an increase of direct special education instruction in science and social studies) after it considered Student's progress in her educational programs to date, her strengths, her current educational and emotional functioning, her need for highly specialized educational programming with an emphasis on teaching skills related to emotional and behavioral regulation, her cognitive and learning profile, her age and whether any additional appropriate supports were

available for Student at █████ Middle School, Parents' preferences for her educational goals, program and placement and the obligation to provide Student with a free appropriate public education in the least restrictive environment.

FINDINGS OF FACT

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

Student

1. Student is a twelve-year old, who just completed sixth grade student with a disability. Student resides with her mother in the District. She also spends time with her father who resides in the District. During the 2018-2019 school year Student attended █████ as a 6th grade student. (Testimony of Mother.)
2. Student is eligible for special education and related services under the IDEA category of Other Health Impairment ("OHI"). Student's disability related educational needs include the areas of attention, executive function, social/emotional skills, behavior, and academic skills. (Exhibit R2-3 to 4, 34 to 35, R3, and testimony of Student Services Administrator and School Psychologist.) In addition, Student takes anti-seizure medication for a seizure disorder. (Testimony of Mother and Father and Exhibit R30.) Side effects were not listed for anti-seizure medication by physician on the Authorization and Permission for Administration of Medication form provided to the District. (Exhibit R30.) Student is an English Learner, but family has declined EL services. (Exhibit R8-4.) Student is described as a delightful, engaging child when regulated. (Testimony of Mother, Father, Student Services Administrator, S.W., N.C., S.M., B.R., Social Worker, School Psychologist, L.M., Dr. F. and Exhibits R6-3, R7-61.) In a regulated state, Student can engage in conversations with adults, but has trouble staying on topic or focusing on task at hand. (Testimony of Mother, Father, Student Services Administrator, and N.C.) When dysregulated, Student is

described as very angry, verbally hostile and erratically behaved when dysregulated. She is frequently dysregulated. (Testimony of S.W., N.C., S.M., B.R., and L.M., and Exhibit R12.)

3. Student does not complete in-class work or homework in all academic classes, both general and special education. (Testimony of S.W., N.C., S.M. and B.R., and Exhibits R6-3.)

4. Student has difficulty with attention, maintaining focus, following directions, social skills, peer relationships and emotional regulation at [REDACTED] School and on sports teams and to a small degree at home. (Testimony of Father.)

STUDENT'S DISABILITY RELATED EDUCATIONAL NEEDS

ATTENTION

5. As early as 4th grade, Student's inattention was noted to be high average to elevated by her teachers on rating scales. Teacher rating scales also rated Student with elevated to very elevated levels of hyperactivity/impulsivity. (Exhibit R2-21 to 22.) Student's 6th grade team reported that Student had difficulty maintaining focus even with adult support next to her. (Testimony of S.W., N.C., S.M., B.R., Social Worker, and School Psychologist.) During the 6th grade, Student required one-to-one support in general education classes, with and without co-teaching, small group instruction and direct special education instruction. With adult one-to one support in a direct instruction special education classroom, Student was on-task about 20% of the time when her peer was on task about 95% of the time. (Testimony of S.W. and Exhibits R2-19 and R7-8 to 20.)

EXECUTIVE FUNCTION

6. Student needs ongoing assistance with organization of her desk, coat rack, backpack, assignment notebook and classroom materials. (Testimony of S.W., N.C., S.M., B.R., Social Worker, Exhibit R4-10.) Teacher responses on executive functioning inventory indicated that Student's over all executive functioning falls within the low average range with difficulty with initiation and working memory that negatively impacted her ability to remain on-task, complete work and engaged. (Exhibit R2-22 to24, R7-20 to 21.)

SOCIAL/EMOTIONAL/BEHAVIOR

7. Student has difficulties with peer relationships including social connections and friendships. Student has poor emotional regulation, with little control over her anger and

aggression. Student is unable to identify coping strategies and expected/unexpected behaviors without support of visual and verbal cues. She is beginning to recognize her need for support during unstructured time and requested additional time with the social worker to prepare for lunch recess. Student frequently draws pictures depicting violent scenes. (Testimony of S.W., N.C., S.M. and B.R., and Exhibits R2-40 to 42, R4-9 to 10, R6-9, R7-21 to 22, R8-14, 28, R9-1 to 3, 6 to 7, R12, R13a, and R21.)

8. Student experiences regular incidents of defiance/aggression of high intensity that ranged in frequency from weekly in fourth grade to Student averaged 1.01 incidents of unexpected behavior per day in 6th grade. (Testimony of S.W. and Exhibit R2 40 to 42, R3-3, 24 to 27, R6-8 to 9, R7-21 to 22, R8-5, 10 to 12, R9-1 to 3, 6 to 7, and R21.) Student's frequent periods of dysregulation are marked by anger, hostility and aggressive behavior and caused her to miss 4,758 minutes of instructional time during 6th grade. (Exhibits R8-20 and R12.) She needs familiar adults, concrete explanations, clear directions and consistency at school. (Testimony of S.W., Social Worker, School Psychologist, Dr. F. and Student Services Administrator.)

9. Student spent class time drawing, playing on her iPad, or with toys on the floor and wandering the classroom. (Testimony of S.M., B.R., School Social Worker and School Psychologist, Exhibits R10, and R11.) Student was suspended out of school for 2.5 days for physical aggression in the third quarter of 6th grade. (Testimony of L.M., Exhibits R21, R23, and R24.)

ACADEMIC

10. Student needs special education support in written expressions and math fluency. (Testimony of S.W., Exhibits R6, R7-15 to 16, and R8-6 to 12.) Cognitive assessments indicate weakness in non-verbal information and working memory. (Exhibit R2-22 to 24.) Student struggles with abstract concepts during academics. (Testimony of S.M., B.R., S.W., and N.C.)

11. Student attended ██████ Elementary School in fourth (4th) grade. (Testimony of Mother, and Exhibit R2-2.)

12. Student participated in the 4th grade general education classroom with daily support from her classroom teacher, 50% individual associate/aide support and push-in special education in writing for 30 minutes three times per week, special education services in the general education math class. Student was also provided special education resource for 20 minutes per day and social work services 60 minutes per week. Student's District wide test results revealed inconsistent

performance in the areas tested with scores in average and below average range and overall personal growth shown. (Exhibit R2-36 to 40, R2-59 and R4-7.)

13. Student attended ██████ Elementary School for fifth (5th) grade. Student participated in the 5th grade general education classroom with daily support from her classroom teacher, 50% individual aide support and push-in special education in writing for 30 minutes three times per week. Student was also provided special education resource for 20 minutes per day and social work services 60 minutes per week. Student received core reading, math and writing instruction within the general education classroom with support from an aide. In addition, Student received 30 minute of direct reading instruction four days per week in a small group setting using the Leveled Learning Intervention program to work on reading comprehension skills. Student was support by an aide during reading and writing, by a resource teacher in math and writing. Abstract work was modified to accommodate her concrete thinking. (Exhibit R4-1, 5, and 6 and R4-18.)

14. At Student's 5th grade annual review, a plan was made for Student to meet the social worker at ██████ before the fall to ease her transition to a new school. (Exhibit R4-5.) Student made little progress toward her goals. In addition, the IEP team increased the level of support for Student to include goals in writing, social work and Independence/BIP (behavior intervention plan) and added an individual student aide in general education, special education push-in services in reading, writing, and math five days per week, pull-out special education resource 2.5 times/week for 42 minutes and increased social work services to include 30 minutes three times/ per week. (Exhibit R4-12 to 19, R4-32.)

STUDENT'S 6TH GRADE

15. At █████ Student received extensive support from her IEP team, that included Student Services Administrator,² S.W. (special education teacher)³, N.C.(special education teacher),⁴ B.R. (Social Studies teacher),⁵ S.M. (Science teacher),⁶ Social Worker,⁷ School Psychologist,⁸ and an EL teacher. She also was supported by █████ administration staff, including L.M.⁹, the Assistant to the Principal, who provided her with supports during periods of dysregulation, planned breaks, and rewards for expected behaviors. (Testimony of Student Services Administrator, S.W., B.R., Social Worker, School Psychologist and L.M., and Exhibit R13)

16. Student experienced a rough transition to 6th grade. Student began at █████ enrolled in co-taught classes in reading, writing and math and was supported by an aide in general education Science and Social Studies with a small group resource class and social work service. (Testimony of Student Services Administrator, S.W., N.C., Social Worker.) Student had difficulty maintaining focus and on task behaviors, even with a teacher, social worker or aide sitting next to her. It was

² Student Services Administrator holds bachelor's degree in psychology from Northern Illinois University, an educational specialist in school psychology from University of Kansas, a Ph.D. in school psychology from University of Kansas and director of special education endorsement from Illinois State University. He currently holds a Professional Educators License with a special education, school psychologist and director of special education endorsements. He has 17 years of experience in education. He worked as Student Services Administrator at █████ for four years and was responsible for supervision and support of the SOAR program at █████

³ S.W. holds a Masters' degree in Elementary Education from Michigan State University. He has 12 credits in curriculum and instruction from Michigan State University, 9 MA credits in Reading Specialist from Morehead State University, Morehead, Kentucky, and 9 credits in special education from National Louis University for LBS1 certification. He holds a professional educators license with endorsements in elementary education k – 9 and LBS1 K-9. He has taught for 15 years and has been at █████ for the past five years as a 6th grade special education teacher.

⁴ N.C., special education teacher who holds a Bachelor of Arts and Master of Arts from Eastern Illinois University. She holds an LBS1 professional educators license.

⁵ B.R., a 6th grade social studies teacher at █████ has a bachelor of arts in Elementary Education, Master of Arts in Special Education and holds a professional educators license in Elementary Education (K- 9) with 5th to 8th endorsements in science, language arts, and social studies, and LBS1 pre K to age 21. B.R. has 22 years of teaching experience, including 21 years in middle school and six years as a special education teacher.

⁶ S. M., a 6th grade science teacher at █████ has a Bachelor of Science degree in conservation science and geology from University of Wisconsin- Madison and a Master of Arts degree in teaching and learning from DePaul University. She holds a professional educators license with an endorsement for Elementary Education K to 9. S.M. has 16 years of experience teaching Science.

⁷ Social Worker holds a bachelor's degree in psychology from Coastal Carolina University, an Associate's degree in liberal arts from Cayuga Community College, and a Master of Arts in social work from University of Illinois – Chicago. She is trained in TEACH, PECS, de-escalation techniques, ADHD, student with ADHD and Non-Violent Crisis Intervention. She is a licensed clinical social worker and holds an Illinois professional educators license type 73 for social work K to age 21. She has worked in █████, █████ High School District, █████ (for 10 years) and has been at District for 3 years.

⁸ School Psychologist is a licensed school psychologist with an Educational Specialist Degree from Loyola University-Chicago. The 2018-2019 school year was her 10th year as a school psychologist at █████ (Exhibit R 48.)

⁹ L.M., █████ Assistant to the Principal, holds a bachelor's degree from Illinois State University in Elementary Education (K-9) and a Master of Arts in School Leadership from Concordia University. She has a Type 75 (K- 12 Administration) license and endorsement in English Language Learners, English /Language Arts, Science and Social Studies. L.M taught for SD 54 for six years and has been with District █████ since 2016

difficult to maintain her engagement, she needed lots of movement to stay engaged in learning. Student received modified assignments and tests. Student frequently needed adults to scribe her responses to assignments and reflection sheets. (Testimony of S.W., S.M., B.R., Social Worker, and School Psychologist, and Exhibits R10 and R11)

17. First trimester, Student experienced frequent periods of dysregulation as recorded in her behavior logs¹⁰ (87 incidents in 49 days of school) marked by anger, verbal hostility, erratic behavior (including kicking, hitting, throwing objects, threatening gestures), and disengagement, which caused her to miss 2,840 minutes of instructional time (about 1.5 weeks). Student generally did not complete in-class work or homework (49.5%) and generally required one-to-one adult support to do this work. (Exhibit R6-3, R6-8, R6-35, R12, Testimony of Student Services Administrator, S.W., N.C., and Social Worker.) Student struggled with selecting what to attend to, racing thoughts, verbal expression when agitated, academic expectations and had a poor ability to sustain attention when agitated and became verbally and physically aggressive. (Testimony of Student Services Administrator and Social Worker.) She frequently drew pictures depicting violent scenes. (Testimony of Student Services Administrator, S.W., N.C., Social Worker, School Psychologist, and Exhibit R11.) Student also spent class-time inappropriately, drawing, playing on her iPad, or playing with toys on the floor, and wandering the room. (Testimony of S.M., and B.R.)

18. On November 8, 2018, the IEP team met to conduct an interim IEP review and revise the IEP. The team requested more information and sought consent for a psychiatric evaluation of Student to obtain more information due to concerns with Student's lack of social skills, inability to attend and concern about her reality base. (Exhibit R6-3, R6-8, R6-35, and Testimony of Student Services Administrator and School Psychologist.) Student made statements that indicated she was overwhelmed by the academic and social expectations of 6th grade. (Testimony of S.W.) When Student reached a point of frustration, she became dysregulated and had to be removed from class to deescalate and because of her disruption of the rest of the class members. Student recognized that her grades were low but was unable to make the connection between her classroom

¹⁰ Student's behavior log was developed by S.W. and Social Worker. S.W. and Social Worker provided training to all staff that worked with Student. S.W. maintained the behavior log electronically and summarized the reports for data analysis and reporting. Logs classified behaviors and included anecdotal notes concerning the incidents and outcomes. (Testimony of S.W. and Social Worker)

behavior and low grades. Student became visibly upset because peers were not showing an interest in hanging out with her. (Testimony of Social Worker, and Exhibit R6-8 to 9.)

19. The November 8, 2018 report on goals indicated that she did not meet any of the trimester benchmarks on her goals, but she was making some progress on most of her goal. She was not making progress on her behavior goals. Student was beginning to be able to identify her feelings of dysregulation and given time and prompting, she could a coping strategy that could have been used to solve the problem. She could not identify coping strategy that would allow her to solve her problem and effectively deal with academic tasks or social interactions as she was becoming dysregulated. (Exhibit R6-10 to 17.) As the academic demands of 6th grade increased, Student's ability to be successful in school decreased. (Testimony of Student Services Administrator, Social Worker, School Psychologist and Exhibit R6-16 to 17.)

20. The IEP team agreed to increase support for Student in a small group setting. Student was moved to a special education instructional setting for reading, math, written expression, and resource. She continued to receive 90 minutes of social work per week and a 50% one-to-one aide during her time spent in the general education time for PE, fine arts, lunch, recess and X-block. (Testimony of S.W. and Exhibit R6-40.) Her goals, accommodations, modifications, and BIP remained in place. (Exhibit R6-20 to 35.)

21. On November 8, 2018, the IEP team determined that it needed additional information and data to assist with educational and special educational placement planning for Student. The team sought consent for a special education reevaluation of Student in response to Student's difficulty transitioning to 6th grade and her functional and psychological presentation. The team recommended a psychiatric evaluation of Student. Mother provided consent for the psychiatric evaluation. (Exhibit R6-3, Exhibit R7-79 to 88, and Testimony of Student Services Administrator, Social Worker, and School Psychologist.)

22. Dr. F.¹¹, a child, adolescent and adult psychiatrist, was hired by the District to conduct an evaluation of Student to assist in diagnostic clarification and to make academic recommendation for her. (Testimony of Dr. F. and Exhibit R7-61.)

¹¹ Dr. F. is psychiatrist engaged in private practice of child, adolescent and adult psychiatry in Northfield, Illinois (1994 to present). He is certified in Psychiatry (1987) and Child and Adolescent Psychiatry (1989) by the American Board of Psychiatry and Neurology. He completed a B.A. in physiology at University of Illinois- Urbana in 1978, a

23. Dr. F.'s evaluation of Student included a review of records, and interviews of school staff (one hour in duration), Student's Father (two hours in duration), Student's Mother (one and a half hours in duration) and Student (one and a half hours in duration). The evaluation was conducted between November 29, 2018 and December 11, 2018. Dr. F issued a written report that was considered at the February 22, 2019 IEP meeting. (Testimony of Dr. F. and Exhibit R7-61, Exhibit 7-2, 7-61 to 78.)

24. Dr. F.'s report indicated that Student's academic and behavioral concerns have been present for several years. Student's presentation, in all settings, includes marked distractibility/tangentially, physical restlessness, and impulsivity/dysregulation. He indicated that this is highly consistent with the DSM5 (diagnosis of Attention Deficit Hyperactivity Disorder ("ADHD)). These symptoms negatively impact Student in academic settings, in conversations, athletics and limit her ability to focus for screen-based games. Student's level of tangentiality/distractibility and difficulty with modulating/filtering her reactions is among the most severe Dr. F. has observed. (Testimony of Dr. F. and Exhibit R7-76.)

M.D. at University of Illinois College of Medicine (Chicago) in 1982, an Internal Medicine internship at University of Illinois Hospital in 1983, Residency in Psychiatry University of Illinois Hospital in 1986. In addition, Dr. F. completed a Family Institute of Chicago one-year training program in 1986 and a fellowship in Child and Adolescent psychiatry at Yale Child Study Center, New Haven, Connecticut in 1988. Dr. F. has worked in various settings including as an Assistant Clinical Professor of Psychiatry for the University of Chicago (1988–1994), as co-director of Chicago Lakeshore Hospital's Child Inpatient Unit and Day Treatment Program (1992-1994, as Psychiatric Consultant to Allendale Residential Treatment Center (1994-1995), as Psychiatric Consultant Private Placement Team for SEDOL (Special Education District of Lake County) (1995 to about 2012), and as consultant with social work staff of Solomon Schechter Day Schools(1996-2000). Presently, in addition to his private practice, Dr. F. serves as a Psychiatric Consultant to [REDACTED] (since 1990), consults with [REDACTED] Public Schools social work staff (since 2011) and conducts psychiatric evaluations for several school districts (since 2012). Dr. F. estimated that he completes forty or more psychiatric evaluations annually for the various school districts. (Testimony of Dr. F. and Exhibit R52-1.)

25. Student has marked difficulties assessing social situation, processing feedback and significant cognitive weakness and possible language weaknesses. Student has great difficulty with abstract concepts and is very concrete in her thinking. Emotionally, Student presents as a much younger child but is unable to read social situations as effectively as a typical 6/7 year- old child. Dr. F. cautioned that accurately measuring Student's cognitive/academic abilities is difficult due to her distractibility/impulsivity, but she appears to have significant cognitive challenges, including visual-spatial weakness, impacting her ability to make changes, understand math concepts, and read social cues. Testing also reveals Student has a significantly impaired working memory which may contribute to her difficulty processing academic work and social feedback. Dr. F. indicated that a Neurodevelopmental Disorder, unspecified, may be present given the clear challenges in non-verbal realm (mat. Visual spatial functioning and possible relative to language. (Testimony of Dr. F. and Exhibit R7-76.)

26. Dr. F. indicated that Student appears to struggle with fine motor challenges making the physical act of writing a frustrating challenge and may qualify her for a diagnosis of Developmental Coordination Disorder. (Testimony of Dr. F. and Exhibit R7-76.)

27. Dr. F. observed that Student's non-compliance and oppositional responses are not present much in the home setting and appear to be largely a response to the stress she experiences in the academic setting. (Testimony of Dr. F. and Exhibit R7-76.)

28. Dr. F. stated that Student is a charming, engaging girl who appears to enjoy social interactions with adults. He noted that she appears to be extremely frustrated and highly stressed within the context of a mainstream school setting and grade level demands. He noted that Student appears to encounter less frustration in her home setting, but there is evidence that her disabilities impact her in all settings, including home and recreational. Student's cognitive abilities relative to the academic demands/challenges of mainstream school, her marked attentional challenges, restlessness and impulsivity may cause her to feel overwhelmed much of the time. Student appears to become dysregulated and act out impulsively when stressed or challenged by academic or social demands. In addition, Student has marked challenges interpreting social cues, difficulty filtering her reactions, limited understanding of socially appropriate behaviors and limited sense of coping strategies. Combined these make the social world extremely challenging and frustrating for her. Peer relationships are negatively impacted by her interests (which are younger than those of her

peers), her clumsy and inappropriate social behavior (including threats, verbal and physical aggression). (Testimony of Dr. F. and Exhibit R7-77.)

29. Dr. F. observed that Student experiences extreme difficulty completing the work required of a sixth grader or to function adequately within the mainstream school setting, even with a one-to-one aide assisting her. Due to her behavior she has missed close to an hour or more of instructional time a day. Student's behavior may be inadvertently being reinforced by her removal from class which removes her from the challenges, academic and social. Her inappropriate behavior in school further likely further alienates her socially from her peers (Testimony of Dr. F. and Exhibit R7-76 to 77.)

30. Dr. F. recommended a smaller, less stimulating academic environment, where academic demands can be "titrated" to her ability level and a smaller classroom, with a high degree of structure, reinforcements, and consequences are provided. This academic setting should teach her coping skills and to read social cues as well has help her manage these and academic challenges. Dr. F. recommended placement in a therapeutic day school. (Testimony of Dr. F. and Exhibit R7-76 to 77.)

31. On February 22, 2019 the IEP team, including both parents, Student Services Administrator, School Psychologist, Social Worker, Dr. F., S.W., S. M. a SOAR special education teacher, and a SOAR social worker. (Testimony of Student Services Administrator and Exhibit R7-2) The team met to review Dr. F.'s report, Student's progress. The team noted inconsistency in Student's test scores, and that the score ranged in the below average to average range in reading, math and writing. (Testimony of S.W. and School Psychologist and Exhibit R7-20.) Even in a small group instructional setting, Student continued to struggle to follow directions, stay on task, frequently required one-to-one adult support to work during class instruction, would complete work only with adult support and would turn in assignments after adult prompting. Her work completion rate increased from 49.5% to 79.7% after the move to the ELP class. Student was able to follow her middle school schedule, changing classes and moving within the building. Her attendance was good. (Testimony of S.W. and Exhibit R7-8 to 20.)

32. After Student was moved to the ELP class, her behavior improved only slightly. (Testimony of S.W. and N.C.) She went from an average number of incidents of unexpected behaviors of 1.37 from August 22, 2018 to November 2, 2018 to an average number of 1.01 from November 3, 2018 to February 20, 2019. When removed from class, Student completed reflection

forms concerning her behaviors with the assistance of adult, who frequently scribed for her. She was unable to identify any strategy other than work refusal to deal with frustration in the classroom. (Testimony of Social Worker, School Psychologist, and Exhibit R7-22)

33. During the period from November to February, Student's zones of regulation were recorded during her classes. Significantly, Student reported as follows: blue zone 44/163, green zone 72/163, yellow zone 26/163 and red zone 21/163. Student made no progress on identifying solutions to unexpected behaviors. She made some progress in written expression where she was able to write a multi-paragraph essay on a preferred topic with one-to-one adult assistance. Student showed a little bit of progress in her ability to stay in class and complete work, but she was not engaged 50 to 75% of class time, drawing pictures or on her iPad, becoming non-complaint when asked to work on what the class was doing. From November 3, 2018 to February 20, 2019 there were 57 documented behavior incidents and average of 1.01 per day. She missed 1918 hours of instructional time due to behavior incidents that required removal from the classroom. (Testimony of S.W., Social Worker and Exhibit R7-24 to 31.) Student tried to connect with peers but had difficulty with peer relationships due to poor social skills and social miscues. Student does not appear to have formed friendships in school. (Testimony of B.R., L.M. and Social Worker.)

34. The IEP team agreed that Student needs could not be met in her current program at [REDACTED] and that constant one-to-one adult support and supervision would limit Student's access to her peers and would not teach her the social skills she needed. (Testimony of Student Services Administrator, S.W., and School Psychologist.) On February 22, 2019, based on the data collected through formal assessments and ongoing data collection that indicated Student's lack of success with a high level of adult support at [REDACTED] and Dr. F.'s recommendations the IEP team recommended Student be placed in the Social and Academic Readiness program ("SOAR") at [REDACTED] Middle School for special education direct instruction in all academic instruction with a classroom aide, BIP and social work services beginning March 11, 2019. The SOAR program had the components that were recommended by Dr. F. and could provide Student with access to non-disabled peers in non-academic and academic settings as appropriate to her ability and needs. The team felt this was an appropriate placement and would be less restrictive than a therapeutic day school placement that Dr. F. recommended. (Testimony of Student Services Administrator, S.W., Social Worker, and School Psychologist.)

35. Father participated in the February 22, 2019 IEP meeting and agreed with the team decision. After the IEP meeting Father visited the SOAR program and continued his endorsement of the SOAR program for Student. (Testimony of Father, Student Services Administrator, and Exhibit R7-2 and 4.) Mother participated by telephone but did not agree with the team decision. (Testimony of Mother, and Exhibit R7-2.)

36. On April 25, 2019 another IEP meeting was convened to complete Student's annual review. Mother participated in this IEP meeting via telephone. (Exhibit R8-3.) The team noted that pursuant to stay put, Student remained in the placement at █████ which consisted of small group special education instruction in reading, math, writing and resource, in addition to science and social studies, fine arts, PE classes and lunch/recess in the general education setting. (Exhibit R8-4.)

37. Student demonstrated some progress toward meeting IEP goals from April to the end of the third trimester. She met her benchmark in Math, demonstrated progress in written expression, but did not meet her benchmarks in emotional regulation or functional work completion. (Exhibit 9-1 to 12.) Student's grade reports reflect that she is able to earn passing grade in her special education classes, Music and PE. Student's grades in general education courses (Art, Drama, Science and Social Studies) were D- or unsatisfactory which confirms her lack of success in general education classes with intense adult support. (Exhibit R20-1 to 2.)

38. Student's poor attention and difficult with emotional regulation and unexpected behavior impacts her academic growth and performance. In a small group lesson, Student continues to struggle to pay attention. She does better when there is an individual activity to complete. (Testimony of S.W., S.M., Social Worker, and Exhibit R8-4.) Student missed 4,758 minutes of instructional time during the 6th grade. (Exhibit R8-20.)

39. Student continues to receive below average scores in most standardized testing in reading, math, and writing. (Exhibits R8-6 to 9.) The team noted that there were glimmers of potential for average performance, but that Student needed an adult sitting next to her during testing for her best performance due to her inability to focus and attend and frequent emotional dysregulation. For example, Student demonstrated the ability to do 6th grade level reading passage work (reading passage and then answers comprehension questions on the reading without looking back to the text) without difficulty on the AimsWeb Plus Survey Level Assessments. (Exhibit R8-7)

40. Student completed 79.6% of her modified work during the third trimester. During a recent observation, Student was on task only 20% of the time when her peer was on task 95% of the time. (Testimony of School Psychologist, and Exhibit R11.)

41. Student averaged one behavior incident per day missing and an average of 41 minutes of instruction due to dysregulation per day. When dysregulated, Student required one-to-one adult support. The Social Worker and School Psychologist provided much more support to Student than required by her IEP. (Testimony of Social Worker, School Psychologist, and Exhibit R8-4, and R8-10 to 12.) During the third trimester, Student engaged in behavior that resulted in 2.5 days out-of-school suspension for two incidents of physical aggression to another student, and an incident of aggressive behavior verbal and physical for more than one hour. (Testimony of L.M., and Exhibits R 21, R23 – 1 to 3, R24-1 to 2.)

42. In Science class, Student needs constant reminders to get her materials, begins class by using her iPad for personal interest or drawing, need constant direct support to follow directions and work for short periods of time, and leaves completed work behind in classroom. Student is silly and immature, not presenting like her peers. She is distracted and off-task and is difficult to redirect and requires constant prompting. Student had difficulty working in groups and often needed multiple prompts to do so and slowed her group down. (Testimony of S.M. and Exhibit R8-4.)

43. Student's IEP team added two goals in April 2019, one for math skills and one for executive functioning. (Exhibit R8-31 to 34.) The team continued to recommend that the IEP, including the new goals be implemented in the SOAR program. In the SOAR program Student is expected to benefit from the higher level of structure, fewer transitions, more differentiation of academics, less distractions, presence of two teachers that are highly trained in dealing with emotional disabilities, increased consistency, as well as the embedded social skills instruction. The team expects that Student will be available to learn more often due to these supports and will be developing more independence without an adult setting next to her all day. (Testimony of School Psychologist.)

44. Ms. [REDACTED] agrees with the goals, accommodations and modifications, and behavior plan developed for Student in the April 25, 2019 IEP. Ms. [REDACTED] disagrees with Dr. F.'s diagnosis of ADHD. (Testimony of Mother, and Exhibit R8-5.)

SOAR PROGRAM

45. The SOAR program was developed as a therapeutic and support program for students with behavioral or emotional challenges. SOAR has a positive approach to promoting appropriate student behaviors and utilizes a point system that is designed to help students gain social emotional skills and gain independence. (Exhibit 8-5 and Testimony of ██████████ Administrator.)

46. The SOAR program is designed to provide students with the instruction and therapeutic support needed to develop competencies in self-awareness, self-management, social awareness, relationship skills, and responsible decision-making to improve the academic performance, attitudes and behaviors, decrease negative behaviors and reduce emotional distress. SOAR students are supported by the SOAR teacher, associate (aide) staff and a social worker in individual, small group and large group settings. The program utilizes research-based general education curriculum and intervention curriculum, daily home-school communication and a behavior system to meet each student's individual needs and as contained in their IEP. SOAR students participate in the general education curriculum as appropriate with the goal of reintegration to the general education environment. SOAR staff is trained in Non-Violent Crisis Intervention. SOAR program has a Student Service Administrator and School Administrator to manage, supervise and support the program. (Exhibit R38-1 to10 and Testimony of ██████████ Administrator.)

47. The SOAR program is located in ██████████ Middle School. ██████████ is the receiving school for about 80% of the student body from ██████████ Elementary School, which is the school Student attended for her early grades. (Testimony of School Psychologist and ██████████ Administrator.)

ATTEA's ACE PROGRAM

48. ██████████ has a continuum of special education programs, including speech/language services only, support co-taught classes (i.e. special education push into general education classes), small group instructional, small group instructional resource support for executive function, time management and work completion and the Academic Continuum of Excellence (ACE) program. The ACE program provides students with small group special education instruction in all academic areas with embedded speech/language and social work services of 30 minutes each. The ACE program is designed for student with significant academic discrepancies of 3 or more years below

grade level and one or more disabilities such as SLD, ID, Autism, Speech/language Impairment and ED. (Testimony of Student Services Administrator and School Psychologist.)

CONCLUSIONS OF LAW

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

Issue One: Whether the District's Propose placement of Student in the SOAR program (February 22, 2019 IEP) will provide her with a free appropriate public education in the least restrictive environment?

IDEA guarantees students with disabilities a free appropriate education or FAPE.¹² Districts must comply with the procedural and substantive requirements of IDEA to provide a FAPE to a student.¹³ In this matter there are no allegations of procedural violations by the District. Accordingly, the substantive requirements of IDEA must be examined next.

Recently, the Supreme Court clarified that a school fulfills its substantive responsibility to provide a FAPE by offering the student "an IEP reasonably calculated to enable a child to make progress in light of the child's circumstances."¹⁴ "An IEP is reasonable calculated to confer educational benefit when it is 'likely to produce progress, not regression or trivial educational advancement.'¹⁵ Here, the District's proposed IEPS (February 22, 2019 and April 25, 2019) are at issue.

Student has significant disability related educational need in the areas of attention, executive function, social/emotional skills, behavior, and academic skills which are discussed in the section below. (FF #1, 2, and 5-14.) Over the past two school years, the District has provided to Student increasingly intense supplemental aides, such as co-taught academic classes, modified curriculum, small group instruction, one-to-one adult assistance for increasing portions of the school day, behavior plans, crisis intervention, social work services to teach pro-social and emotional regulation skills, and resource programing for executive function skill development in

¹² 20 U.S.C. §1412(a)(1).

¹³ *Board of Education of the Hendrick Hudson Central School District, Westchester County et. al v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034 (1982).

¹⁴ *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, No. 15-827, 137 S.Ct. 988 (U.S. Mar. 22, 2017.)

¹⁵ *Alex R. ex rel. Beth R. v Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F3d. 603, 615 (7th Cir. 2004.)

the general education setting. (FF #12-20.) Then after those efforts were unsuccessful, the District provided Student with academic and behavioral support in a setting outside of the general education classroom in a special education classroom for her core academic instruction and modified the behavior intervention plan to provide more support. (FF # 31-34.)

The District provided support for Student in the general education setting through the first trimester of her sixth-grade year. She received special education instruction in areas of identified academic need; in 4th and 5th grade written expression, and 6th grade reading comprehension, written expression and math. (FF #12, 13, and 16.) When Student's IEP team noted that she was making some progress toward her goals, but she did not meet any of her first trimester benchmarks, they moved Student to a small group special education instructional setting for reading, writing and math. She was provided with executive functioning support during a resource period and with 50% individual aide during her time in the general education setting. Her goals, accommodations and modifications for instruction, behavior and assessments were implemented in all school settings. The team requested and received consent for an evaluation to provide more information and data to support Student in learning. (FF #21.)

The results of the most recent academic assessments and psychiatric evaluation confirmed Student needs in the areas attention, executive function, social/emotional skills, behavior, and academic skills. (FF #22-31.) The District's proposed IEPs February 22, 2019 and April 25, 2019) address these needs through accommodations and modifications for instruction and assessment, including a behavior intervention plan, through social/emotional, executive functioning and academic goals in emotional regulation, work completion, written expression and math goals and benchmarks that are designed to move Student towards skill acquisition and independence. The IEPs propose placement of Student in the SOAR program at [REDACTED] a program that can implement her goals and provide the related services she needed and is designed to address her need for a smaller, less stimulating academic and classroom environment with a high degree of structure, where academic demands geared to her ability level, where social and coping skills are taught and reinforcements and consequences are provided. (FF #34, and 45-47.)

Student's IEP team closely monitored Student's progress and met multiple times modified her IEP to provide her with increased support during her sixth-grade year. In light of Student's current needs and lack of success over the past two years with increasing levels of support and her identified needs, I find that the proposed IEP (February 22, 2019 and April 25, 2019) is reasonably

calculated to enable Student to make progress and to confer educational benefit that is more than minimal progress toward achieving her goals and progressing in the curriculum or a FAPE.

Issue Two: Whether the nature and severity of Student’s disability is such that education in the regular classes with the use of supplementary aides and services cannot be achieved satisfactorily?

IDEA and Illinois special education law requires that school districts provide students with disabilities a FAPE in the least restrictive environment (“LRE”).¹⁶ The LRE mandate provides that children with disabilities receive their education in the regular classroom environment to the maximum extent appropriate. If segregation from the student’s non-disabled peers and community is needed due to the nature and severity of the disability that renders education in the regular classroom with the use of supplementary aides and services impracticable because FAPE cannot be provided to the student with disabilities, the degree of segregation from the student’s non-disabled peers and community should be mitigated as much as possible.¹⁷

Here, Student’s disability related educational needs include attention, executive function, social/emotional skills, behavior, and academic skills. Student’s inattention has been significantly discrepant from that of her peers. Her time on task was 20% compared to her peer in the general education classrooms who was 95% on task. Her difficulty maintaining focus and attending has been addressed through increasing levels of adult support. (FF # 5.) At the conclusion of her sixth-grade year, Student required and was provided with adult one-to-one assistance during most of her school day. (FF # 37.) Despite this support Student had difficulty maintaining focus and was disengaged from learning for significant amounts of the school day. (FF #36-38.)

Student needs assistance with organization of her materials in all school settings. (FF #6 and 42.) Student completed less than half of her assigned work in the general education setting, and after being placed in direction special education instructional setting, Student still required one-to-one adult support to complete 79.7% of her work. (FF #40.)

¹⁶ 20 U.S.C. §1412(a)(5)(A), 34 C.F.R. §300.114(a)(2), 105 ILCS 5/10-22.41, 105 ILCS 5/14.802(d), 23 Ill. Admin. Code §226.240 and *Beth B. v. Van Clay*, 282 F.3d 493, 498, (7th Cir. 2002).

¹⁷ 34 C.F.R. 300.114(a), 34 C.F.R. 300.117, *Bd. of Educ. of Township High Sch. District No. 211 v Ross*, 486 F.3d 267 (7th Cir. 2007), and OSEP Memorandum 95-9, 21 IDELR 1152 (OSEP 1994).

Student has difficulties with peer relationships including social connections and friendships. Student has poor social skills and emotional regulation. (FF #4, 7, 25, 28, 33, 37, 38, and 39.) Student is unable to identify coping strategies and expected/unexpected behaviors without support of visual and verbal cues outside of social work settings. (FF #7, 25, 28, 30, and 33.) Student has acknowledge being overwhelmed by social and academic expectations. (FF # 18.) She is beginning to identify her feelings of dysregulation. Student has not developed friendships at school. (FF #33 .)

Currently, Student spends class time drawing, playing on her iPad, or with toys on the floor and wandering the classroom. Student experienced frequent periods of dysregulation marked by anger, hostility and aggressive behavior that caused her to miss 4,758 minutes of instructional time last year. (FF #9 and 38.)

Student's cognitive assessments indicated weakness in non-verbal information and working memory academic achievement. Student struggles with abstract concepts. Student's scores on achievement assessments were inconsistent. Generally, her overall language scores are in the average range, reading and math in the low average range and her written composition in the below average range. (FF #10 and 25.)

Student recognizes her grades were low. (FF #18.) After being moved to a special education direct instructional setting she met her benchmark in math third trimester and demonstrated progress in written expression. During sixth-grade Student did not meet her benchmarks or goals in emotional regulation or functional work completion. (FF #37.)

In fifth grade, Student was supported in the general education classroom with accommodations and modifications for instruction and assessments, small group reading support in general education, a half time individual aide, push-in special education instruction in writing three times per week and a daily resource period and 60 minutes of social work services per week. (FF #13.) Despite this support, Student struggled with academic, social and behavioral demands of fifth grade as discussed above. A behavior intervention plan was implemented to support her during periods of dysregulation, and she was able to complete most of her work with the adult support with her assignment notebook and materials. (FF #14.) Student was unable to identify expected and unexpected behaviors and coping skills without the support of visual and verbal cues from adults. (FF #7.) Student made a little progress her 5th grade year. (FF# 14.)

In response to this lack of progress, the District increased the level of support provided to Student in the general education setting. (FF #14.) Student began 6th grade with co-taught (general education and special education teachers) classes in reading, writing and math. She was supported by accommodations and modification in all academic instruction and assessment and an individual aide in Science and Social Studies. Student continued to receive a resource group and social work services. In addition, she was supported by a behavior intervention plan in all areas of her school day. (FF #16.)

Even with these additional supports, Student experienced a steady decline in in her ability to effectively function in the general education classroom setting in sixth grade. First trimester Student had trouble with focus, attention, emotional and behavioral regulation. In the classroom, she was frequently off task and frequently of dysregulated. First trimester, as the result of dysregulation Student was not available for learning at least 2, 840 minutes. Her behavior when dysregulated was marked by verbal and physical aggression. Despite one-to-one adult support, Student completed less than half of her in-class work and homework. While student was making some progress towards her goals, she did not meet her first trimester benchmarks. (FF #17-19.) Second and third trimester, after being moved to an ELP class, Student improved slightly. She produced more work, demonstrated progress on some benchmark and had fewer average number is behavioral incidents, but they were more intense in nature. (FF# 31-33 and 37-41.)

The use of supplementary aides and services discussed above did not provide satisfactory support for Student's disability related needs and was not an environment wherein she was available for learning in a sufficient amount to enable her to progress at the rate anticipated for her progress in that learning environment. I find that the nature and severity of Student's attention, executive function, social/emotional, behavior, and academic needs was so discrepant from her age grade peers and so severe that even with the use of supplementary aides and services Student could be satisfactorily educated in regular classes.

The IEP team found District cannot provide the types and levels of support need by Student in at [REDACTED] (FF #33.) [REDACTED] does not have the ability to place Student in a classroom for social and emotional skills instruction with other students of similar needs and abilities. At [REDACTED] Student would be the only student in the social/emotional skills class or work be placed in a program developed for students with significant academic deficits and this would not provide her with opportunities to develop and practice the skills learned with peers. At [REDACTED] Student would remain

socially isolated and dependent on one-to-one adult assistance function in school due to her attention and emotional needs in academic and social settings. (FF #34 and 48.)

The District may change a student's placement to a more restrictive setting if the mainstream environment was not satisfactory and could not be made so.¹⁸ That is what the District has done here.

Father agreed with the District's proposed placements. (FF# 35.) Mother did not dispute the nature and severity of Student's needs at school. She notes that these are not observed in the home. She did not disagree with the IEP goals, accommodations and modification, and related services provided in the proposed IEPs, she only disagrees with the program placement and its location in ██████████. (FF#44.) Mother argued that all ██████████ teachers and staff were fully trained to deal with the disabilities needs of Student related to her autism, ADHD and learning disabilities. The District does not dispute this assertion. District argues that Student's experienced and well qualified IEP team at ██████████ were committed to providing her with an appropriate education and demonstrated genuine care for her. The IEP team dynamics included regular collaboration and problem solving for Student. The IEP team at ██████████ provided Student with a significant amount of support, significant academic accommodations and modification and made program changes when Student was not demonstrating progress towards meeting her goals or academically. The support included significant administrative and psychological support to IEP team, including modeling and coaching of techniques and systems to assist Student with attention, emotional regulation and behaviors. Despite the efforts of the IEP team, Student did not make progress as measured by benchmark assessments, work completion, social/emotional goals, and her continued emotional dysregulation that resulted in an average loss of 38.7 minutes per day over the school year. In addition, in spring Student became physically aggressive which resulted in out-of-school suspension. The evidence presented in the hearing supports the District's assertions.

Mother asserted that ██████████ has a good school district which is the reason that she did not move away from ██████████ in addition to keeping Student and her sister near to their father.

¹⁸ *Bd. of Educ. of Township High Sch. Dist. No. 211 v. Ross*, 486 F.3d 267(7th Cir. 2007).

The District's proposed placement of Student is within the District and will not impact the proximity of her school to her father or sister. SOAR is housed in [REDACTED], a middle school that receives more than half of the [REDACTED] students, which is more than [REDACTED] received. (FF #47.) Student will be familiar with some of the student body at [REDACTED] due to her attendance at Hoffman.

Finally, Mother asserted that she was very impressed by how well Student adjusted to middle school at [REDACTED] even though Student had issues to deal with. The District asserts and the evidence presented at hearing supports the conclusion that Student has not adjusted and is experiencing academic decline. She lacks social skills and true friendships. District asserts that Student needs direct instruction in academics, coping skills, problem solving, and social skills. These cannot be provided in the context of the general education classroom. Student's needs should be addressed in a smaller classroom within a program designed to provide the required instruction. The smaller classroom self-contained program at [REDACTED] is the ACE program which is designed to meet the needs of students with significant academic discrepancies of three (3) or more years below grade level and have one or more disabilities. Student does not fit this profile and the [REDACTED] self-contained program would be too restrictive for Student as she would be significantly higher functioning than her classroom peers and would still require one-to-one adult support and supervision to implement her program that would be different from the remainder of the class. This would result in the same type of isolation that would occur in the general education setting.

The District is required to provide Student with an appropriate education, not the best education or the placement that his parents prefer.¹⁹ The District's proposed placement in the SOAR program is designed to address Student's needs in attention, executive function, emotional regulation, social skill development and academic instruction. It is housed within a public school and Student will have access to her non-disabled general education peers, many of whom attended the same elementary school that she did, while providing her with a smaller, supportive environment where she can benefit from the structure and support of the embedded social/emotional program. The Parent has not met her burden of persuasion. I find that the implementation of the February 22, 2109 and April 25, 2019 IEP in the SOAR program located at

¹⁹ *Heather S. v. State of Wis.*, 125 F.3d 1045, 1057 (7th Cir. 1997)

██████ Middle School is reasonably calculated to provide Student with a FAPE in the least restrictive environment.

DISTRICT'S BURDEN OF PRODUCTION

The District has a statutory duty to produce evidence that it has properly identified the student's disability needs in terms of their nature and severity, whether the student has been determined as eligible for special education and related service and that it is providing or has offered a free appropriate public education (FAPE) to the student in the least restrictive environment (LRE). 105 ILCS 5/14-8.02a(g-55).

As discussed above, the evidence shows that the District has at all relevant times identified the special education needs of Student and the nature and severity of those needs through its evaluations, assessments, progress monitoring and reports of current levels of performance. The evidence presented demonstrates that Student has been determined appropriately determined as eligible for special education and related services under the IDEA. The evidence shows that the District has made available to Student the special education and related services that are appropriate and adequate to meet Student's needs at all times relevant in this matter. The evidence presented demonstrates that the District has provided a FAPE to Student in the least restrictive environment. The evidence presented also demonstrates that the District's February 22, 2019 and April 25, 2109 IEP are an offer of special education and related services to Student that are reasonably calculated to provide her with a FAPE in the least restrictive environment. Accordingly, I find the preponderance of the evidence shows that the District has provided and proposes to provide to Student a FAPE in the least restrictive environment.

In conclusion, as discussed above, the preponderance of the evidence does not support Mother's claims. She has not met her burden in this matter. Accordingly, Mother's requested relief is denied.

ORDER

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

The District does not need to take any further action as Parent has not sustained her burden of proof in this case and her requests for relief are denied.

NOTICE OF RIGHT TO REQUEST CLARIFICATION

Pursuant to 105 ILSC 5/14-8.02a(h), either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification 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: June 26, 2019

/s/ Kathleen C. Fuhrmann _____,
Hearing Officer

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

APPENDIX A

[REDACTED] v. [REDACTED] School District No. [REDACTED]
ISBE Case No: 2019 DP 0213

[REDACTED] Child	Student
[REDACTED] Middle School, school attending	[REDACTED]
Ms. [REDACTED] Parent/Petitioner	Mother
Dr. [REDACTED] Parent	Father
[REDACTED], 6 th grade general education Science teacher	S.M.
Dr. [REDACTED], Student Services Administrator [REDACTED] Middle School	Student Services Administrator
[REDACTED], School Social Worker	Social Worker
[REDACTED], Special Education teacher	S.W.
[REDACTED], School Psychologist	School Psychologist
Dr. [REDACTED], Private Psychiatrist	Dr. F.
[REDACTED], Student Services Administrator [REDACTED] Middle School	[REDACTED] Administrator
[REDACTED], Special Education Teacher, Language Arts and	N.C.
[REDACTED], 6 th grade general education Social Studies teacher	B.R.
[REDACTED], [REDACTED] Middle School Assistant to Principal	Assistant to Principal

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

██████████
Student,

Case No: 2019 DP 0213

v.

Kathleen C. Fuhrmann, Impartial Hearing Officer

██████████ School District ██████,
School District.

CERTIFICATE OF SERVICE VIA EMAIL

I, the undersigned Kathleen C. Fuhrmann, certify that on June 26, 2019, a copy of FINAL DETERMINATION AND ORDER was served upon the following persons via email transmission by attached said document(s) in pdf format to the email addresses set forth below:

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Laura Sinars, Esq.
Robbins, Schwartz, Nicholas, Lifton & Taylor, LTD.

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██████████

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

Date: June 26, 2019

Signed: /s/ Kathleen C. Fuhrmann

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██
██

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

██████████

Student,

Case No: 2019 DP 0213

v.

Kathleen C. Fuhrmann, Impartial Hearing Officer

██████████ School District ██████,

School District.

CERTIFICATE OF SERVICE VIA CERTIFIED MAIL

I, the undersigned Kathleen C. Fuhrmann, certify that on June 26, 2019, a copy of FINAL DETERMINATION AND ORDER was served upon the following persons via certified US Mail delivery by depositing the same in the United States Mail, in an envelope securely sealed, postage prepaid, return receipt requested and legibly addressed to the addresses set forth below:

Ms. ██████████
630 ██████████
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Laura Sinars, Esq.
Robbins Schwartz
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Date: June 26, 2019

Signed: */s/ Kathleen C. Fuhrmann*
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