

[REDACTED]

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

STUDENT¹,

Student,

Case No: 2022-DP-0130

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

[REDACTED] SD [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 an 11-year-old, male who is a 5th grade student at a District elementary school. He qualifies for special education services under the disability category of Emotional Disability (ED) pursuant to an IEP and eligibility meeting on December 1, 2020. The Student has been enrolled in the District since third grade and has received special education supports and services since at least first grade. The Student struggles with behaviors that impede his learning, specifically self-injurious behaviors, vocal disruption, refusal and aggression.

¹ Personal identification information is provided in Appendix A.

Parent maintains the following: (1) The District violated the mandates of the IDEA and the Illinois School Code from October 2021 to the present by failing to revise the Student's IEP and BIP to address his sensory dysregulation and add appropriate related services in the areas of occupational therapy and paraprofessional support; (2) The District failed to provide the Student with a free and appropriate public education (FAPE) in the least restrictive environment (LRE) when the IEP team determined that a therapeutic day school was the appropriate placement to meet the Student's educational and behavioral needs. (IHO Exhibit #1, 11, 17, 27.)

The Parent, *pro se*, filed a due process hearing request on January 12, 2022. (IHO Exhibit #1.) Subsequently, legal counsel filed an appearance in this matter on Parent's behalf and the due process complaint notice was subsequently amended on March 24, 2022. (IHO Exhibits #6, 11.) The Amended Due Process Complaint Notice was accepted and the 45-day timeline reset as new issues were raised in the amended request. (IHO Exhibit #12.) The District filed its response to the amended hearing request on April 11, 2022. (IHO Exhibit #18.) The parties participated in mediation on March 2, 2022. However, they were unable to resolve the outstanding issues. (IHO Exhibit # 17.) Parent's legal counsel withdrew its appearance on April 4, 2022, and Parent proceeded at the due process hearing self-represented. (IHO Exhibit #13, 17, 27.)

The 45-day timeline was reset when the Amended Due Process Complaint Notice was filed and accepted. (IHO Exhibit #11, 12.) No continuances were requested. The Prehearing Conference was completed on April 8th and the Due Process Hearing dates were set by

agreement for April 27, 28 and May 2, 2022². The decision due date is set for June 7, 2022³.

(IHO Exhibit #17.)

The Parent opted for a closed hearing. The Due Process Hearing was held on April 27-28, 2022. Parent represented herself and her Student *pro se*. Ms. [REDACTED] of Robbins Schwartz represented the District and Ms. [REDACTED] Director of Student Services, served as the District Representative. The Parent presented one individual witness and the remaining witnesses were joint witnesses.⁴ The Parent presented the following Exhibit (PE): #3-6 which was admitted into evidence. The District presented the following Exhibits (SD): # 1-2, 4-7, 9-16, 19, 21-24, 26-31, 33-34 which were admitted into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-33. Both parties submitted oral closing statements, a written outline thereof, and provided citations to any case law relied upon. No stipulations or agreed upon facts were submitted by the parties.

ISSUES

The issues raised by the Parents, including the relief requested, and the response of the District, present the following issues, defenses and requested relief for determination by this Hearing Officer:

- (a) Withdrawn per Parent request.
- (b) Withdrawn per Parent request.
- (c) Whether in October 2021, the District revised the Student's IEP and BIP to address his sensory dysregulation and added appropriate related services in the areas of occupational therapy and paraprofessional support in order to provide FAPE.

² The May 2, 2022 hearing date was not needed as both parties presented their respective cases and closing arguments in two days on April 27-28.

³ As the hearing was completed on April 28, 2022, the decision due date is May 12, 2022.

⁴ Witnesses presented by both parties are identified in Appendix A.

Parent maintains that the District failed to revise the Student's October 2021 IEP and BIP to address his sensory dysregulation and failed to add appropriate related services including occupational therapy and additional paraprofessional support minutes. The District maintains that it revised the Student's IEP and BIP during the time period at issue and added accommodations to address the Student's sensory issues. The occupational therapist consulted with the IEP team and worked with the team to design additional services which were provided in the IEP. The Student's IEP provided for 1:1 paraprofessional aide support. Based upon this, the District maintains that the Student was provided a FAPE at all times in question.

(d) Withdrawn per Parent request.

(e) Whether the proposed therapeutic day school placement provides the Student with a FAPE in the least restrictive environment (LRE).

Parent maintains that the general education setting with pull-out special education services in math and writing and a 1:1 paraprofessional aide including social work service minutes, occupational therapy service minutes, and a behavior intervention plan (BIP) is the least restrictive environment in which the Student can receive a FAPE. The District maintains that the current general education setting is not appropriate as the Student's behavioral needs prevent him from receiving an education there and the proposed therapeutic day school placement is the least restrictive environment in which the Student can receive a FAPE.

At the Prehearing Conference, issues (a) through (e) were certified by this Hearing Office for hearing⁵. During the April 25, 2022, Status Conference, Parent withdrew her request for a due process hearing related to issues (a), (b), and (d) and same were stricken from this Hearing Officer's consideration pursuant to her Status Call Order dated April 26, 2022.

Parent requests the following relief:

- a. Order the District to add related services to the Student's IEP including occupational therapy and additional paraprofessional minutes;
- b. Order the Student to be placed in special education for 26% of his school day and the remainder of the time in the general education setting in the District elementary school he currently attends.

FINDINGS OF FACT

This Hearing Officer did not have the benefit of a transcript with respect to the testimony heard when writing this decision. Therefore, the following is based upon this Hearing Officer's

⁵ See this Hearing Officer's Prehearing Report & Order dated April 12, 2022.

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. After considering all the evidence, as well as the arguments of both District counsel and Parent, this Hearing Officer's Findings of Fact are as follows:

1. The Student is an 11-year old male who is currently a 5th grade student at a District elementary school. He qualifies for special education services under the disability category of Emotional Disability (ED) pursuant to an eligibility and IEP meeting on December 1, 2020. He has been eligible for special education services since at least first grade, May 17, 2018. (Testimony of DR, SW, PSY; SD #1-7.)

2. The Student has been enrolled in the District since third grade. (Testimony of Parent, DR, SW, PSY; SD #1-7.)

3. The Student is currently in 5th grade and struggles with behaviors which impede his availability for learning. The behaviors include aggression, disruption, refusal, self-inflicted/injurious behavior, and vocal disruption. (Testimony of DR, SW, LBS, PSY, PRIN, GE, BCBA; SD #9-16, 19, 21, 26-31, 34.)

4. In October 2020, the District conducted a triennial reevaluation of the Student. At that time the domains identified for reevaluation were academic achievement, functional performance, health, and social emotional status. The consent for reevaluation form, with these identified domains, was sent home to Parent. Parent signed and returned the consent form. No fine or gross motor or sensory concerns were raised by any staff members or Parent. Neither Parent nor staff requested that the Student be evaluated for occupational therapy services as no concerns were noted in that area. (Testimony of SW, PSY; SD #5-7.)

5. Neither Parent nor classroom staff has raised concerns about the Student's fine or gross motor or sensory skills since that time to the present. Writing is a non-preferred activity so the Student's hand writing is sometimes illegible. However, this is due to the fact that writing is a non-preferred activity; it is not a skill deficit. (Testimony of DR, PSY, GE, SW, LBS; SD #5-7, 9-11, 14, 16, 19, 24.)

6. As part of the Student's triennial reevaluation, a Functional Behavioral Analysis (FBA) was conducted which included classroom observations and a collection and review of antecedent, behavior, and consequence data and review of ongoing data collected related to the Student's behaviors of concern, including noncompliance and disruptive behavior. As a result of the analysis, it was determined that the primary function of the Student's behavior is escape. The Student engages in noncompliant and disruptive behaviors to escape tasks that are non-preferred, challenging, or require sustained attention and effort; to escape from the classroom environment; to escape from demand/request/directions from teachers; to escape from social interactions that cause him strong feelings. (Testimony of SW; SD #5-7.)

7. Rating scale data using the Behavior Assessment System for Children Third edition (BASC-3) was also collected from Parent and classroom staff who worked directly with the Student. The data revealed clinically significant emotional and regulations skills as reported by both Parent and classroom staff in the areas of Externalizing Problems, Internalizing Problems, Behavioral Symptoms Index, and Adaptive Scales. This indicated significant social emotional and adaptive skill needs. (Testimony of SW; SD #7.)

8. At the December 1, 2020 IEP meeting, the Student was found eligible for special education services as a student with an Emotional Disability (ED). The Student's Behavior Intervention Plan (BIP) was updated to include preferential seating in the classroom, visual

supports, opportunities for breaks/use of calming tools, use of redirection strategies, use of positive reinforcement by teachers when the Student is displaying expected behaviors. Self-regulation strategies were implemented including Zones of Regulation, Social Thinking, and the Second Step curriculum. The social emotional goal was updated and direct social work services were increased. (Testimony of SW; SD #7.)

9. The Student is capable of demonstrating grade level academic skills, however, he is unable to maintain proper behavior regulation and requires significant intervention and support when he is upset or confronted with non-preferred tasks or assignments. To support these needs, the IEP included direct special education support in the general education classroom, social work support, and a Behavior Intervention Plan (BIP) to address his behavioral difficulties. One to one paraprofessional support throughout his school day was provided to support behavioral and emotional regulation and engagement in learning and classroom activities. (Testimony of PSY; SW, LBS; SD #7.)

10. The Student has had a BIP since he enrolled in the District in third grade. (Testimony of SW; SD # 1-2.)

11. The Student has received one to one support from a paraprofessional aide since entering the District at the beginning of third grade. (Testimony of DR, PRIN, PSY, SW, LBS; SD #2, 4, 7, 10, 14, 16, 19, 24.)

12. Thereafter, the IEP team began regular meetings to review and update the Student's IEP and BIP in an effort to promote his engagement in educational activities and regulation of his disruptive behaviors. (Testimony of DR, SW, PSY, LBS; SD #9-11, 14, 16.)

13. During his fourth and fifth grade school years, the Student was not engaged in the learning process and was not progressing toward grade level standards. He would voluntarily

seat himself in the back of the classroom, with his back to the classroom teacher, hoodie pulled up, with headphones on, playing games on his Chromebook. SW, LBS, and PRIN spent significant time in his general education classroom on a daily basis attempting to foster his engagement in the learning environment and classroom activities to no avail. (Testimony of DR, SW, LBS, GE, PRIN; SD #33-34.)

14. Due to the Student's escalating behaviors, in Spring 2021, the District engaged a private Board Certified Behavior Analyst (BCBA) to conduct an updated Functional Behavioral Assessment (FBA) and recommend updates to the Student's Behavioral Intervention Plan (BIP). BCBA's data confirmed that escape/avoidance of demands and attention from others, primarily adults, were the functions of the Student's behaviors. The IEP team, including Parent and BCBA, met to review and revise the Student's BIP and IEP. BCBA worked closely with the school team to model and coach effective behavioral responses to the Student's behaviors. (Testimony of BCBA, DR, SW,LBS, PRIN; SD # 13-14,16, 28.)

15. On March 18, 2021, staff support was increased to two adult staff with the Student at all times due to false accusations the Student made about staff. The two adults with the Student at all times consist of a paraprofessional aide and the principal, special education teacher, or social worker. (Testimony of DR, PRIN, LBS, SW; SD #24.)

16. The Student's IEP team met nine (9) times during the 2020-2021 and 2021-2022 school years to address concerns related to the Student's dysregulated, aggressive, non-compliant behavior and lack of engagement and participation in the educational activities in the classroom. During these meetings, the Student's IEP and BIP were reviewed and revised. Interventions and supports were changed; goals and objectives were added; additional special education minutes were added; additional social work minutes were added; an outside BCBA was engaged to assist

with the FBA and BIP and to provide an additional ten (10) hours of coaching to classroom and teaching staffing working with the Student. Academic demands were reduced/faded and a shortened school day was trialed. (Testimony of BCBA, SW, DR, LBS, PSY, GE; SD # 5, 7, 9-11, 14, 16, 19, 24.)

17. The IEP team encouraged Parent to consider placement of the Student in the highly structured educational program, the LEAF program, in the District. The LEAF program is designed to support students with significant behavioral and emotional regulation, and social skill needs. Parent refused to explore or consider this possible placement. (Testimony of DR, SW, LBS, PSY, Parent; SD #9-11, 14, 16, 19, 24.)

18. At the beginning of the 2021-2022 school year, BCBA returned to the school to provide coaching to teachers and classroom staff working with the Student. School staff understood the agreed upon behavioral intervention strategies recommended and coached by BCBA and were correctly and appropriately implementing them in the Student's program. (Testimony of BCBA, GE, SW, LBS.)

19. The goal of demand fading is to reduce demands in order to allow the student to build confidence and experience success and then slowly increase the demands and expectations to obtain increased compliance from the Student. To date, the school team has been unable to increase demands and expectations for the Student. (Testimony of BCBA, GE, SW, LBS, PSY, DR; SD #33-34.)

20. An IEP meeting was held on October 26, 2021, at that time the team reviewed in detail the Student's behavioral data. From August 18, 2021 to October 15, 2021, the Student was verbally and physically aggressive on fourteen (14) out of twenty-nine (29) days or forty-eight

percent (48%) of the days. Aggressive behaviors include hitting, kicking, poking, choking, and throwing items at another person. (Testimony of SW; SD # 19, 24.)

21. To address the Student's increasing verbal and physical aggression, a positive reinforcement plan was created to reward the Student when he was not engaging in aggression toward others. Additional supports were added including additional special education instruction within the general education and special education settings to provide direct skill instruction to the Student to address the behaviors that were interfering with his educational progress.

(Testimony of SW, LBS, BCBA; SD # 19, 21.)

22. From October 19, 2021 to December 7, 2021, the Student engaged in aggression fifty-five percent (55%) of the days present in school and he engaged in disruption sixty-one percent (61%) of the days present. (Testimony of SW, LBS; SD # 24.)

23. During the 2021-2022 school year, through January 6, 2022, the Student was suspended for more than 10 full days due to aggressive behaviors. (Testimony of SW, LBS, PRIN; SD #24.)

24. The Student's maladaptive behaviors impede his ability to connect with and form lasting friendships and relationships with peers. He is aggressive toward peers in unstructured settings, including lunch and recess. His behavior confuses peers and makes them uncomfortable.

(Testimony of SW, GE, DR.)

25. On January 6, 2022, an IEP team meeting was held to review and revise the Student's IEP and to conduct a manifestation determination due to the number of out of school suspensions the Student received as a result of his aggressive behaviors toward staff and other students. The amount of time the Student spent outside of the classroom due to his dysregulated behaviors, on a daily basis, had increased to forty-three percent (43%) of his school day. He engaged in

physical aggression toward staff and other students on forty-eight percent (48%) of the days he was in attendance at school. Further, his engagement in learning had significantly decreased.

(Testimony of SW, LBS, GE, PRIN; SD #24, 26.)

26. The Student's current functioning reflected an increase in aggression and time out of the classroom and a decrease in listening to instruction and working as expected. On January 6, 2022, the IEP team recommended that the Student be placed in a therapeutic day school setting.

(Testimony of DR, SW, LBS, PRIN, PSY, GE; SD #24.)

27. Parent did not agree with the IEP team recommendation of a therapeutic day school placement. (Testimony of Parent; SD #24.)

28. Data collected since the January 6, 2022, IEP meeting reveals that the Student spends approximately thirty-one percent (31%) of his time on-task compared to same age peers who spend approximately ninety-one percent (91%) of classroom instruction time on-task.

(Testimony of PSY; SD #27.)

29. The Student's aggressive behavior have increased and his engagement in learning and progress toward his goals and grade level standards has declined. The Student is not engaged in educational activities in the classroom. He continues to sit in the back of the classroom, facing away from the teacher, with headphones on, not responding to the efforts of the classroom teacher, social worker, and special education teacher to promote his engagement. He spends on average three (3) hours each day outside of the general education classroom and the academic demands placed on him are less than half those of a typical fifth grade student. (Testimony of

DR, SW, LBS, GE, PRIN; SD #24-25, 29-31.)

30. The Student's educational needs are not being met in the general education setting. He is unable to make academic or behavioral progress in the current general education setting.

(Testimony of DR, SW, LBS, PRIN, GE, PSY; SD #14-16, 19, 21-24, 33-34.)

31. The District has exhausted available supports and services in its attempts to educate the Student in the general education setting. (Testimony of DR, SW, LBS, PRIN, PSY, GE; SD #24.)

32. The Student requires a therapeutic day school setting to meet his needs. His social emotional and behavioral needs are paramount and need to be addressed before he is available for academic learning. He requires a small classroom setting with access to special education teachers, paraeducator support, mental health professional support, and social work support all delivered in a consistent, structured setting. He requires positive behavioral interventions (rewards and incentives) and sensory and social emotional support built into the curriculum to target his aggressive, disruptive, non-compliant behaviors. (Testimony of DR, PRIN, PSY, SW, LBS, GE; SD #16, 19, 24, 33-34.)

33. MA is a therapeutic day school designed to meet the needs of students with social emotional and behavior deficits which impede their educational progress. It provides small class sizes in a consistent, structured setting with social work, special education, mental health and paraeducator support within its classrooms. Its curriculum uses positive behavior interventions and sensory supports to address the behavioral and academic needs of its students. It provides individualized, specialized instruction to meet the needs of its students. MA is a therapeutic day school that can meet the needs of this Student. (Testimony of DR, PSY, SW, PRIN.)

34. The testimony of DR, SW, LBS, PSY, PRIN, and GE was uncontroverted by Parent at hearing. SW, LBS, and PRIN have worked with the Student providing direct services to him for

at least the last two school years (his 4th and 5th grade school years). This Hearing Officer finds the testimony of DR, SW, LBS, PSY, PRIN, and GE to be credible and persuasive. This is based upon their educational backgrounds, experience, time working with or direct familiarity with the Student, and the consistency of their respective testimony.

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:

Free Appropriate Public Education (FAPE)

The Individuals with Disabilities Education Act ("IDEA") guarantees children with disabilities the right to a free, appropriate, public education ("FAPE"). 20 U.S.C. §1412(a)(1). In order to determine whether a school district has provided a FAPE requires the determination of whether the school district complied with the procedural and substantive requirements of IDEA. *Board of Education of the Hendrick Hudson Central School District, Westchester County et. al. v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034 (1982). In matters alleging a procedural violation, the hearing officer may find that a student did not receive a FAPE only if the procedural inadequacy impeded the student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decisions-making process regarding the provision of a FAPE to the parent's child or caused a deprivation of educational benefit. 20 U.S.C. §1415(f)(3)(E); 34 C.F.R. §300.513(a); *Rowley* at 206-207. In the instant case, Parent's due process complaint notice does not allege any procedural violations of the IDEA.

As recently clarified by the United States Supreme Court, under the Individuals with Disabilities Education Improvement Act ("IDEA"), a school satisfies its substantive obligation to

provide a free appropriate public education by offering a child “an IEP reasonably calculated to enable a child to make progress in light of the child’s circumstances.” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, No. 15-827, 137 S.Ct. 988 (U.S. Mar. 22, 2017.) “[A]n IEP is reasonably calculated to confer educational benefit when it is ‘likely to produce progress, not regression or trivial educational advancement.’” *Alex R. ex rel. Beth R. v. Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 615 (7th Cir. 2004.) [T]he progress contemplated by the IEP must be appropriate in light of the child’s circumstances. . . . The instruction offered must be ‘*specially designed*’ to meet a child’s ‘*unique needs*’ through an *individualized* education program.” *Endrew F.*, 137 S.Ct. 988. The IEP is to provide a statement of the “special education and related services and supplementary aids and services . . . to be provided to the child.” 34 C.F.R. 300.320(a)(4).

The IEP is the “centerpiece” of the IDEA. The IEP is constructed only after careful consideration of the child’s present levels of performance of achievement, disability, and potential for growth. For a child not integrated in the regular education classroom, a child’s IEP may not need to aim for grade level advancement if that is not a reasonable prospect for the child. *Endrew F. v. Douglas County Sch. Dis. Re-1*, 375 S. Ct. 988, 69 IDELR 174 (US 2017). The child’s program, however, “must be appropriately ambitious in light of the circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom.” *Id.* The goals can differ; however, the goals should provide the child with the chance to “meet challenging objectives.” The IEP must also aim to enable the child to make progress. The Supreme Court explained that an IEP which provides for merely more than de minimis progress from year to year “can hardly be said to have offered an education at all.” *Endrew F. v. Douglas County Sch. Dis. Re-1*, 375 S. Ct. 988, 69 IDELR 174 (US 2017). Any review of an IEP

must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. *Id.*, at 206–207, 102 S.Ct. 3034.

The IDEA does not require states to develop IEPs that “maximize the potential of handicapped children.” *Board of Educ. v. Rowley*, 458 U.S. at 189, 102 S.Ct. at 3042. What the statute guarantees is an “appropriate” education, “not one that provides everything that might be thought desirable by loving parents.” *Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F.2d at 567 (*internal citation omitted*); see *Carlisle Area School v. Scott P.*, 62 F.3d at 533–34 (school districts “need not provide the optimal level of services, or even a level that would confer additional benefits, since the IEP required by IDEA represents only a ‘basic floor of opportunity’” (*quoting Board of Education v. Rowley*, 458 U.S. at 201, 102 S.Ct. at 3048).

A school district is not required to provide a student with the “best conceivable” individualized education program, but only an IEP that is reasonably calculated to enable the student to receive educational benefits. *Alex R. v. Forrestville Valley Community Unit School District #221*, 375 F.3d 603,616 (7th Cir. 2004), *cert. denied*, 125 S.Ct. 628 (2004). Local school districts are not required to be guarantors of educational progress but are required to develop IEPs that are reasonably calculated to allow for progress. When determining whether a student has benefited from an educational program, the courts look, at least in part, to whether the student is making progress toward the goals included in the student’s IEP. *County of San Diego v. California Special Education Hearing Office*, 93 F.3d 1458 (9th Cir. 1996). See also *Brad K. v. Board of Education of City of Chicago, Chicago Public School District #299*, 787 F.Supp.2d 734, 738 (N.D. Ill. 2011), quoting *Jaccari J. v. Board of Education of City of Chicago, District No. 299*, 690 F.Supp.2d 687, 702 (N.D. Ill. 2010) (factors to consider when determining whether an IEP is reasonably calculated to provide educational benefits “include: ‘(1) the child’s

potential; (2) whether his IEPs were tailored to his unique needs; (3) whether his IEPs provided access to specialized services; (4) whether they addressed disability-related acts; and (5) whether the child achieved progress during the relevant time period”). Goals, short-term objectives, and descriptions of present levels of the student’s performance should reflect the student’s progress, or, if there is a lack of progress, the school district should consider adjusting the program to provide a different configuration or amount of services or a different placement to make it more likely that the IEP will confer educational benefit. *See Kevin T. v. Elmhurst Community School Dist. No. 205*, No. 01 C 0005, 2002 WL 433061 (N.D. Ill. Mar. 20, 2002).

The Seventh Circuit has ruled that under the *Rowley* standard, an “IEP passes muster provided that it is . . . ‘likely to produce progress, not regression or trivial educational advancement.’” *Alex R.*, *supra*, 375 F.3d at 615, quoting *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245,248 (5th Cir. 1997). *See also Richard Paul E. v. Plainfield Community Consolidated School District 202*, No. 07 C 6911, 2009 WL 995459 at *17 (N.D. Ill. Apr. 9, 2009) (finding school district did not violate child’s rights under IDEA when IEP was reasonably calculated to provide him with educational benefits by addressing his behavioral and learning disabilities). Indeed, the Seventh Circuit has opined that the “critical issue [is] whether the school administrators were unreasonable” when making placement and service determinations. *School District of Wisconsin Dells v. Z.S.*, 295 F.3d 671, 676 (7th Cir. 2002) (finding that one-month delay in figuring out what to do with student after he had to be removed from school was reasonable).

In the instant matter, Parent alleges that the District denied FAPE when it failed to revise the Student’s IEP and BIP in October 2021 to provide additional support in the form of occupational therapy services and paraprofessional service minutes. The testimony and

documentary evidence introduced at hearing reveals the following: The District conducted the Student's triennial re-evaluation commencing in October 2020. At that time, the domains identified for reevaluation were academic achievement, functional performance, health, and social emotional status. Parent was an active participant in that process. At that time, no fine or gross motor or sensory concerns were raised by school staff or Parent. (FF# 4-5.) At hearing, Parent indicated that her concern stemmed from a comment made by a teacher regarding the illegibility of the Student's handwriting. However, the testimony at hearing revealed that writing is a non-preferred activity for the Student and his handwriting can be illegible as a result. This is not a fine motor skill deficit, it is a behavioral deficit. The testimony and documentary evidence introduced at hearing on this point was uncontroverted at hearing. (FF# 4-5, 34.) Therefore, Parent's claim that the District failed to provide the Student with a FAPE by not providing occupational therapy services is without merit.

The IEP team met to revise the Student's IEP and BIP nine (9) times during the 2002-2021 and 2021-2022 school years, through January 6, 2022 to address the Student's dysregulated, aggressive, non-compliant behavior and lack of engagement and participation in educational activities in the classroom. (FF # 12-16.) Since his enrollment in the School District, the Student has been provided with a dedicated one to one paraprofessional aide. In March 2021, due to the Student's aggressive, noncompliant, dysregulated behaviors, a second dedicated adult was assigned to be with the Student throughout his school day. The second adult was either the school social worker (SW), the special education teacher (LBS), or the school principal (PRIN). (FF #11-13, 15.) Parent's contention that the District failed to provide the Student with a free and appropriate public education (FAPE) by failing to provide additional paraprofessional support minutes, it without merit. At all times at issue, the Student had a

dedicated paraprofessional aide. That support was increased to two adults in March 2021, due to the Student's behavioral deficits, and remains through the date of hearing. (FF #11, 15.) No evidence was introduced at hearing to indicate that additional paraprofessional support, beyond two dedicated adults, would benefit the Student or successfully address his aggressive, noncompliant, dysregulated behaviors. (FF #11-17, 20-29.)

Least Restrictive Environment (LRE)

Under IDEA, the School District has an obligation to educate a student to the greatest extent appropriate with his nondisabled peers. 20 U.S.C.A. 1412(a)(5)(A); *Board of Education of Township District No. 211 v. Ross*, 486 F.3d 267, 277 (7th Cir. 2007); *Beth B. v. Van Clay*, 282 F.3d 493 (7th Cir. 2002). The Illinois School Code and implementing regulations also require that to the maximum extent appropriate a child with a disability must be educated in the least restrictive environment with children who are not disabled. 105 ILCS 5/10-22.41; Ill. Admin. Code 226.240. Removal from the regular education classroom of a child with a disability should only occur when education in the regular classroom cannot be achieved with the use of supplementary aids and services. 20 U.S.C.A 1412(a)(5)(A); 34 C.F.R. 300.114(a)(2)(ii). The Seventh Circuit has declined to adopt any sort of multi-factor test for assessing whether a child must remain in a regular school. *Ross supra. See also Beth B., supra.* "The ultimate question is whether the education in the conventional school was satisfactory, and, if not, whether reasonable measures would have made it so. *Id.* The District may change a student's placement to a more restrictive setting or maintain that placement if the student would not make adequate progress in the less restrictive placement. *Ross citing Beth B. v. Van Clay*, 282 F.3d 493, 499 (7th Cir. 2002). The LRE mandate does not override the FAPE requirement. If a child's placement does not confer a "meaningful benefit" and a more restrictive program is likely to provide such

benefit, the child is entitled to be placed in that more restrictive program. *P v. Newington Bd. of Educ.*, 51 IDELR 2 (2d. 2008).

The Northern District of Illinois subsequently applied this test in *Board of Educ. of Tp. High School Dist. No. 211 v. Michael R.*, 2005 WL 2008919 to conclude that it was appropriate for a school district to place a child in a sophisticated behavioral high school with reverse mainstreaming opportunities that allows for integration into the regular education environment instead of the parent's requested general education classroom with supports and services. The Court agreed with the hearing officer's finding that it was the student's "behavior, not her cognitive or motor abilities, that required a change in her placement." *Id. at *18*. Moreover, the court noted that the student gained minimal benefit from her placement in a regular education setting because of the amount of time she spent receiving supports and services to address her significant behaviors. *Id. at *18-19*. The court concluded that, in light of the fact that her behaviors prevented her from gaining meaningful educational benefit from the regular education classroom and that even with significant supports, regular education for the student was "unsatisfactory" under the Beth M. standard. *Id.*

To implement the concept of LRE, each state is required to have procedures which ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. 34 C.F.R. § 300.115. Specifically, a continuum of alternative placements must include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions. 34 C.F.R. § 300.115; 23 Ill. Adm. Code 226.300.

The testimony and documentary evidence introduced at hearing is clear and uncontroverted by Parent: the Student is unable to make academic or behavioral progress in the

current general education setting and the District has exhausted available supports and services in its attempts to educate him in that setting. (FF# 30-31, 34.) The Student enrolled in the District in third grade and has been supported by an IEP, BIP, and a one to one paraeducator since that time. (FF# 2, 10-11.) During his 4th and 5th grade school years, his IEP team met nine (9) times to review behavioral data and academic progress and to update his IEP and BIP in an effort to promote his engagement in educational activities and to regulate his disruptive behaviors. (FF #4-16.) Social emotional goals were revised and added; special education minutes were increased; paraprofessional support was increased to two (2) adults at all times; several Functional Behavior Assessments (FBAs) were conducted and the Student's Behavior Intervention Plan (BIP) was revised based upon that data; an outside Board Certified Behavior Analyst (BCBA) was engaged by the District. (FF# 6-13, 19.) The BCBA conducted an FBA and assisted the IEP team in crafting a revised BIP. All of her recommendations were incorporated into the BIP by the IEP team. The BCBA was re-engaged by the District at the beginning of the 2021-2022 school year to provide coaching and training to the Student's school team. The school team understood the behavior intervention strategies and correctly and appropriately implemented them with the Student. (FF# 18.) Academic demands were reduced/faded. (FF # 16, 19.) The IEP team recommended that the Student be placed in the highly structured educational program in the District designed to support students with significant behavioral and emotional regulation and social skill needs. However, Parent refused to discuss or consider this possible placement. (FF# 17.)

Despite the District's efforts to provide these additional supports and services, the Student's engagement in the educational environment declined and his aggressive behaviors increased. (FF #13-29.) The Student is not engaged in educational activities in the classroom.

He voluntarily sits in the back of the classroom, facing away from the teacher, with headphones on, not responding to the efforts of the classroom teacher, social worker, and special education teacher to promote his engagement. He spends on average three (3) hours each day outside of the general education classroom and the academic demands placed on him are less than half those of a typical fifth grade student. He is not making academic progress and is not meeting grade level expectations. Academic demands were reduced and the school team has been unable to increase those demands. (FF# 19, 29-30.) The Student's aggressive behaviors have increased. The maladaptive behaviors impede his ability to learn and to connect and form lasting relationships with peers. (FF#20-30.) While there was much discussion by Parent at hearing related to the Student's fondness for one of the positive behavior reinforcement strategies recommended by BCBA and implemented by the school team, the Stitch Chart, the testimony related to same was uncontroverted: While the Student enjoyed this intervention, it did not have the desired behavioral outcome. (FF# 21-25.) The District has exhausted available supports and services in its attempts to educate the Student in the general education setting and provide FAPE. (FF# 31.) The testimony and documentary evidence introduced at hearing is clear and uncontroverted. The general education setting is unsatisfactory and is not appropriate for this Student.

The Student requires a therapeutic day school setting which can address his social emotional and behavioral needs. He requires a small classroom setting with access to special education teachers, paraeducator support, mental health professional support, and social work support all delivered in a consistent, structured setting. He requires positive behavioral interventions (rewards and incentives) and sensory and social emotional support built into the curriculum to target his aggressive, disruptive, non-compliant behaviors. (FF# 32.) The District

has identified an appropriate therapeutic day school that can provide the required supports to this Student, MA. (FF# 33-34.)

Based upon the uncontroverted testimony and documentary evidence introduced at hearing, it is the finding of this Hearing Officer that the Student requires placement in a therapeutic day school, such as MA, as recommended by the IEP team at the January 6, 2022 IEP meeting in order to receive a free and appropriate public education (FAPE) in the least restrictive environment (LRE). Further, the District has, at all times at issue, provided the Student with a free and appropriate public education (FAPE). The Student's IEPs and BIPs were data driven; regularly reviewed and revised; and provided individualized instruction, supports and services to address his behavioral dysregulation and engage him in the educational environment.

CONCLUSION

Based upon the Findings of Fact and Conclusions of Law, at all times at issue, the District provided the Student a free and appropriate public education (FAPE). Further, the least restrictive environment in which the Student's needs can be met is a therapeutic day school, such as MA, or a similar facility that can address his significant social emotional and behavioral, as well as his academic, needs.

ORDER

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

Parent's requested relief is hereby denied and Parent's due process complaint notice, as amended, is hereby dismissed with prejudice.

The Least Restrictive Environment (LRE) in which the Student can receive a free and appropriate public education (FAPE) is a therapeutic day school as per the January 6, 2022 IEP.

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: May 11, 2022

[REDACTED]

/s/: Janet K. Maxwell-Wickett

Janet K. Maxwell-Wickett,
Impartial Hearing Officer

[REDACTED]

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[REDACTED]

[REDACTED]

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APPENDIX A

██████████ v. ██████████ SD ██████████
Case No: 2022-DP-0130

Child	██████████
Attending School	██████████ Elementary School (WES)
District School	██████████ Elementary School (WES)
Child's Parent/Petitioner	██████████ (Parent)
Parent Witnesses:	
Treating Therapist	██████████ (RS)
Joint Witnesses:	
District Representative/Director of Student Services	██████████ (DR)
School Social Worker	██████████ (SW)
Learning Behavior Specialist/ Special Ed Teacher	██████████ (LBS)
School Psychologist	██████████ (PSY)
Principal	██████████ (PRIN)
General Education Teacher - 5 th Grade	██████████ (GE)
Board Certified Behavior Analyst	██████████ Sizemore (BCBA)
Schools:	
Therapeutic Day School	██████████ - ██████████ (MA)