

[REDACTED]

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

STUDENT¹,

Student,

Case No: 2020-DP-0069

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

[REDACTED]
School District.

FINAL DETERMINATION AND ORDER

JURISDICTION

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

BACKGROUND

The Student is a 7-year-old, male who is currently a 2nd grade student at a District elementary school. He qualifies for special education services under the disability categories of Emotional Disability (ED) and Specific Learning Disability (SLD). The Student attended a District general education elementary school. (IHO Exhibit 1.)

After an IEP meeting held on September 13, 2019, the District sought to place the Student at a therapeutic day school. Parents disagreed with that determination and filed a Due Process Complaint Notice on October 10, 2019. Thereafter, the District filed the Due Process

¹ Personal identification information is provided in Appendix A.

Complaint Notice (DPCN) currently before this Hearing Officer on October 23, 2019 on an expedited basis seeking to remove the Student from the District elementary school and place him in a therapeutic day school alleging that the Student was a danger to himself or others. (IHO Exhibit 1.) The Parties participated in mediation on November 8, 2019 but were unable to resolve the outstanding issue. Based upon this, the 20-School Day timeline for this Hearing Officer to conduct the hearing began to run on October 23, 2019 with November 22, 2018 being the 20th school day. The 10 School- Day deadline for this Hearing Officer to render a decision is December 11, 2019. (IHO Exhibit 4,7.)

A prehearing conference was held on November 7, 2019. The Parties agreed to the following hearing dates: November 18 & 22, 2019. (IHO Exhibit 7.) Subsequent to the prehearing conference, Parents advised via email that they would not participate in the Due Process Hearing. This IHO responded via email, with a copy to District counsel, encouraging them to reconsider and appear at the hearing as scheduled. (IHO Exhibit 9.)

The Parents opted for an open hearing. The Due Process Hearing was held on November 18 & 22, 2019. Ms. [REDACTED] of [REDACTED] represented the District. Ms. [REDACTED], [REDACTED] Elementary School Principal, was the District Representative on November 18th. Mr. [REDACTED], [REDACTED] Elementary School Assistant Principal, was the District Representative on November 22nd. The Parents were unrepresented and did not appear at hearing. The District presented its witnesses. (IHO Exhibit 6, 8.) The District presented the following Exhibits: District Exhibits SD# 10-28 which were introduced into evidence. The Parents did not appear at or participate in the hearing and did not present any exhibits. The Hearing Officer's Exhibits were: IHO Exhibits # 1-11. The District submitted a written outline of its closing statement and the case law relied upon. (IHO Exhibit 11.)

ISSUES

The issues raised by the District for determination by this Hearing Officer are:

(a) Whether a change of placement to an interim alternative educational setting is necessary because it is dangerous to maintain the Student in his current educational placement pursuant to 105 ILCS 5/14-8.02(b), 23 Ill. Admin. Code §226.655, and 20 U.S.C. §615(k)(2) and (3), 34 C.F.R. §300.532, §300.507, §300.508.

(b) The hearing officer shall consider the following factors in determining whether an interim alternative placement is appropriate:

- 1.) Whether the local school district has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;
- 2.) Whether the child's current placement is appropriate;
- 3.) Whether the district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
- 4.) Whether the interim alternative educational setting will permit full implementation of the student's IEP and includes services and modifications designed to prevent the undesired behavior from recurring.

105 ILCS 5/14-8.02(b).

The District requests that this Hearing Officer determine that the Student is substantially likely to injure himself or others if his current educational placement is maintained. The District further requests that this Hearing Officer order a change of placement to a therapeutic day school and order Parents to comply with the interim alternative educational setting placement process, including signing necessary releases, touring the facility, making the Student available and facilitating the Student's initial placement in the interim alternative educational setting.

The Parents maintain that the Student is not substantially likely to injure himself or others in his current educational placement, a self-contained special education classroom in a general education elementary school with additional supports and services, and requests that this Hearing Officer determine that the current educational placement be maintained.

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, recording of the hearing, and recollection. This Hearing Officer carefully considered the testimony of all witnesses presented and all documents introduced and admitted into evidence whether or not specifically referred to or cited when making her final determination. To the extent that a Finding of Fact adopts one version of a matter on which the evidence is in conflict, the evidence adopted has been determined more credible than the conflicting evidence. After considering all the evidence, as well as the arguments of District counsel, this Hearing Officer's Findings of Fact are as follows:

1. The Student is a 7-year-old, male who is currently in 2nd grade. He qualifies for special education services under the disability categories of Emotional Disability (ED) and Specific Learning Disability (SLD). Emotional Disability (ED) is the primary disability category. The Student currently attends LES, a District general education elementary school, in a self-contained special education classroom. (Testimony of PRIN², AP³, PSY⁴, SW⁵, SPED⁶, BS⁷; SD# 16.)
2. The Student's May 16, 2019 IEP provided for a private therapeutic day school placement. Parents disagreed with the IEP team determination and subsequently filed a request for a Due

² PRIN is the school Principal. She has been so employed for four years. Prior to this position, PRIN was an Assistance Principal and a first grade teacher.

³ AP is the Assistant Principal at LES. He has been so employed for the past two years. He was previously a special education teacher for 17 years. He holds a Masters of Educational Leadership, Type 75 license and a special education LBS1 unlimited. He is CPI certified.

⁴ PSY is the school Psychologist. She has been employed as a school psychologist for the past 13 years and has been employed by the District for the past four years. She holds a Type 73 license and has an ESL endorsement.

⁵ SW is the school social worker. She has been employed as a school social worker for the past 9 years and has been employed by the District for five years. She holds a Type 73 license and is a Licensed Clinical Social Worker (LCSW).

⁶ SPED is a special education teacher. He has 22 years of experience, primarily in that capacity. He holds a Type 75 license, an administrator license with a special education certification.

⁷ BS is a Behavioral Specialist. She holds a Type 73 School Counselor Certification and is an internationally certified Clinical Trauma Counselor. She has worked with students with severe behavioral difficulties for the past 13 years and has been employed by the District for the past 3 years.

Process Hearing in June 2019. In order to resolve the due process proceeding, the District and Parents entered into a mediation agreement in which a mutually agreed upon outside evaluator was selected to perform a neuropsychological evaluation. Said evaluation was conducted in July 2019 and a subsequent eligibility and IEP meeting was held on September 13, 2019. (Testimony of PRIN; SD# 13, 16.)

3. At the conclusion of the September 13, 2019 IEP meeting, the IEP team again determined that a therapeutic day school placement was the appropriate placement for this Student. (SD #16.) Parents disagreed with the IEP team's placement determination and filed a Due Process Hearing request on October 10, 2019. The District filed its expedited Due Process Hearing request on October 23, 2019. (IHO Exhibit #1.)

4. The Student entered first grade at LES at the beginning of the 2018-2019 school year. Prior to entering first grade, an IEP and Behavioral Intervention Plan (BIP) had been developed for the Student in May/June 2018. The Student becomes easily frustrated when presented with challenging or non-preferred tasks. (Testimony of PRIN, AP, SPED, PSY, SW; SD #10.)

5. During his first grade year, when assigned challenging or non-preferred tasks, the Student engaged in problematic behaviors identified as noncompliance/failure to follow directions and tantrumming. Specifically, the Student engaged in the following behaviors: hitting, kicking, biting, spitting, over verbalization, screaming, yelling, leaving the classroom or school building, throwing items including desks and chairs, profanity, crying, threatening to harm himself, threatening to harm others. The Student has injured himself while engaging in these behaviors. (Testimony of PRIN, AP, SPED, PSY, SW; SD #11-15, 18, 26, 28.)

6. As part of a Functional Behavior Assessment (FBA), the District tracked the Student's identified behaviors over four quarters, for 214 school days. The data indicated that the

Student's noncompliance ranged from an average of 14 to 37 times per day. Tantrum behaviors occurred on average as few as one per day up to seven per day. The Student made at least 12 occurrences of threats to hurt himself or others. By the end of the Student's first grade year, he had been referred for 20 major behavioral incidents and 5 minor behavioral incidents. Major behavioral incidents were those involving verbal or physical aggression and unsafe behaviors. (Testimony of PRIN, AP, SW, PSY, BS; SD #10-15.)

7. The Student's behaviors began to escalate in February 2019 when they could no longer be managed in the classroom and additional administrative support and crisis team support was required. A crisis team was developed consisting of eight (8) CPI certified staff members. From January – May 2019, the crisis team was utilized weekly at a minimum, and often daily, to assist the Student in managing his behavioral difficulties. In the second half of the 2018-2019 school year, the Student's behaviors became more extreme - the behavioral episodes would last longer and it would take longer to de-escalate the Student. (Testimony of PRIN, AP, SW, PSY; SD #13.)

8. In response to the escalating behaviors, the District implemented and documented a range of behavioral interventions including the following: classroom point system/daily reward system; shared paraprofessional that switched to an individual paraprofessional in May 2019; a "calm down" corner; breakfast with SW; lunch with peer buddies; movement breaks "training time" that allowed the Student to run in the hallways; sensory strategies; time-out in the classroom; a designated elopement area; instruction in Zones so he could verbalize what "zone" he was in; increased ability to earn choice time. (Testimony of PRIN, SW, AP, BS; SD #10-15.)

9. The Student had behavioral difficulties during his bus rides to and from school. He would engage in the following behaviors: refused to wear his seatbelt; hit the bus window with

his fists; threatened to blow up the bus; ran off the bus. (Testimony of PRIN, AP; SD #18.) In response to these difficulties, the Student was provided with an activity pack on the bus to keep him occupied with preferred tasks while he was on the bus. Upon his arrival at school in the morning, he would have breakfast in a quiet place with SW to provide time for him to calm down and prepare for the school day. (Testimony of PRIN, SW; SD #10-15.)

10. BS is a behavior specialist employed by the District. She worked with the Student and the staff in contact with the Student during the 2018-2019 and 2019-2020 school years. BS was assigned to work with the Student due to his severe behaviors. BS trained the first and second grade staff who worked with the Student including teachers, paraprofessionals, social worker, speech language pathologist, occupational therapist, school psychologist, assistant principal and principal. She trained all staff assigned to work with the Student on how to collect behavioral data with fidelity and how to implement the behavioral interventions contained within the Student's BIPs with fidelity. (Testimony of BS; SD #10-11, 13, 15.)

11. The Student's initial Behavior Intervention Plan (BIP) for his first grade year provided four main strategies to target his behaviors including utilizing the following: first...then language to help him stay on track, then a preferred activity; scripted common language among staff; individualized task sheet to make him feel he was in control; points sheet if he performed expected behaviors. (Testimony of BS, AP; SD #10.) The IEP team subsequently revised the Student's BIP in March 2019 because the prior BIP did not include all of the behaviors District staff were currently seeing. The target behaviors were changed from eloping to eloping and tantruming to provide a clearer picture of the behaviors so they could be addressed in the BIP. The behavioral intervention strategies changed in the revised BIP to include the following: more motor activities; incorporated a physical and sensory component; training on zones so the

Student could identify “zone” he was in; non-verbal cues to give him reinforcement without stopping class instruction; physical breaks; body sock and sensory blanket use to add pressure to help him calm down; training session where he would run up and down the hall with the teacher. (Testimony of BS, SW, AP; SD #11-13.)

12. Beginning in February 2019, the Student’s behaviors began to escalate. The behaviors decreased in frequency however, they increased in intensity. (Testimony of BS, SW, AP; SD #13.)

13. A Functional Behavior Assessment (FBA) was conducted during the early part of 2019 and the Student’s BIP was again revised in May 2019 after the District collected behavioral data for 214 school days. (Testimony of BS; SD #14, 27.)

14. At the conclusion of the Student’s first grade year, a mutually agreed upon outside evaluator, Dr. Howard conducted a neuropsychological evaluation of the Student. Dr. Howard saw much of the same behavior as the school staff saw in the classroom. Dr. Howard concluded that emotional and behavioral regulation was a necessary prerequisite for learning to occur and that stabilizing the Student’s behavior is the primary goal at this time. Dr. Howard recommended a therapeutic day school placement for the Student which includes the following: low student-teacher ratio; staff trained to incorporate therapeutic behavioral modification elements into the classroom; individual and group therapy modalities; a parent/family support component; occupational and speech language services. (Testimony of BS, AP; SD #15.)

15. The Student has severe reading and written expression deficits due to poor phonological awareness/decoding weaknesses as well as broader speech and language delays. He also has visual processing difficulties. The Student has a specific learning disorder with impairment in reading and written expression. (Testimony of SPED; SD #15-16.)

16. The Student is unable to make any academic gains due to behavioral difficulties. Behavioral difficulties make him unavailable for learning. (Testimony of SPED, AP; SD #15-16.)

17. During the 2018-2019 school year, the Student's behaviors resulted in injuries to PRIN, the classroom teacher, and the Student's paraprofessional. The injuries were the result of kicks, hits, punches, bites, head-butts, and scratches and left scratches, bruises, and bite marks. PRIN was bitten by the Student and the bite left a mark. The Student also threatened self-harm and harm to others stating he "wanted to die and go into the sky." The Student talked about killing an animal. (Testimony of PRIN, AP, SW, PSY; SD #18.)

18. An eligibility and IEP meeting was held on September 13, 2019 pursuant to the prior mediation agreement. At that meeting, Emotional Disability (ED) was added as the Student's primary disability category. Dr. Howard, the outside evaluator, participated in the meeting. The IEP team recommended that the Student be placed in a therapeutic day school setting. This determination considered Dr. Howard's report and adopted her recommendations for same. (Testimony of PRIN, AP, SW, BS, PSY; SD #16.)

19. All District staff who testified at hearing agreed with the IEP team's determination of a therapeutic day school placement for the Student. Parents disagreed with the IEP team placement determination. (Testimony of PRIN, AP, SW, PSY, SPED, BS.)

20. Due to the Student's continued unsafe behaviors, a School Supervision and Safety Plan was developed on September 19, 2019. This plan addresses the Student's safety in all aspects throughout the school building. It addresses how the Student enters and exits the school building, his movements in and around the building, supervision during inside and outside time,

how staff communicate with other adults that support the Student. This plan was provided to all staff in the school who work with the Student. (Testimony of PSY, SW; SD #17.)

21. During the 2018-2019 school year, the Student received 120 social work minutes per week per his IEP. In September 2019, the Student's social work minutes were increased to 240 minutes per month/60 minutes per week. SW provides 30 direct minutes per week and 30 functional minutes per week to Student in and around the school building. SW is providing the same number of social work support minutes that the Student would receive in a therapeutic day school setting. However, the Student's dangerous behaviors have continued. The Student is able to practice skills in isolation in a social work setting. However, he is unable to use the learned skills in a functional way when he becomes upset. In both the current school year and the 2018-2019 school year, SW provided the Student with social work services in excess of those required by his IEP. She provided support to assist the Student with problem solving when he became upset; she would provide support during transition times; and she would do risk assessments when required. SW performed 15 total risk assessments when the Student threatened self-harm or harm to others during the 2018-2019 school year. (Testimony of SW, AP, PRIN, PSY; SD #10-13, 17-18, 27.)

22. During the current 2019-2020 school year, the Student's behaviors have continued to escalate. On September 13, 2019, the Student eloped from the classroom, ran upstairs in the building, and stated that he wanted to die and if he threw himself over the staircase that he would die. He ran outside of the building and was redirected back inside by a teacher. The Student then leaned over the staircase and threatened to throw himself over the staircase. (Testimony of PRIN, SW, AP, PSY; SD #18.)

23. The Student's mood changes very quickly with very little provocation. Small things such as not being "first" in line or for an activity can trigger him. Even if he is able to calm down and be safe, he can become upset again very quickly and with very little warning. School staff cannot always predict what will trigger the Student and they are not able to control the general education environment enough to support this Student. Currently, the Student's behaviors are more extreme. He is more aggressive this school year. He is a stocky, strong boy who is physically larger than most second grade students and plays football. The Student has employed skills learned in football against teachers and staff by charging them and attempting to tackle teachers and staff. (Testimony of AP, SPED, SW, BS; SD #18.)

24. Currently, in his second grade school year, the Student is much more able to articulate a plan for self-harm or harm to others. The Student has threatened to kill teachers, other students, and staff. The Student can recognize and articulate that he caused injury to AP and SPED and has threatened to do the same to PRIN. To date, the same number of threat assessments have been conducted relative to this Student as were conducted in the entire 2018-2019 school year. (Testimony of PRIN, AP, SPED, SW; SD #18, 28.)

25. SPED is the Student's second grade special education teacher. He also taught the Student during extended school year (ESY) in Summer 2019. For his second grade year, the District modified the Student's classroom structure decreasing the number of students in the self-contained special education classroom. There is currently a ratio of 4 staff to 6 students in the Student's classroom. SPED has been hit by the Student approximately 80-100 times this school year. He has been kicked approximately 20 times and he has been bitten 3 times. On October 18, 2019, the Student became escalated. The classroom had to be cleared of other students. The Student grabbed SPED by the sides of his arms and the sides of his legs. SPED moved away

from the Student. However, the Student grabbed SPED's legs again and bit him in his left quadricep. The bite broke the skin, caused bleeding and bruising and required SPED to seek medical attention and treatment. (Testimony of SPED, PRIN, AP; SD #18.)

26. The Student threatens self-harm approximately weekly or every other week. There have been approximately six (6) major behavior incidents since October 18, 2019. (Testimony of SPED, AP, PRIN; SD # 18, 28.)

27. The Student attempts to intimidate adults by repeatedly using offensive language and name calling. (Testimony of SPED, AP; SD #18, 28.)

28. On October 28, 2019, AP was called to the Student's classroom to provide assistance. The Student was throwing desks, chairs, and he pushed over a barrier between desks which landed on the head of another Student. AP and SPED attempted to de-escalate the Student and had to perform a two person CPI hold. After the Student calmed down and was released from the CPI hold, he charged at AP as if to tackle him. AP stepped back to avoid being hit and tore his meniscus requiring surgery, time away from work and physical therapy. Other students were in the room at the time of this incident as there was not enough time to remove them from the classroom. (Testimony of AP, PRIN, SPED; SD #28.)

29. The Student's academic deficits cannot adequately be addressed at LES as the Student's inability to self-regulate makes him unavailable for learning. (Testimony of SPED, BS; SD #15.)

30. The District has attempted on multiple occasions to work collaboratively with Parents. However, Parents have refused to cooperate with the District. Both Parents have been verbally abusive to teachers and staff and the Student's father has threatened AP. (Testimony of PRIN, AP, SPED, SW, PSY; SD #19-26.)

31. Other students are fearful of the Student and parents of other students have requested that their children be removed from the Student's classroom. (Testimony of PRIN, AP, SPED.)

32. Since September 2019, the District has attempted to engage the Parents' participation in a therapeutic day school placement. Parents have refused to cooperate. (Testimony of PRIN, ST; SD #19-25.)

33. In November 2019, the District received consent from Parents to send the Student's IEP to four therapeutic day schools. (Testimony of ST⁸; SD #21-24.) All four schools contacted the District and indicated a desire to proceed with the intake process for the Student. (Testimony of ST.)

34. All four therapeutic day schools are able to implement the Student's September 13, 2019 IEP. All schools have a small staff to student ratio; trained and licensed therapists on staff; all staff are trained in de-escalation procedures; and all have a family participation component. (Testimony of ST.)

35. Based upon her experience as a special education teacher, an LBS1, and the District's Private Day Specialist, this Hearing Officer finds the testimony of ST to be credible and persuasive.

36. ST's hearing testimony was uncontroverted at hearing.

37. This Hearing Officer finds the testimony of all District witnesses, PRIN, AP, PSY, SW, SPED, BS and ST, to be credible and persuasive. This finding is based upon the following: (1) the education and experience of each witness; (2) the testimony of each witness corroborated that

⁸ ST is the District's Private Day Specialist. She has held that position for the past two (2) years. In this position, ST works with families and students who need educational placements outside of the District. ST holds a Master's Degree in Social Work. She has nineteen (19) years of experience as a special education teacher and holds a LBS1 credential.

of the other witnesses; (3) the documentary evidence presented at hearing corroborated the witness testimony.

38. The testimony of all District witnesses was uncontroverted at hearing.

CONCLUSIONS OF LAW

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

The IDEA and the Illinois Administrative Code provide as follows: Requests for expedited due process hearings shall be made in accordance with 34 C.F.R. §300.532 and §300.533 and Section 14-8.02(b) of the Illinois School Code. 105 ILCS 5/14-8.02(b).

- (a) The hearing officer shall determine:
 - 1.) whether the child shall be placed in the proposed alternative educational setting; or
 - 2.) whether the local school district has demonstrated that the child's behavior was not a manifestation of the child's disability.

- (b) The hearing officer shall consider the following factors in determining whether an interim alternative placement is appropriate:
 - 1.) Whether the local school district has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;
 - 2.) Whether the child's current placement is appropriate;
 - 3.) Whether the district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

- 4.) Whether the interim alternative educational setting will permit full implementation of the student's IEP and includes services and modifications designed to prevent the undesired behavior from recurring.
- (c) If all conditions set forth in subsection (b) of this Section are met, the hearing officer shall order a change in the child's placement to an appropriate interim alternative educational setting for not more than 45 school days. If the district demonstrates that the student is substantially likely to injure himself or herself or others if returned to the placement that was used prior to the student's removal, the hearing officer may order that the student remain in the interim setting for subsequent periods of up to 45 school days each.

23 Illinois Administrative Code §226.655. *See also* 20 U.S.C. §1415(k)(3), 34 C.F.R. §300.532.

Factors of be considered:

In determining whether placement in an interim alternative educational setting is appropriate, the hearing officer shall consider the following:

- (1) Whether the local school district has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of the Student is substantially likely to result in injury to the Student or to others.

The testimony and documentary evidence presented at hearing reflects the following:

The Student has been attending a general education elementary school in a self-contained special education classroom. (FF #1, 4-5, 22-25.) He is unavailable for learning due to severe behaviors and an inability to self-regulate. (FF #14-16, 29.) The Student engages in problematic and dangerous behaviors when presented with challenging or non-preferred tasks. Specifically, the Student engages in the following behaviors: hitting, kicking, biting, spitting, over verbalization, screaming, yelling, leaving the classroom or school building, throwing items including desks and chairs, profanity, crying, threatening to harm himself, threatening to harm others. The Student has injured himself while engaging in these behaviors. (FF# 5.) The Student has eloped from the classroom and school building, run upstairs in the school building and threatened to throw himself over the staircase. (FF# 22.) The Student's aggressive behaviors have resulted in

injuries to the Student, teachers and staff, and other students. Injuries to his special education teacher and the assistance principal in October 2019 resulted in on-going medical treatment for both individuals. (FF# 23-28.) School staff cannot always predict what will trigger the Student's dysregulation and they are unable to control the general education environment enough to support the Student in self-regulation and effectively managing his behaviors. (FF# 23.) The Student's behaviors resulted in approximately 15 total risk assessments of self-harm or harm to others in the 2018-2019 school year. (FF# 21.) To date, for the 2019-2020 school year, the same number of risk assessments have been conducted. (FF# 24.) The testimony and documentary evidence presented at hearing was uncontroverted. (FF# 37-38.)

Based upon the above, this Hearing Officer finds that the evidence is clear and overwhelming that the District has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of the Student, in a general education setting, is substantially likely to result in injury to the Student or to others. The District has met its burden with respect to this factor.

When determining whether an interim alternative placement is appropriate, the second factor to be considered is:

- (2) Whether the Student's current placement is appropriate.

The testimony and documentary evidence presented illustrate that the Student's current general educational placement is not appropriate. The overwhelming testimony at hearing reflects that a therapeutic day school is the appropriate placement for this Student. All District witnesses who testified at hearing agreed that the Student required a therapeutic day school setting. Further, the IEP team determination was supported by the conclusions of the mutually selected, outside evaluator, Dr. Howard. (FF # 18-19.) The Student's severe behaviors make

him unavailable for learning in the general education environment. (FF # 29.) He requires an educational environment with a low student-teacher ratio; staff trained to incorporate therapeutic behavioral modification elements into the classroom; individual and group therapy modalities; a parent/family support component; occupational and speech language services. (FF #14.) Stabilizing the Student's behavior is the primary goal at this time. (FF #14.) Despite multiple Functional Behavior Assessments (FBA) and several modifications to his Behavior Intervention Plan (BIP), the Student's behaviors have increased in intensity. (FF# 20-24.) This increased intensity of behaviors has resulted in injuries to the Student's classroom teacher and the assistant principal. Both injuries required on-going medical treatment. (FF #25-28.) Further, the Student has continued to engage in self-harm behaviors including eloping from the classroom and school building and running to the building staircase and threatening to throw himself over the rail in order to "die and go into the sky." (FF #22-23.) The testimony at hearing was consistent and uncontroverted, a therapeutic day school setting is the appropriate setting to support this Student given his severe behaviors and inability to self-regulate. (FF# 18-19, 37-38.)

This Hearing Officer finds based upon the uncontroverted testimony and documentary evidence presented at hearing that a therapeutic day school is the appropriate setting in which to stabilize the Student's behaviors and allow him to be available for learning. This Hearing Officer further finds that the District has met its burden with respect to this second factor.

When determining whether an interim alternative placement is appropriate, the third factor to be considered is:

- (3) Whether the District has made reasonable efforts to minimize the risk of harm in the Student's current placement, including the use of supplementary aids and services.

The hearing record is replete with the overwhelming amount of effort the District has made to minimize the risk of harm in the Student's current placement. The testimony at hearing

is clear and uncontroverted. The District implemented multiple supplementary aids and services in an effort to minimize the risk of harm and allow the Student to remain in his current placement. Specifically, the District implemented the Student's BIP during the 2018-2019 school year. During that time, the District conducted an FBA tracking the Student's identified behaviors for 214 school days. (FF #4-6.) In response to the Student's problematic behaviors, the District implemented a range of behavioral interventions including: classroom point system/daily reward system; shared paraprofessional that switched to an individual paraprofessional in May 2019; a "calm down" corner; breakfast with SW; lunch with peer buddies; movement breaks "training time" that allowed the Student to run in the hallways; sensory strategies; time-out in the classroom; a designated elopement area; instruction in Zones so he could verbalize what "zone" he was in; increased ability to earn choice time. (FF #8.) The Student's BIP was subsequently revised based upon the data collected during the 2018-2019 school year. Same was implemented during the 2019-2020 school year. (FF#11-13.)

An eight person crisis team was developed with CIP certified staff members to assist the Student to de-escalate and to keep him and others safe during periods of dysregulation. (FF#7.) Social work minutes were increased to provide a comparable level of support to that found in a therapeutic day school setting. (FF# 21.) A Safety Plan was developed and implemented to support the Student throughout the school building. (FF# 20.) A Behavioral Specialist was assigned to the Student and the staff team working with the Student. BS trained staff in BIP implementation and data collection to ensure that both were consistent and implemented with fidelity. (FF# 10.) The Student's second grade self-contained classroom was reconfigured to provide a higher staff to student ratio in order to provide further support to this Student. (FF# 25.) Supports were implemented in an attempt to address the Student's behavioral difficulties

during his bus rides to and from school. (FF# 9.) A mutually agreed upon outside evaluator was engage to conduct a neuropsychological evaluation during the summer of 2019 and she participated in the Student's September 13, 2019 eligibility and IEP meeting to provide her recommendations. (FF# 14-15, 18.) Dr. Howard, the outside evaluator, recommended a therapeutic day school placement and the IEP team accepted her recommendations. (FF#18.) Despite all of the supports and services implemented to assist the Student, his behaviors increased in intensity. During the 2019-2020 school year to date, the Student's behaviors have resulted in injuries to staff members. (FF# 25-28.) Further the Student has threatened self-harm is a able to articulate a plan to carry out his threats. (FF# 23-24.) All of the above efforts implemented by the District have been unable to effectuate stabilization of the Student's behavior.

Based upon the above, this Hearing Officer finds that the District made reasonable efforts to minimize the risk of harm in the Student's current placement, including the use of supplementary aids and services. This Hearing Officer further finds that the District has met its burden with respect to this factor.

When determining whether an interim alternative placement is appropriate, the fourth factor to be considered is:

- (4) Whether the interim alternative educational setting will permit full implementation of the student's IEP and includes services and modifications designed to prevent the undesired behavior from recurring.

The IEP Team recommended that the Student be placed in a therapeutic day school. (FF# 18-19.) Four possible therapeutic day schools were presented at hearing. All four schools are able to implement the Student's September 13, 2019 IEP. All four schools provide a small staff to student ratio; trained and licensed therapists on staff; all staff are trained in de-escalation

procedures; all school have a family participation component. The testimony and documentary evidence presented at hearing was uncontroverted. (FF# 33-36.)

Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that all four therapeutic day schools presented at hearing will permit full implementation of the Student's IEP. Further, the proposed schools provide trained and licensed therapists on staff who are trained in de-escalation procedures designed to prevent the Student's undesired behaviors from recurring. The District has met its burden with respect to the fourth factor to be considered.

In an expedited hearing in which the District is requesting removal of a Student to an interim alternative educational setting for not more than forty-five (45) days, the burden of demonstrating by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the child or others is the burden of the District alone. This Hearing Officer finds that the District has met its burden. The District has shown substantial evidence with respect to all of the four factors required. As all four factors required by 23 Ill. Admin. Code §226.665 have been met, this Hearing Officer hereby orders "change in the child's placement to an appropriate interim alternative educational setting for not more than 45 school days."

This Hearing Officer determines that:

The District has met its burden will respect to all four factors required for placement of the Student in an interim alternative educational setting pursuant to IDEA, the Illinois School Code and its implementing regulations pursuant to 20 U.S.C. §1415(k)(3), 34 C.F.R. §300.532 and §300.533, 105 ILCS 5/14-8.02(b), and 23 Ill. Admin Code §226.655 for not more than 45 school days.

Parents are directed to comply with the interim alternative educational placement process, including signing necessary releases, touring the facility, making the Student available and facilitating the Student's initial placement in the interim alternative educational setting.

District's request is hereby granted.

ORDER

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

The District's requested relief to change the Student's placement to an appropriate interim alternative educational setting, a therapeutic day school, for not more than 45 school days is granted.

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 shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of 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: December 9, 2019

/s/: Janet K. Maxwell-Wickett

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

[REDACTED]

APPENDIX A

[REDACTED] v. [REDACTED]

Case No: 2020-DP-0069

Student	[REDACTED] (Student)
Attending School	[REDACTED] Elementary School (LES)
Child's Parents/Petitioners	[REDACTED] (Father)
	[REDACTED] (Mother)
District Witnesses:	
Principal – [REDACTED] Elementary School	[REDACTED] (PRIN)
Assistant Principal – [REDACTED] Elementary School	[REDACTED] (AP)
School Psychologist	[REDACTED] (PSY)
School Social Worker	[REDACTED] (SW)
Special Education Teacher	[REDACTED] (SPED)
Behavioral Specialist	[REDACTED] (BS)
Private Day Specialist	[REDACTED] (ST)
Parent Witnesses:	
None.	
Therapeutic Day Schools:	[REDACTED] [REDACTED] (JSS)
	[REDACTED] [REDACTED] (MHA)
	[REDACTED] (A [REDACTED])
	[REDACTED] (CAE)