

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

█,]	
Student,]	
]	CASE NO. 2019-DP-0261
v.]	
]	MARY SCHWARTZ
█]	Impartial Hearing Officer
COMMUNITY CONSOLIDATED]	
SCHOOL DISTRICT █,]	
Local School District.]	

FINAL DECISION AND ORDER

JURISDICTION

The undersigned hearing officer has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*, and her appointment as hearing officer by the Illinois State Board of Education (ISBE) on May 1, 2019.

PROCEDURAL BACKGROUND

The parent is representing herself and her son in this matter. The district is represented by Laura Sinars and Zaria Udeh of Robbins Schwartz. The district filed a due process request on April 30, 2019, requesting an expedited due process hearing and an Order placing the student in a therapeutic setting as an interim alternative educational setting (IAES) for 45 school days so that it could conduct an initial evaluation. The undersigned hearing officer issued several preliminary Orders upon appointment, including a statement of the parties' rights in these proceedings. An initial status conference was held on May 6th by telephone conference call. The prehearing conference was held on May 14th by telephone conference call, and the final prehearing report was

issued on May 17th. The district was willing to participate in mediation or a resolution meeting. The parent stated that she would agree to a resolution meeting only if the district's Superintendent participated in the meeting. Although no formal resolution meeting was held, the parties did engage in confidential discussions on May 20th, before the start of the hearing that day. They were unable to reach a resolution.

The first day of hearing was May 20, 2019, as agreed to by the parties. The second day of hearing was set for May 28th. However, at 11:47 p.m. the night before the hearing, the mother emailed the hearing officer that she could not attend because she was on a "regimen of muscle relaxers, steroids, and pain meds." The email stated that she was unsure if she could make it to the hearing or could sit up all day. The undersigned forwarded the email to district's counsel and asked how the district suggested to proceed. The district noted that no extensions of time are allowed as this is an expedited case. Additionally, the district had requested the hearing because of its serious concerns about the student's behaviors and the need for an evaluation. The district asked to have the hearing go forward as scheduled and offered May 29th as a possibility, for a half or full day. The mother then informed the district and hearing officer that she could not attend at all on May 29th. After discussion with the parties, the parties agreed that the hearing would proceed as planned on May 28th with the district presenting its witnesses. The mother was offered the option to attend by telephone conference call but declined to do so. Later that day, the mother emailed the hearing officer and district that she would attend on May 29th to present her witnesses. The final half-day of hearing was held on May 29th.

In rendering this decision, the undersigned has considered all documents entered into evidence, testimony by the parties' witnesses, the parties' closing arguments and proposed case law, as well as the hearing

officer's independent research. This decision is issued within ten school days after the close of the record in this case. 105 ILCS 5/14-8.02b(k).

ISSUES AND REQUESTED REMEDIES

The district's expedited complaint raises the following issues for hearing:

1. Whether the parent refused to consent to the district's requests to conduct an initial evaluation of the student;
2. Whether district personnel expressed concerns about the student's patterns of behavior directly to the special education director or supervisory personnel;
3. Whether maintaining the student in the general education classroom is substantially likely to result in injury to the student or to others;
4. Whether the district made reasonable efforts to minimize the risk of harm in the general education classroom; and,
5. Whether the district may move the student to an interim alternative educational setting (IAES) for not more than 45 school days as a diagnostic setting in which the initial evaluation will be conducted.

The district requests an Order overriding the parent's lack of consent and permitting the district to conduct an initial evaluation of the student for special education and related services. The district also requests that the undersigned order that the initial evaluation be conducted in an IAES placement as a diagnostic placement for not more than 45 school days. The district specifically requests that [REDACTED] School be the IAES placement in which the evaluation will be conducted.

The district asks that an IEP meeting with the parent be held while the student is in the IAES placement to review the evaluation information. If the student is found IDEA eligible for special education and related services and

the parent consents to services, the district shall develop an IEP for the student.

No transcript was issued prior to the date of this decision; therefore, the testimony referenced below is based on the undersigned's memory and hearing notes. In rendering this decision, the undersigned has considered all documents entered during the hearing, testimony by parties' witnesses, the parties' closing arguments and their suggested case law, as well as the hearing officer's independent research.

FINDINGS OF FACT

1. The student showed strong academic skills at the start of first grade. Testimony, Ms. L. However, his academic performance soon became impacted by his behavioral and social difficulties, including problems with anger, verbal and physical aggression, and disruptive behaviors. *Id.* These behaviors also impacted the amount of time he was available for academic learning. *Id.* The student's behavior escalated in mid-October, with increased non-compliance with directives, disrespect to staff, and physical behaviors towards his classmates. *Id.* In late October, he told a peer "I'm going to cut your head off and sell it to someone." SD 63. Ms. L. shared this and her other concerns with the student's mother through frequent emails. SD 61-63, 67-69, 84, 86, 105.
2. Ms. L., the student's first grade teacher, has taught first grade for 19 years and has 24 years overall experience as a teacher. *Id.* She has a B.S. in elementary education and a M.S. in curriculum and instruction. *Id.* At the beginning of school year 2018-19, her classroom staff included a classroom aide, a co-teacher during literacy, and a special education teacher a couple times/day to support the special education students in the classroom. *Id.*

3. Ms. L. and the student's mother met for a parent/teacher conference in November, at the end of the first trimester. Testimony, Ms. L. She informed the mother about the student's academic progress as well as her concerns about his behaviors, including an increase in non-compliance and physical aggression. *Id.* The mother told her that the student was having trouble sleeping, which resulted in his frequently being late to school. *Id.* Ms. L. invited the mother to come to the classroom to talk with the classroom students about Kwanza. *Id.*

4. Ms. L. began to keep a daily log of the student's behaviors in December 2018. Testimony, Ms. L. The log helped her track changes in his behaviors, when they occurred, and whether interventions were successful. *Id.* During December, the student had several instances of physical aggression towards peers, including: grabbing other students or their iPads; choking another student; aggressively pushing a student at lunch; and, grabbing and ripping game pieces that his peers were using. SD 39. He also threatened peers verbally and called them "idiots." Testimony, Ms. L.

5. The P [REDACTED] I [REDACTED] Team (PIT) began meeting in December 2018 to discuss strategies to work with the student. SD 5-9. PIT members included the school psychologist, special education teacher, speech pathologist (SLP), occupational therapist (OT), social worker (SW), literacy differentiation specialist, principal, and classroom teacher. SD 6. At that time, staff were concerned about the student's following behaviors: non-compliance, dysregulation, inflexibility to change, and a sense of timing that was a bit off, which resulted in his starting tasks later than others. Testimony, Ms. L.; SD 7, 39. Other students began to shy away from him because of his behaviors. Testimony, Ms. L. In mid-December, he choked another student in gym and pushed a student at lunch. SD 39. A few days later, he pushed a student in art class and ran

out of the classroom. *Id.* He grabbed the teacher's laptop and kicked the door. *Id.*

6. The student received an in-school suspension on December 19, 2018 for "kicking, scratching, and attempting to bite adults." SD 10, 31, 39. The mother requested a classroom change, which the team considered but did not grant. Testimony, Ms. B. The district's superintendent, Ms. S., was consulted about the suspension and the mother's request for a classroom change. Testimony, Ms. S. The superintendent has an extensive background in special education: she worked as a school psychologist, an assistant director of special education, an associate principal, and a director of student services prior to her present position as superintendent. *Id.* The superintendent did not support the parent's request because her lengthy experience in special education has shown her that there is no "magic solution" to a student's behavioral problems. *Id.* Additionally, staff must be "mindful of not disrupting" a child's educational environment during the year. *Id.* The superintendent receives weekly updates about the student and has a "consultative" role with his team to ensure that resources are properly allocated and best practices followed. *Id.*

7. Ms. K., the district's school psychologist, began working as part of the student's classroom team in December. Testimony, Ms. K. She has a B.S. in psychology and a graduate degree in school psychology. *Id.* She has been with the district for four years. *Id.* Ms. K. is trained in Crisis Prevention Intervention (CPI) and is involved when CPI is necessary for this student. *Id.* The PIT spent considerable time looking at the student's behaviors and analyzing why they occur. *Id.* In December, the team added an end-of-day checkout system. SD 5-9. The system was discontinued at the end of winter break when staff reported that it was not making a positive difference. Testimony, Ms. K.; SD 5-9.

8. Ms. J., the school social worker, began as part of the student's PIT in December 2018. Testimony, Ms. J. In addition to being a certified school social worker, Ms. J. is also trained in classroom management and behavioral interventions. *Id.* She works with the student directly and in crisis situations, including the December incident that resulted in the in-school suspension and in a December 20th CPI hold. *Id.*; SD60a. Based on her work with the student, she reported that he has difficulty regulating emotion, thinking flexibly, and working things through in an emotionally appropriate way. Testimony, Ms. J. Over school year 2018-19, Ms. J. was involved in three crisis calls in January, eight crisis calls in February, four crisis calls in March, two crisis calls in April, and three crisis calls in May. SD 60 a, b. She was injured in two of those calls and reported an injury of bruising and redness to her shoulder after being kicked by the student after the February 19th crisis call. Testimony, Ms. J.; SD 60a.

9. The student's behaviors continued to escalate in January; therefore, Ms. K.B. was added to his support team in January 2019. Testimony, Ms. K.B. Ms. K.B., who is the district's special education cooperative, has a master's degree in educational leadership and is a Ph.D. candidate at Aurora University. *Id.* She is trained in Crisis Prevention Intervention (CPI) and is also a CPI trainer. *Id.* She has worked extensively with the student when he was in crisis and also works with his educational team on problem solving and figuring out how to address his difficult behaviors. *Id.*

10. Ms. K.B. noted the student's many strengths: he is "super bright," very charming, loves adults and talking about technology, and has "tons of strengths in reading and math." *Id.* However, his dysregulation interferes regularly with his classroom performance through behaviors that include eloping from class, tearing materials in the classroom, hitting and

kicking, destroying work of his fellow students, tearing pictures off the walls, sitting on the floor and refusing to talk or make eye contact, throwing objects around the room. *Id.* Ms. K.B. worked with the student's teachers to develop interventions to use in the classroom when the student became dysregulated. *Id.* She models the interventions in the classroom for staff, conducts observations of the teacher, and provides instruction on collecting data. *Id.* Ms. K.B. reported that the student's teacher "never gave up on being his teacher" and that the student "responded very well" to her. *Id.* The student has been aggressive towards Ms. K.B., including hitting, kicking, and scratching her and throwing staplers, books, and a water bottle at her. *Id.*

11. The student had several significant behavioral incidents in the classroom in January. On January 7th, after returning to the classroom from gym, he grabbed his teacher's arm and twisted it repeatedly, ignoring her instructions to stop doing so. SD 40. The class was removed from the room. *Id.* After the student calmed down, he was able to help clean up the materials he had thrown around the room and to participate in class with his teacher nearby. *Id.* Both the social worker and principal were involved with helping the student settle and return successfully to the classroom. *Id.* The next day, the student arrived late to school and had difficulty in the classroom. *Id.* He pulled the teacher's hair and went out the back exit door. *Id.* After returning to class an hour later, he had difficulty engaging and behaving in the classroom. *Id.* At lunch, he grabbed another student's lunchbox and said he "was going to bring a knife and hurt 2 other classmates." *Id.* When he was back in the classroom, he was able to engage in math and science activities. *Id.* A couple days later, he hit the teacher in the leg with his iPad after she reminded him to put it away and then locked it away when he did not comply. SD 41. The teacher's leg was bruised from the impact. *Id.* Support staff were called to assist with the student. *Id.* When the student's mother arrived in the afternoon to make

a presentation to the class, he behaved well while she was there. *Id.* At the end of the day, however, he wandered off outside because he could not see a particular staff person. *Id.* The mother kept him home from school the next day. *Id.*

12. Over the next few days, the student continued to have difficulty when he could not use the iPad when he wanted. SD 42. His behaviors included stomping on the iPad and hitting people with it. *Id.* He denied those behaviors, saying “it was the angry person inside of him” who had done them. *Id.* His work refusal and difficult behaviors continued throughout January, including: throwing the iPad, hitting a substitute, calling the class aide a “b****”, and grabbing objects from his classmates. SD 43. Between January and spring break, Ms. K.B. was called into the classroom between three times/week to daily. Testimony, Ms. K.B. Sometimes her efforts to help the student get back on track were successful, but other times, he “just shut down.” *Id.* In addition to direct support to the student, Ms. K.B. provided support to the classroom teacher through modeling how to respond to the student’s difficult behaviors, supporting staff on collecting data, and observing the teacher’s interactions with the student so that she could provide feedback. *Id.*
13. The January 14, 2019 PIT note reports that the student consistently arrived late to school, leading to a recommendation that he take the bus. SD 60-c. In school, his difficult behaviors with peers were mostly verbal and with staff were primarily physical. Testimony, Ms. K.B. The team notes report that he was “very physical and angry,” wandered around the classroom and left the building twice, and smiled during his misbehaviors. SD 60-c.
14. To address the student’s increased behaviors, the district added a classroom aide and a Board Certified Behavior Analyst (BCBA) to his

classroom. Testimony, Ms. L. A positive reinforcement system was put in place; however, it did not motivate him and was eventually dropped. *Id.* Ms. L. had “significant concerns” about the student, especially when his behaviors began to impact his academic work. *Id.* His absences from school increased from two absences in the first trimester to 13.5 in the second. SD 17. His tardies also increased, from 24 in the first trimester to 27 in the second. *Id.* Although he was developing or showing mastery in academic skill, the student’s “Learner Characteristics” report indicates a slight decline in managing time to complete tasks, participating in class, and “demonstrating attitudes and behaviors that lead to successful learning” in all subject areas. SD 18, 19.

15. In January 2019, the student’s aggressive behaviors continued, both toward his peers and staff. Testimony, Ms. L. On January 7th, he had difficulty returning to the classroom from gym and threw classroom objects around the room. *Id.*, SD 40. He also grabbed Ms. L.’s arm and twisted it repeatedly. *Id.*. Staff removed the other students from the classroom. SD 40. The student had another difficult day on January 8th and then was absent the following two days. *Id.* On January 11th, he hit and kicked Ms. L., stomped on her feet, and hit her with an iPad. *Id.*, SD 40. Staff removed the other students from the classroom. *Id.* Ms. L. consulted with Company Nurse regarding her injuries. Testimony, Ms. L.; SD 113-117. She had “significant swelling” for two days. Testimony, Ms. L. The student verbally threatened his peers, saying “I am going to get you”, calling them idiots, and hitting them. *Id.*

16. The mother emailed Ms. L. on January 7th, asking her to complete and return to her a behavior rating scale, the BASC, which she had sent to school in the student’s bookbag. Testimony, Ms. L, PD 15. The BASC is a psychological assessment. Testimony, Ms. S. Ms. L. did not complete the form because she did not have a signed release of information from the

mother. Testimony, Ms. L. Standard procedures for psychological assessments require a parent to provide a signed release of information giving consent for the professional (e.g., Ms. S.) to complete the form. Testimony, Ms. M.B., Ms. S. Additionally, the form must be sent directly to the requesting professional. *Id.*

17. The student's difficult behaviors over the following couple weeks included: throwing his iPad on the floor and stomping on it; hitting staff on the backs of their legs; spitting water on the floor; denying his behaviors by saying that "it was an angry person inside of him" that had done the behaviors. SD 42. On January 18th, staff removed the other students from the classroom after the student had thrown game materials at them, hit a substitute, and thrown his iPad. SD 43. Staff contacted the mother and asked her to pick up the student. *Id.*

18. Between January 15th and 29th, there were ten crisis calls, six of which involved more than one staff person. SD 60a, h. The school principal was part of the January 17th crisis team. SD 60h.

19. During the first week of February 2019, a concerning incident arose after the student had an apparently successful morning, participating in class and completing his schoolwork. Testimony, Ms. L.; SD 86. Ms. L. was meeting with the student and a peer and wanted to share the peer's score with her privately. *Id.* When Ms. L. tried to do so, the student grabbed the paper and walked around the room. *Id.* He did not respond to Ms. L.'s directive until she called another student over. *Id.* He wrote on the other student's paper, tore his book, and then held a pair of open scissors close to Ms. L.'s head and said "I am going to cut your hair." *Id.* When the teacher did not respond, he put the scissors down. *Id.* Ms. L. called for support, and the student calmed down. *Id.* Shortly thereafter, at recess, he threw two staplers after being told that he could not play with a toy he

had brought to school in his backpack. *Id.* Support staff worked with him, and he had a “productive afternoon.” *Id.* Ms. L. informed the mother about these behaviors by email. SD 86. Ms. L. copied the principal on the email. SD 86.

20. The student’s difficult behaviors continued throughout February and included: destroying and throwing classroom materials, urinating in a garbage can in the school hallway, verbal and physical disruptions in the classroom, kicking his teacher and stomping on her foot, throwing papers in the principal’s face and poking her with a pencil, telling his teacher “I would love if you could die, I would love if you could die,” breaking a glass water bottle on the floor, screaming at a female peer, which caused her to cry. SD 44-46. Additional staff were put in the classroom to help manage his behavior. SD 45, 46. On Valentine’s Day, Ms. K.B. was called in to provide crisis support when the student was moved to the “calm down” room after having difficulty calming down in class. Testimony, Ms. K.B. After initial difficulty engaging with Ms. K.B., the student was able to tell her what had happened and then began to do some work. *Id.* His dysregulation lasted for three hours. *Id.* He was absent the following day. SD 45. Between January and spring break 2019, Ms. K.B. was called in to help with the student between three times/week to daily crisis calls. Testimony, Ms. K.B. The school principal was part of the crisis team on February 6th, 14th, and 20th. SD 60 I, j.

21. Ms. J. is the school’s social worker. Testimony, Ms. J. She is a licensed clinical social worker and also has her Type 73 certificate. *Id.* She is trained in CPI, behavioral interventions, and classroom management. *Id.* She began working with the student in December, providing both direct services and crisis services. *Id.* She assisted with three crisis calls in January, eight crisis calls in February, four crisis calls in March, two crisis calls in April, and two crisis calls in May. *Id.*, SD 60 a, b. In

February, Ms. J. added “informal social work” to the student’s services, which allowed her to provide up to five group sessions without a parental permission slip. SD 60a; Testimony, Ms. J. The social worker met with the student once in a group meeting that focuses on following classroom expectations. *Id.* The mother requested that the student have individual meetings rather than group, and Ms. J. then honored that request. *Id.* Ms. J. asked the mother if the student was receiving outside services and if so, requested that the mother provide a release of information so that the school could collaborate with the outside provider(s). Testimony, Ms. J. There is no evidence showing that the district received releases of information from the mother to permit the district to communicate with the student’s private providers.

22. Ms. P. is a board certified behavior analyst (BCBA). Testimony, Ms. P. She has a master’s degree in clinical psychology and in behavior analysis, a certificate of advanced study, and over 150 hours of supervised work as a BCBA. *Id.* She is also trained in CPI and is a CPI instructor. *Id.* She first met the student during a crisis call in January 2019 and now is involved on an almost daily basis with him, providing regularly scheduled support. *Id.* She described the student as “very social and talkative,” athletic, and playful. *Id.* He has difficulties transitioning between and within activities, with demands that he does not want to follow, and when he cannot have his preferred items. *Id.* He has difficulties with peer interactions and when he makes a mistake in his work or his work is “not perfect.” *Id.*

23. The PIT met on February 13th to discuss the student’s problem behaviors, the functions of his behaviors, and how to provide consistent interventions. Testimony, Ms. P.; SD 12. The team decided to collect data to help identify the student’s behavior patterns and formulate interventions. *Id.*; SD 58, 59, 59a, b. The student has a positive reinforcement system, with reinforcers every 10 minutes, and also

receives daily concrete, specific instruction on behavior. Testimony, Ms. P. The plan was updated on February 20th and includes positive supports and a crisis support plan, with specific directives on how crisis staff should interact with the student during a crisis. SD 13.

24. On February 25th, the student had difficulty after lunch, including the following behaviors: blocking a video the teacher was showing to the class; grabbing the teacher's sweater and trying to kick her; ripping down all the artwork in the school hallway; threatening to throw his iPad at the teacher; and, ripping up papers and throwing a timer on the floor repeatedly until it broke. SD 46. The following day, he said that he felt upset and was able to regulate himself with the teacher's support. *Id.* Two days later, he was upset about not having his boots for recess and "threw applesauce across the room so it hit a window and exploded." SD 47.

25. The mother attended the February 27th problem solving meeting. SD 14. School staff noted the student's strengths: "very capable" of doing grade level academic work; able to show empathy to peers; able to focus and engage in academic work. SD 14. Areas of concern included: unsafe behaviors; non-compliance; property destruction; and, missing instruction and work completion. *Id.* The mother reported that he did not show those behaviors at home and did not talk about his bad days with her. *Id.* School staff asked the mother to sign a release permitting the district to communicate with outside providers. SD 15. There is no evidence that the mother signed the form.

26. The student's second trimester report card, for the period ending on February 22nd, indicates that he was absent 13.5 days during the reporting period and tardy 27 days. SD 17. His learning characteristic scores are equally divided between not mastering and developing mastery, and half of those scores had declined from the prior trimester. SD 18.

Several of his literacy scores improved, particularly in reading, and the others remained constant. *Id.* He also showed mastery of skills in math, literacy, science, social studies, and music. SD 19.

27. The student received three out-of-school suspensions in March 2019. SD 22, 24, 31. The first was on March 5th, for a physical altercation with another student. *Id.* The second was on March 12th, for urinating on recess equipment in front of peers, and the third was on March 19th, when he intentionally bit the hand of another student. *Id.* Staff reported that the biting was not provoked. *Id.*

28. Staff implemented various interventions to address the student's concerning behaviors, including but not limited to: a positive behavioral chart with rewards; "permission slip social work support" to address emotional regulation; an alternate location for work; breaks; access to sensory tools; restorative practices; processing with adults; Crisis Prevention Intervention (CPI); and, physical restraint. SD 30. Physical restraints were implemented on: December 20, 2018 when he kicked, hit, scratched, and tried to bite staff who were responding to his behavior; February 7, 2019 when he used objects as weapons, attempted to bite staff, cut an adult's hair, and threw heavy objects at staff; and, February 14, 2019, when he made threatening comments to staff and used a pencil as a weapon toward staff. *Id.*

29. Ms. M. has worked with the student on a daily basis since March, when she was assigned as his 1:1 BCBA. Testimony, Ms. M. Ms. M. has a M.A. in behavioral analysis and is a BCBA for the cooperative. *Id.* In class, he shows both good and aggressive behaviors. *Id.* He is able to work with a variety of his classmates on projects and participates in classroom activities. *Id.* His disruptive behaviors include physical aggression toward

peers and adults and property destruction. *Id.* He was aggressive with Ms. M. when she tried to prevent him from destroying classroom property. *Id.*

30. On March 11, 2019, the district recommended a formal risk assessment after the student stated “I want to kill myself” while working on his iPad. SD 30, 31; Testimony, Ms. K.B.; Ms. J. When Ms. J. met with the student, he told her that “he wanted to be dead or ‘never alive again’ ” because he was not happy and then “no one could be mean to him again.” SD 31. He also had said that he wanted to “cut up my body like lego pieces” and reported that he had access to knives at home. *Id.*; Testimony, Ms. J. Both Ms. J. and Ms. K.B. talked with the mother about these statements and the district’s concerns “multiple” times and explained that the district would pay for the assessment if the mother took him to the provider recommended by the district. *Id.* This practice is in line with the district’s policy on risk assessments. *Id.* The district made an appointment for the student with the private provider for March 12th; however, the mother neither kept nor cancelled the appointment. SD 60a. Testimony, Ms. B.

31. The mother took the student to a private provider that she selected for the risk assessment, rather than the one proposed by the district. Testimony, Ms. K.B.; SD 23. Ms. K.B. spoke with the private provider who conducted the March 14th risk assessment and stated that the provider was “not totally comfortable” in completing the risk assessment. Testimony, Ms. K.B. The district had a release from the mother, which permitted the district to talk with private provider only about the risk assessment. *Id.* The outside provider wrote a short letter regarding her assessment. SD 23. The letter reports that student was upset and frustrated because he had lost a game and did not show any current suicidal ideation or threat. *Id.* The letter notes that the private provider did not have any contact with school staff and had only reviewed

information provided by the student's mother. *Id.* The letter recommends a formal risk assessment if the student escalated and staff had concerns for his safety. *Id.* It also identifies two providers who could conduct a risk assessment. *Id.* On March 20th, the district added a 1-1 BCBA to directly support the student in the classroom. ¶ 29.

32. The district convened a domain meeting on April 4, 2019. SD 26-38. The mother attended the meeting. SD 34. District staff reviewed all the domains: functional performance, cognitive functioning, communication status, health, hearing/vision, motor abilities, and social-emotional status. SD 27- 32, 34-36. School staff noted concerns about the student's working memory and ability to recall events, and his difficulty consistently following directions, completing work, and transitioning between tasks. SD 27. However, their primary concern was about the student's social/emotional status, including: physical aggression towards peers and adults, threatening language to self and others, verbal disruptions, public urination in a school garbage can, property destruction, elopement, non-compliance, work refusal, disrespectful language, intentional destruction of peers' property/work, and threatening posturing towards staff and peers. SD 29-32. The school team recommended a special education evaluation conducted in a diagnostic placement in a public therapeutic day school. SD 36, 37.

33. The parent actively participated in the domain meeting, asking questions about the student's academic functioning, motor domain, and many details related to his social/emotional functioning. SD 34, 35. She raised a concern that kindergarten data was included in the review. SD 36. She also stated that the student does not demonstrate the reported behaviors in the home. *Id.* The parent asked about whether she could observe the student in school, and the district explained its observation procedures.

SD 37. The district's procedures were confirmed by the superintendent during her testimony. Testimony, Ms. S.

34. The district reviewed the consent to evaluate form with the mother and explained that the evaluation could not begin until a 10 school day period had expired, beginning the day after consent was provided. SD 37. The district explained the evaluation process, including that the parent would have an opportunity to observe the therapeutic school at which the evaluation would be conducted. *Id.* The district explained that a therapeutic setting is necessary for the evaluation because of the student's "escalated and unsafe behaviors." *Id.* The parent requested time to consider the district's recommendation and did not sign the consent form at the meeting. SD 38.

35. The public day school proposed by the district as the diagnostic placement in which the assessment would be conducted is "relatively close" to the student's home and current school. Testimony, Ms. C. Ms. C. contracts with the district to facilitate evaluations and placement. *Id.* Ms. C. has a B.A. in sociology and psychology and master's degrees in social work and educational administration. *Id.* She met with district staff before the domain meeting and also attended the domain meeting. *Id.* The proposed diagnostic placement has many resources, including: significant support within the classroom, provided by a teacher and classroom aides; small classes; the ability to modify academics "up or down" depending on an individual student's need; both push-in and pull-out related services; and, numerous behavioral services. *Id.* Each student has a point sheet individualized to that student's needs, with points earned on a half-hour basis. *Id.* School staff review the points every 20 days to determine if changes are necessary. *Id.* The school also implements a positive behavioral support system, with group norms laid out for everyone. *Id.* Expectations are reviewed at the start of each class. *Id.* Parents receive a

daily note from staff, and the school has a morning coffee for parents and a monthly parents' support group. *Id.* The proposed diagnostic placement could meet the student's academic needs during the proposed evaluation period and also support him emotionally during the diagnostic process. *Id.*

36. The superintendent meets with administrators weekly about the student, to ensure that best practices are followed and resources are available. Testimony, Ms. S. Ms. S. began her educational career as a school psychologist and was a high school administrator for many years and an assistant director of special education. *Id.* She was director of student services in this district and has served as superintendent for 10 years. *Id.* Ms. S. approved the due process request because she "is convinced" that the district cannot meet the student's needs without more information. *Id.* Despite the amount of resources provided to the student, there has not been a significant change in his behaviors or the frequency of his behaviors. *Id.* The student's race did not impact the district's determination that an evaluation is necessary and that it should be conducted in a diagnostic setting. *Id.* The district has an "extremely high success rate" on successfully transitioning students back to the district after an evaluation in a diagnostic placement. *Id.*

37. On April 10th, Ms. K.B. emailed the parent an updated domain sheet, which included the neuropsychological assessment that she and the mother had discussed a few days before. SD 95.

38. The district secured a second risk assessment of the student in April 2019 after he stated that he wanted to hurt himself and his mother and that his mother and the school wanted to hurt him. Testimony, Ms. K.B. After hearing these statements, Ms. K.B. consulted with district administration and called the mother to inform her of what had happened

and what the district wanted to do. *Id.* Ms. K.B. reported that the mother was “very angry” about the call and asked if this was a new “thing” the district was going to be doing. *Id.* Ms. K.B. stated that the mother told her that if it was an emergency, the district should call 911. *Id.* The district asked the mother pick up the student at school rather than having him take the bus home. *Id.* When the mother refused to do so, Ms. K.B. took the student to the hospital. *Id.* The hospital released the student to the mother after she arrived. *Id.*

39. The student meets with a physician’s assistant, Ms. M., on a monthly or bi-monthly basis for 20 to 30 minutes. Testimony, Ms. M. Ms. M. works with the student’s physician. *Id.* The mother is present during the appointments, except for one time when Ms. M. met with the student alone for 10 minutes. *Id.* Her knowledge of the student’s behavioral problems in school is based solely on the mother’s reports, and she has had no direct contact with the school. *Id.* She was unaware of the extensive supports put into place for the student in the classroom, including BCBA’s, social work services, and 1:1 assistance. *Id.* She also was unaware of the student’s physical aggression towards school staff and peers. *Id.* Ms. M. is supportive of the student being evaluated, although “concerned” about the request to conduct the evaluation in another setting. *Id.* While the testimony of this witness is credible as to her own experience with the student, it is limited by the fact that she has had no contact with school personnel and no knowledge of the services that have been and are being provided to the student to address the district’s concerns.

40. The student’s older brother picks him up at the bus every day after school. Testimony, N.M. He also takes the student to many athletic activities – gymnastics, basketball, swimming, soccer – and reported that the student does not cause any problems in those activities. *Id.* The

student has lots of energy, understands the rules of the activities, and follows the rules. *Id.* The brother's testimony is credible as to his experience with the student but limited as he has no contact with school personnel or direct knowledge of events in school.

41. The mother described the student as a follower and believes that he is being picked on and influenced by his peers.¹ She also asserts that the district is "not willing" to deal with African-American students in a culturally responsive manner, noting that only about 4% of the students in the district are African-American. She further contends that the district retaliated against her by filing a report with the Department of Children and Family Services when she would not consent to have the student to have the student evaluated. PD 2, 11-14. She is concerned that she asked repeatedly to observe the student in school and was only allowed to observe him for one hour.

CONCLUSIONS OF LAW

The purpose of the IDEA is to ensure that all children with disabilities receive a free appropriate public education and related services "designed to meet their unique needs and prepare them for further education, employment and independent living." 20 U.S.C. §1400(d)(1)(A). A district must comply with the IDEA's procedural and substantive requirements in order to provide a free appropriate public education (FAPE) to a student. *Board of Educ. of the Hendrick Hudson Cent. School District., Westchester Cnty. v. Rowley*, 458 U.S. 176 (1982) ("Rowley"). If a student is found IDEA eligible, the student's IEP must be appropriately ambitious in light of the child's circumstances. *Andrew F. v. Douglas County School District*, 137 S. Ct. 988, 69 IDELR 174 (2017).

¹ To facilitate the mother's testimony, the hearing officer instructed the mother to prepare a list of questions for the hearing officer to ask her on the day of her testimony. The list of questions was presented to the hearing officer at the time of the mother's testimony, with a copy also presented to the district. The mother's questions are part of the record in this case.

Based on the above factual findings, the parties' arguments, and the undersigned's own legal research, the hearing officer's legal conclusions are as follows:

Whether the parent refused to consent to the district's requests to conduct an initial evaluation of the student:

Before conducting an initial evaluation to determine if a student qualifies as a student with a disability under the IDEA, a district must obtain informed consent from the student's parent. 20 U.S.C. §1414(a)(1)(D)(i)(I); 34 CFR §300.300(a)(1)(i). If a parent does not provide consent, the district may pursue the initial evaluation of the child through due process procedures. 20 U.S.C. §1414(a)(1)(D)(ii)(I); 34 CFR §300.300(a)(3)(i). *In re: Student with a Disability*, 106 LRP 42794, p.3 (Okla. SEA, May 29, 2003).

The uncontroverted evidence shows that the district requested the parent's consent to evaluate the student during the April 4, 2019 domain meeting. ¶¶33, 34. During that meeting, staff reviewed all the domains and reported some concerns about the student's working memory and his difficulty following directions. ¶32. Their focus, however, was on the student's social/emotional functioning, which was adversely impacting his academic and functional performance in school and was the impetus for the proposed evaluation. *Id.* The mother actively participated in the meeting and, although she declined to sign consent at the meeting, she did request time to consider the district's request. ¶34. The district updated the domain sheet about a week after the meeting to include a neuropsychological evaluation the mother had discussed with the district shortly after the domain meeting. ¶37. To date, there is no evidence showing that the parent signed the consent to evaluate form. Based on the foregoing evidence, the undersigned finds that the mother refused to consent to district's request to conduct an initial evaluation of the student.

Whether district personnel expressed concerns about the student's patterns of behavior directly to the special education director or supervisory personnel:

Beginning in December 2018, the district regularly convened a group of staff who worked closely with the student to review and discuss his problematic behaviors. ¶5. Ms. B., the school principal, was part of the PIT and thus directly aware of staff concerns on an on-going basis. *Id.* The district superintendent received weekly updates on the student and also was part of the PIT. ¶36. The evidence clearly shows that top level administrators, including the school principal and district superintendent, were informed and updated on a regular basis about the student's patterns of behavior.

Whether maintaining the student in the general education classroom is substantially likely to result in injury to the student or to others:

The evidence shows that the student's disruptive and aggressive behaviors began to escalate in mid-October and continued throughout the school year. ¶¶ 1, 3-6, 8, 10-13, 15, 17, 19, 20, 21, 24, 25, 27-30, 38. His physically aggressive behaviors towards peers include: grabbing peers, choking a peer, and biting a peer ¶¶ 4, 5, 27; kicking, scratching, and attempting to bite staff ¶ 6; and, hitting people with his iPad ¶12. In January, he stated that he was going to bring a knife to school and hurt two of his classmates. ¶11. Students were removed from the classroom due to this student's behaviors. ¶¶ 11, 15, 17. He also has injured and threatened staff. ¶ 11, 13, 15, 17, 19, 20, 28. The district's efforts to provide a supportive structure to safely contain the student in the general education classroom have not abated his disruptive and aggressive behaviors.

Additionally, the student has made statements that raised staff concerns that he would injure himself. Staff recommended a formal risk assessment in March after he stated that he wanted to kill himself, to be dead, and to "cut up

my body like lego pieces.” ¶30. One month later, in April, the student again made statements about wanting to hurt himself and also stated that his mother and the school wanted to hurt him. ¶38. The district’s interventions in the general education setting have not impacted whatever is motivating the student’s statements of self-harm.

Based on this evidence, the undersigned finds that maintaining the student in the general education classroom is substantially likely to result in injury to the student or to others.

Whether the district made reasonable efforts to minimize the risk of harm in the general education classroom:

The student’s teacher informed the mother of her concerns at the initial parent-teacher conference and began to log changes in the student’s behavior and the success of interventions. ¶¶ 3, 4. A team of school staff working with the student met regularly to discuss strategies in working with the student. ¶¶ 5, 13, 23. Staff with special expertise were added to the classroom: Ms. K., the school psychologist and who is also CPI trained; Ms. J., the school social worker who is also trained in behavioral interventions and classroom management; Ms. K.B., who is CPI trained and a CPI trainer; Ms. P., a certified BCBA; and, a classroom aide. ¶¶ 7-9, 14, 21, 22. The superintendent met weekly with staff to ensure that she was informed on a regular basis about the student. ¶36. Because the student is not IDEA eligible and thus not eligible for related services, the district provided him with “informal social work services” to address some of his emotional and behavioral needs. ¶ 21. The team developed a positive behavioral chart for the student and also allowed him to use an alternative location for schoolwork, have breaks, and participate in restorative practices. ¶28. When the student expressed statements indicating self-harm, the school social worker met with him and communicated her concerns to the parent. ¶ 30. The district also offered to

fund a risk assessment if the parent took the student to a provider recommended by the district and made an appointment for the student. *Id.* When a similar situation arose the following month, the district contacted the mother and then took the student to the hospital after the mother refused to pick up the student at the end of the day. *Id.* The district did not want to send him home on the bus. ¶ 38.

The foregoing evidence supports a finding that the district has made reasonable efforts to minimize the risk of harm in the general education classroom.

Whether the district may move the student to an interim alternative educational setting (IAES) for not more than 45 school days as a diagnostic setting in which the initial evaluation will be conducted:

A student who has not been determined to be eligible for special education and related services and who has violated a code of student conduct may assert statutory protections if the district had knowledge that the student had a disability. 20 USC 1415(k)(5)(A); 34 CFR § 300.534(b)(30, (c)(1)(ii). A district is not deemed to have such knowledge if the parent of the child has not allowed the district to evaluate the child. 20 USC 1415(5)(C). The student may then be subject to the disciplinary measures that apply to students without disabilities. 20 USC 1415(D)(i). However, if a district requests an evaluation during the time that the student is subject to disciplinary measures, the evaluation must be conducted in an expedited manner. 20 USC 1415(D)(ii). The child must remain in the educational placement determined by the district pending the results of the evaluation. *Id.* A diagnostic placement is a temporary placement in which a student may be placed as part of the evaluation process. 1999 IDEA – Part B regulations, Question 14, Appendix A(1999); *In re: Student with a Disability*, 115 LRP 32147 (SEA NM May 21,

2015). A diagnostic placement is a method of evaluation, not an educational placement. *Middletown Bd. of Educ.*, 10 ECLPR 22 (SEA Ct. 2013).

The student has received both in-school and out-of-school suspensions. ¶¶ 6, 8, 27. His behavioral problems have increased in frequency and intensity over the school year. Most recently he has expressed concerning statements about wanting to harm himself and a worry that others want to hurt him. ¶ 38. The district has requested an expedited evaluation and further requested that the evaluation be conducted in a diagnostic placement at a public therapeutic day school. District's Complaint. The proposed placement has staff, supports, and interventions that would support the student while he is in diagnostic setting. ¶ 35. The evidence supports a finding that the district may move the student to [REDACTED], a public therapeutic day school, where an evaluation of the student will be conducted. This placement is a diagnostic placement that may not last more than 45 school days. The district shall convene an IEP meeting while the student is in the diagnostic placement to review the evaluation information. If the student is found IDEA eligible and the parent consents to services, the district shall develop an IEP for the student.

ORDER

IT IS ORDERED THAT:

1. The district shall move the student to the diagnostic placement, [REDACTED], for not more than 45 school days. An evaluation of the student will be conducted in that setting and must be completed within the 45-school day timeline.
2. The district shall provide round-trip transportation for the student from his residence to [REDACTED] for the entire 45 school days of the placement.

3. The district shall convene an IEP meeting to review the evaluation results while the student is in the 45 day placement. If the student is found IDEA eligible, the district shall prepare an IEP for student.

Within sixty (60) school days of receipt of this Order, [REDACTED] Community Consolidated School District No. [REDACTED] shall submit proof of compliance to:

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

NOTICE OF RIGHT TO REQUEST CLARIFICATION

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned hearing officer within five (5) days of receipt of this decision. 105 ILSC 5/14-8.02a(h). The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party(ies) and the Illinois State Board of Education. The right to request such 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 FILE CIVIL ACTION

This decision is binding on the parties unless a civil action is timely commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.02a(i), that civil action shall be brought in

any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

DATE: June 8, 2019

Mary Schwartz
Impartial Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Final Decision and Order was sent by electronic mail and also by U.S. Mail, certified, directed to the individuals listed below:

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

Ms. Laura Sinars
Robbins Schwartz

[REDACTED]
[REDACTED]
[REDACTED]

Mr. Andrew Eulass
Due Process Coordinator
Illinois State Board of Education
100 North First Street
Springfield, Illinois 62777

before 3:00 p.m. on June 8, 2019.

[REDACTED]

Mary Schwartz
Impartial Hearing Officer

[REDACTED]