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

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[REDACTED] CCSD [REDACTED]

School District,

Case No: 2022-DP-0099

v.

Janet K. Maxwell-Wickett,  
Impartial Hearing Officer

STUDENT<sup>1</sup>,

**Expedited Hearing**

Student.

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**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 6-year-old, female who is currently a 1<sup>st</sup> grade student at a District elementary school. She is suspected of being a student with a disability. (IHO Exhibit #1.) The District filed its Expedited Due Process Hearing (DPCN) request on December 10, 2021 seeking to place the Student in a therapeutic day school for purposes of a case study evaluation alleging that it was dangerous to maintain the Student in her current educational placement as the Student is a danger to herself or others. (IHO Exhibit #1, 12.) The Parties participated in resolution session on December 17, 2021 but were unable to resolve the outstanding issues. (IHO Exhibit

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<sup>1</sup> Personal identification information is provided in Appendix A.

#7.) Based upon this, the 20-School Day timeline for this Hearing Officer to conduct the hearing began to run on December 10, 2021 with January 25, 2022 being the 20<sup>th</sup> school day. (IHO Exhibit #4.) The 10 School- Day deadline for this Hearing Officer to render a decision is February 1, 2022<sup>2</sup>. (IHO Exhibit #12.)

Parents were initially represented by legal counsel in this matter. The Prehearing Conference was held on January 4, 2022 and counsel for both parties participated in same. The Parties agreed to the following hearing dates: January 13 & 18, 2022. Further, Parents' legal counsel requested leave to file a response to the District's DPCN and leave to file same was granted. However, said response was never filed. (IHO Exhibit #12.) Subsequent to the Prehearing Conference, Parents' legal counsel withdrew from the representation on January 6, 2022. (IHO Exhibit #13.) The Due Process Hearing was held via Zoom video conference and Parents chose not to appear. Parents provided email correspondence to this IHO and District counsel which indicated they were aware of the due process hearing. They were also provided with Zoom meeting invitations for both hearing dates. (IHO Exhibits #15-19.)

The Parents opted for a closed hearing. The Due Process Hearing was held on January 13 & 18, 2022. Mr. [REDACTED] of Whitted Takiff LLC represented the District. Ms. [REDACTED] Student Services Coordinator at [REDACTED] CCSD 21 was the District Representative. The Parents were represented by Ms. Ashonta Rice Akiwowo of Rice Legal Services from the date of the filing through January 6, 2022 when she withdrew from the representation. (IHO Exhibit #13.) Parents did not appear at hearing. The District presented its witnesses. (IHO Exhibit #14-15.) The District presented the following Exhibits: District Exhibits SD# 1-3, 6-9, 18-23, 28, 38-46, 51-65, 68-71, 73-75, 78 which were introduced into evidence. The Parents did not appear at or participate in the hearing and did not present any exhibits. The Hearing

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<sup>2</sup> Based upon due process hearing dates of January 13 & 18, 2022.

Officer's Exhibits are: IHO Exhibits # 1-19. The District submitted a written outline of its closing statement and the case law relied upon. (IHO Exhibit #19.)

### **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 her 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 herself or others if her current educational placement is maintained which is a 1<sup>st</sup> grade general education setting. The District further requests that this Hearing Officer order a change of placement to the public therapeutic day school which is part of the District special education cooperative and order Parents to comply with the interim alternative educational setting placement process, including signing necessary releases, touring the facility, making the

Student available for evaluation and placement, 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 herself or others in her current educational placement, a general education 1<sup>st</sup> grade classroom in a district elementary school, and request 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 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 6-year-old, female who is currently in 1<sup>st</sup> grade. The Student is suspected of being disabled. The District has sought parental consent for an initial case study evaluation including a Functional Behavior Assessment (FBA) since September 3, 2021. The Student currently attends PES, a District general education elementary school in a 1<sup>st</sup> grade general education classroom. (Testimony of PRIN<sup>3</sup>, GE<sup>4</sup>, SW<sup>5</sup>, SSC<sup>6</sup>; SD# 1-3.)

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<sup>3</sup> PRIN is the Principal of PES, the District elementary school the Student attends. She has been so employed for the past 10 years. She holds a Bachelor's Degree in Special Education with an LBS1 endorsement. She holds a Master's Degree in Educational Leadership. She is so licensed in the State of Illinois and is CPI trained.

<sup>4</sup> GE is a general education 1<sup>st</sup> grade teacher at PES. She has been so employed for the past 4 years. She holds a Bachelor's Degree and an Illinois Professional Educator's License with ESL and Special Education endorsements.

2. The Student commenced attending PES in August 2021 after transferring from another District general education elementary school. The Student started exhibiting unsafe and dysregulated behaviors within the first several weeks of school. The behaviors started as withdrawal and refusal to engage in an activity and escalated to elopement from the classroom and school building. (Testimony of PRIN, GE, SSC; SD #38-46, 51-65.)

3. From August through December 2021, the Student engaged in instances of hitting, kicking, punching, scratching; throwing lunchboxes and materials in the classroom and in the school; running around the school building; running to the upstairs of the school building and threatening to jump off the second story stairs; running outside of the school building; running outside of the school building and off school grounds, getting farther and farther away from the school each time; climbing on furniture. (Testimony of PRIN, GE, SSC, SW; SD #38-46, 51-65.)

4. The Student expressed suicidal ideation. The Student eloped from the classroom and ran upstairs to the second floor of the building and indicated that she would jump and hit the stairs to harm herself. The Student eloped from the classroom and school building on several occasions running across the parking lot indicating that she wanted to die and wished that she would be kidnapped. She indicated that she would stab herself in the stomach or run onto the street and get run over by a car so she would never come back. The Student has an understanding of death and dying and could articulate a plan to harm herself. (Testimony of PRIN, SW; SD #44-46.)

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<sup>5</sup> SW is the school social worker. She has been so employed for the past 4 years. She holds a Bachelor's Degree in psychology and social work and a Master's Degree in Social Work with a specialization in school, child and family. She holds an Illinois Professional Educator's License in School Social Work.

<sup>6</sup> SSC is the District Student Services Coordinator. She has been so employed for the past three years. She holds a Bachelor's Degree in psychology with an educational specialist in school psychology endorsement. She holds an Illinois Professional Educator's License with endorsements in school psychology and school principal. She is trained in non-violent crisis intervention.

5. The Student's classroom has been evacuated due to her dysregulated behaviors and the school developed a school wide system to alert other teachers, staff and students to close classroom doors if they did not want visitors when the Student eloped from the classroom. Classmates and other students have expressed confusion and fear of the Student and her dysregulated behaviors. (Testimony of GE, PRIN, SSC; SD #38-46, 51-65.)

6. The Student's behaviors have increased in frequency, intensity and duration often lasting for the duration of the school day. Since November 2021, time outs and restraints have been needed to address the Student's behaviors on an almost daily basis, multiple times per day. The Student engages in unsafe behaviors multiple times per day and many times for the entire day. The behaviors are impulsive and the impulsivity is unpredictable making it difficult for school staff to manage. Interventions used by school staff may work one day but will not necessarily work the next. (Testimony of PRIN, SW, SSC; SD #1-3, 38-46, 51-65.)

7. School staff have been verbally abused, pushed, kicked, hit, punched and scratched leaving marks and bruises. (Testimony of PRIN, SW, SSC; SD #51-65.)

8. There are ten (10) to fourteen (14) adults working with the Student each day in order to attempt to manage her dysregulated and aggressive behaviors and keep her and others safe. (Testimony of PRIN, SW, SSC; SD #38-46, 51-65.)

9. As of November 15, 2021, the Student was only spending 52% of her time in the expected space with her general education peers. In addition, of that 52% of time, the Student was only working on assigned activities 41% of that time. Due to her behaviors, the Student has been unable to make academic progress this school year. The Student has missed a substantial amount of academic instruction because she has been outside of the classroom engaged in dysregulated and unsafe behaviors. (Testimony of GE; SD #1-3, 38-46, 51-65.)

10. The Student has been unable to make any gains in her social emotional development this school year and her behaviors negatively impact her ability to establish relationships with her peers. (Testimony of SD; SD #1-3, 38-46, 51-65.)

11. Other students attending PES are unable to obtain needed supports because up to fourteen (14) adults are working with this Student each day attempting to manage her behaviors and keep her safe and are therefore unable to work with other students assigned to their caseloads. (Testimony of GE, SW, SSC; SD #1-3, 38-46, 51-65.)

12. District staff have attempted to provide special education interventions, however, Parents have refused to cooperate. The District began reaching out to Parents on September 3, 2021 in order to discuss a case study evaluation and/ or a functional behavior assessment. Parents refused to attend requested meetings and have made the Student unavailable for evaluation by the District. (Testimony of GE, PRIN, SSC, SW; SD #1-3, 6-9, 18-23, 28, 45.)

13. The District initiated a due process proceeding on October 8<sup>th</sup> in order to obtain an order permitting the District to evaluate without parental consent. At a resolution session, Parents finally agreed to an outside evaluation and a domain meeting was held on November 15<sup>th</sup>. Although the evaluation was agreed upon, the Parents did not provide consent until December 3<sup>rd</sup>. To date, Parents have not signed a release of information to allow the outside evaluator to proceed with the evaluation. (Testimony of GE, PRIN, SSC; SD #1-3, 6-9, 28.)

14. Parents shared negative feelings about school staff with the Student causing confusion and hindering the staff's ability to support the Student. (Testimony of PRIN, SW.)

15. Within the first several weeks of school, a problem-solving team comprised of school administrators, District administrators, school psychologist, school social worker and GE convened to discuss the Student and how best to support her in the classroom. The team met

twice in September, once in October and once in November. School staff communicated routinely to adjust interventions within the school to support the Student. (Testimony of GE, PRIN, SSC, SW.)

16. Visual supports were added for the Student in the classroom, on the Student's desk, in the school calming room and on the lanyards of the Student's support staff so there would be visuals to support her anywhere in the building. The Student received an individualized Social Emotional Learning (SEL) curriculum to work on unexpected behaviors. The classroom calming corner was modified to the Student with the desk rearranged for her and her own box of sensory tools, tailored to her individualized needs and preferences, provided. GE consulted with the special education teacher, school social worker, school psychologist, and District behavioral specialist to provide supports. Alternate seating was provided and strategies including an individualized positive reward system, social stories, adult attention, positive praise, proximity to teacher, and "if...then" choices were utilized. (Testimony of GE, SW, PRIN; SD #38-46, 68-71, 73-75, 78.)

17. A safety plan was created on September 27, 2021 and updated to reflect additional information. When existing interventions were unsuccessful, adult support in the form of a teacher aide was assigned to the Student's 1<sup>st</sup> grade classroom to support her. For safety reasons, there were never less than two adults with the Student at all times. Due to the intensity of the Student's behaviors, the District allocated all ten (10) support staff at PES and up to fourteen (14) adults could be involved to support the Student on a given day. (Testimony of GE, SW, PRIN, SSC; SD #18-23, 28, 38-46, 51-65, 68-71, 73-75, 78.)

18. PES staff utilized the District behavior specialist who observed staff and Student and provided and modeled additional supports and interventions. However, the Student could

not remain in the classroom long enough due to her dysregulated behaviors to benefit from some of the provided interventions. (Testimony of SW; SD #54.)

19. The District and school staff exhausted all Tier I, II and III level behavioral interventions. However, the Student's dysregulated and unsafe behaviors increased in frequency, intensity and duration and staff were unable to determine antecedents for the behaviors. Further, staff were unable to find any interventions that worked consistently to support the Student. (Testimony of GE, SW, PRIN, SSC; SD #18-23, 28, 38-46, 51-65, 68-71, 73-75, 78.)

20. The Student requires a therapeutic day school setting for the case study evaluation and functional behavior assessment (FBA) as the general education environment cannot provide the required behavioral support to the Student. (Testimony of GE, SW, SSC, PRIN.)

21. TRS is a public therapeutic day school affiliated with the District special education cooperative. It services students in kindergarten through 8<sup>th</sup> grade with emotional disabilities who cannot attend their home schools due to aggressive behaviors. It is engaged in identifying social emotional deficits and assisting students with same in order to integrate them back into their home schools. (Testimony of SSC, MW<sup>7</sup>.)

22. TRS has ten (10) classrooms and each classroom covers two to three grade levels. In the kindergarten through third grade classroom there is a two to one student to staff ratio. Each classroom has a social worker or school psychologist, two classroom aids, a special education teacher with LBS1 certification. In addition there are two building assistants to provide substitute and behavior support. All staff are Crisis Prevention Institute (CPI) trained. All therapists are trained in crisis intervention/de-escalation. (Testimony of SSC, MW.)

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<sup>7</sup> MW is the Principal of TRS, a public therapeutic day school associated with the District special education cooperative. He holds a Bachelor's Degree in Political Science and a Master's Degree in Social Work and a Master's Degree in the Principal Prep Program. He holds an Illinois Professional Educator's License in Social Work and as a School Principal.

23. The social worker/school psychologist support assigned to each classroom allows the program to be proactive in responding to student dysregulation which reduces elopement and aggressive behaviors. The high staff to student ratio allows staff to work proactively to avoid student elopement from the school building. (Testimony of SSC, MW.)

24. TRS uses UKERU which is a technique in which staff use mats to deflect aggressive student behavior including hits, kicks, and punches without hands on the student. This technique allows staff to use verbal cues to de-escalate a situation in an effort to avoid hands on crisis intervention techniques. (Testimony of MW.)

25. TRS can serve as a diagnostic placement for students needing a case study evaluation. It conducts case study evaluations of students including full case study evaluations, functional behavior assessments and creation of behavior intervention plans, and triennial re-evaluations of students. (Testimony of SSC, MW.)

26. TRS employs seven (7) social workers, three (3) school psychologists, a speech language pathologist, a physical education teacher, a school nurse, an assistant school nurse, and an occupational therapist provides related services in the building three times per week. (Testimony of MW.)

27. TRS has a STEM lab and provides grade level academic instruction to its students. All classrooms have two-way radios. All students receive group therapy two times per week; daily social emotional learning; and individual therapy. Therapists partner with parents to translate behavioral interventions into the home as well. There are sensory rooms for students to use. Students can go on walks outside and use the multipurpose room. Classrooms are large with few students so students can find space to work away from others. Students have desks with their own sensory reeducation tools designed to meet each student's individual needs. De-

escalation techniques are available to support students and pro-actively address dysregulation.  
(Testimony of MW.)

28. TRS is able to complete the Student's case study evaluation per the domain paperwork with the staff and related service providers it employs. (Testimony of MW, SSC; SD #2.)

29. TRS has the therapeutic supports and staffing to prevent the Student's behaviors from recurring. (Testimony of SSC, MW.)

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

31. The documentary evidence presented by the District at hearing was uncontroverted. (Testimony of PRIN, SW, GE, SSC; SD#1-3, 6-9, 18-23, 28, 38-46, 51-65, 68-71, 73-75, 78.)

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact, the arguments of 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 attends a general education elementary school in a 1<sup>st</sup> grade general education classroom. (FF #1-2.) She is unavailable for learning due to unsafe and dysregulated behaviors.

(FF #2-8.) The Student engages in problematic and unsafe behaviors with no apparent antecedents. Specifically, the Student engages in the following behaviors: hitting, kicking,

punching, scratching; throwing lunchboxes and materials in the classroom and in the school; running around the school building; running to the upstairs of the school building and threatening to jump off the second story stairs; running outside of the school building; running outside of the school building and off school grounds, getting farther and farther away from the school each time; climbing on furniture. (FF# 3, 19.) The Student expresses suicidal ideation. She has eloped from the classroom and run upstairs to the second floor of the building and indicated that she would jump and hit the stairs to harm herself. The Student eloped from the classroom and school building on several occasions running across the parking lot indicating that she wanted to die and wished that she would be kidnapped. She indicated that she would stab herself in the stomach or run onto the street and get run over by a car so she would never come back. The Student has an understanding of death and dying and could articulate a plan to harm herself. (FF #4.) Classmates and other students have expressed confusion and fear of the Student and her dysregulated behaviors. (FF# 5.)

The Student's behaviors have increased in frequency, intensity and duration often lasting for the duration of the school day. Since November 2021, time outs and restraints have been needed to address the Student's behaviors on an almost daily basis, multiple times her day. The Student engages in unsafe behaviors multiple times per day and many times for the entire day. (FF #6.) School staff have been verbally abused, pushed, kicked, hit, punched and scratched leaving marks and bruises. (FF #7.) There are ten (10) to fourteen (14) adults working with the Student each day in order to attempt to manage her dysregulated behaviors and keep her and others safe. (FF #8.) The testimony and documentary evidence presented at hearing was uncontroverted. (FF# 1-8, 30-31.)

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 for purposes of obtaining a case study evaluation and functional behavior assessment. All District witnesses who testified at hearing agreed that the Student required a therapeutic day school setting as the PES staff have exhausted all Tier I, II, and III behavioral interventions without success. (FF# 19-20.) The Student's severe behaviors make her unavailable for learning in the general education environment. She has been unable to make academic gains or social emotional learning gains due to her dysregulated behavior and significant amount of time outside of the classroom. (FF # 8-11.) Further, she has been unable to establish positive relationships with her peers. (FF #10.) Despite significant interventions by administrators and staff, the Student's behaviors have increased in frequency, intensity and duration. (FF #6.) The testimony at hearing was consistent and uncontroverted, the general education setting has been unable to support the Student and assist her with managing her unsafe and dysregulated behaviors and is therefore inappropriate. (FF# 6-11, 30-31.)

This Hearing Officer finds based upon the uncontroverted testimony and documentary evidence presented at hearing that the general education setting is inappropriate. 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 significant 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 consistently attempted, since September 3, 2021, to provide special education services to the Student, however, the Parents' lack of cooperation has precluded these interventions. (FF #12-14.) During the first several weeks of the school year, a problem-solving team was created to discuss how best to support the Student in the classroom and address her dysregulated and unsafe behaviors. That team met at least monthly and school staff communicated routinely to adjust interventions within the school to support the Student. (FF #15.)

Visual supports were added for the Student in the classroom, on the Student's desk, in the school calming room and on the lanyards of the Student's support staff so there would be visuals to support her anywhere in the building. The Student received an individualized Social Emotional Learning (SEL) curriculum to work on unexpected behaviors. The classroom calming corner was modified to the Student with the desk rearranged for her and her own box of sensory tools, tailored to her individualized needs and preferences, provided. GE consulted with the special education teacher, school social worker, school psychologist, and District behavioral specialist to provide supports. Alternate seating was provided and strategies including an

individualized positive reward system, social stories, adult attention, positive praise, proximity to teacher, and “if...then” choices were utilized. (FF # 16.) A safety plan was created on September 27, 2021 and updated to reflect additional information. When existing interventions were unsuccessful, adult support in the form of a teacher aide was assigned to the Student’s 1<sup>st</sup> grade classroom to support her. For safety reasons, there were never less than two adults with the Student at all times. Due to the intensity of the Student’s behaviors, the District allocated all ten (10) support staff at PES and up to fourteen (14) adults could be involved to support the Student on a given day. (FF #17.)

The District and school staff exhausted all Tier I, II and III level behavioral interventions. However, the Student’s dysregulated and unsafe behaviors increased in frequency, intensity and duration and staff were unable to determine antecedents for the behaviors. Further, staff were unable to find any interventions that worked consistently to support the Student. (FF #19.) The District behavior specialist observed staff and Student and provided and modeled additional supports and interventions. However, the Student could not remain in the classroom long enough due to her dysregulated behaviors to benefit from some of the provided interventions. (FF #18.)

Despite all of the supports and services implemented to assist the Student, her behaviors increased in intensity and duration. 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 all available Tier I, II and III interventions. Further, the District has attempted to provide special education services to the Student but has

been unable to do so due to the Parents' failure to cooperate. This Hearing Officer 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 District requests that the Student be placed at TRS, a public therapeutic day school affiliated with the District special education cooperative for, at a minimum, the completion of a case study evaluation and functional behavior assessment (FBA). TRS serves students in kindergarten through 8<sup>th</sup> grade with emotional disabilities. It is engaged in identifying social emotional deficits and assisting students with same in order to integrate them back into their home schools. (FF #21.) TRS has small class sizes with a student to staff ratio of two to one. Each classroom has a social worker or school psychologist, two classroom aids, a special education teacher with LBS1 certification. In addition there are two building assistants to provide substitute and behavior support. All staff are Crisis Prevention Institute (CPI) trained. All therapists are trained in crisis intervention/de-escalation. (FF #22.) Due to the two to one student to staff ratio and a social worker or school psychologist in each classroom, TRS is able to proactively identify and respond to student dysregulation in order to reduce elopement and aggressive behaviors. (FF #23.)

Further, TRS uses UKERU techniques which allow staff to de-escalate aggressive behaviors using mats and verbal cues to avoid hands on crisis intervention. (FF #24.) TRS is able to serve as a diagnostic placement for students needing a case study evaluation. It conducts case study evaluations of students including full case study evaluations, functional behavior assessments and creation of behavior intervention plans, and triennial re-evaluations of students.

(FF #25.) TRS is able to provide special education and related services to its students along with individual and group therapy within a small class-size setting. (FF #26-27.) Its therapeutic supports and staffing are designed to prevent the Student's unsafe, aggressive, and dysregulated behaviors from recurring. (FF #26-29.) TRS can complete the Student's case study evaluation per the domain paperwork created by the school team. (FF #28.) This testimony was uncontroverted at hearing. (FF #30-31.)

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 a “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. In the event Parents refuse to cooperate, the Student must attend the interim alternative educational setting, a therapeutic day school for students with emotional disabilities, and allow the case study evaluation to be completed prior to the Student's enrollment in a local elementary school.

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, TRS, for not more than 45 school days is granted.

Parents are ordered to comply with the IAES placement process including signing all necessary releases, touring the facility, making the Student available for evaluation, and facilitating the Student's initial placement at the IAES.

In the event Parents refuse to cooperate, the Student is hereby ordered to attend TRS and allow the case study evaluation to be completed prior to the Student's enrollment in a local elementary school.

In accordance with 105 ILCS 5/14-8.02a(h), within 45 calendar days of receipt of this Order, the school district must submit proof of compliance to:

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

### **NOTICE OF RIGHT TO REQUEST CLARIFICATION**

Pursuant to 105 ILSC 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification 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: January 27, 2022

[Redacted]

/s/: Janet K. Maxwell-Wickett  
Janet K. Maxwell-Wickett,  
Impartial Hearing Officer

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Email: [Redacted]

**APPENDIX A**

██████████ CCSD ██████ v. ██████ ██████  
Case No: 2022-DP-0099

Student	██████████ (Student)
Attending School	██████████ Elementary School (PES)
Child's Parents	██████████ (Father)
	██████████ (Mother)
District Witnesses:	
General Education Teacher - 1 <sup>st</sup> Grade	██████████ (GE)
Principal – ██████ Elementary School	██████████ (PRIN)
School Social Worker	██████████ (SW)
Student Services Coordinator	██████████ (SSC)
Principal - Timber Ridge School	██████████ (MW)
Parent Witnesses:	
None.	
Therapeutic Day School:	██████████ (TRS)