

ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING

██████████ GRADE	]	
SCHOOL No. ██████████	]	
Petitioner,	]	CASE 2022-DP-0175
Local School District.	]	
	]	MARY SCHWARTZ
v.	]	Impartial Hearing Officer
N.R., a minor,	]	
Respondent,	]	
By and through his parents.	]	

FINAL DETERMINATION AND ORDER

JURISDICTION

The undersigned hearing officer has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*, and her appointment as hearing officer by the Illinois State Board of Education (ISBE) on March 13, 2022.

PROCEDURAL BACKGROUND

The district filed an expedited due process hearing request on March 13, 2022. The ISBE appointed the undersigned as hearing officer for this case on March 14, 2022. This hearing officer issued several preliminary Orders upon her appointment, including a statement of the parties' rights in an expedited hearing. A telephone conference call with the parties was scheduled for March 18<sup>th</sup>. The parents did not participate in the conference call. On March 19<sup>th</sup>, the undersigned issued a summary of the conference call to both parties, stating that the expedited hearing would be held on April 5 and 6, 2022 via zoom. The undersigned also issued a Notice of Expedited Due Process Hearing on March 22<sup>nd</sup>, informing the parties that they must provide their final witness and document lists and a copy of each document on their lists by 5:00 p.m. on March 31, 2022. The Notice also informed the parties that the expedited hearing would be held virtually, via zoom. The undersigned received the district's document and witness lists, with a copy of each document, via electronic mail on March 31<sup>st</sup>. The district also sent a hard copy of its evidence binder, as requested by the hearing officer. The parents did not provide witness and document lists or copies of documents to enter into evidence. They also did not appear at the hearing, so no evidence has been entered on their behalf.

This Final Determination and Order is being issued within 10 school days after the conclusion of the hearing. 105 ILCS 5/14-8.02b(k).

### **ISSUES AND REQUESTED REMEDIES**

The district requested an expedited hearing to place the student in an interim educational setting (IAES) for 45 school days. The district's expedited hearing request raises the following issues for hearing:

1. Whether maintaining the student in his current educational placement is substantially likely to result in injury to the student or to others;
2. 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;
3. Whether district personnel expressed concerns about the student's patterns of behavior directly to the special education director or supervisory personnel;
4. Whether the parent has not provided consent for a proposed initial evaluation for the student;
5. Whether the district may place the student in an interim educational setting (IAES) for not more than 45 school days as a diagnostic placement in which the initial evaluation will be conducted.

U.S.C. § 1415(k)(3); 34 C.F.R. § 300.532; 105 ILCS 5/14-8.02b; 23 IAC § 226.655.

### **FINDINGS OF FACT**

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

1. The student enrolled in District ■ on January 21, 2002 and began attending school there on January 24, 2002. SD 59, 61, 62; Testimony, Ms. U. He was placed in a general education second grade classroom. SD 7.

2. On January 26, 2022, the student had a difficult time after returning from gym class and refused to comply with the teacher's directives. Testimony, Ms. U.; SD 91-94. He began playing with a timer, which disrupted the class, and would not put it away when told to do so by the teacher. *Id.* He took out a pair of scissors and put his finger on the blades. SD 92. The paraprofessional took him out of the classroom for a break; however, once he was in the hallway, he hit and kicked the paraprofessional. *Id.* He also refused to follow staff directives to put the scissors away, tore work off students' lockers, and called staff "stupid, ugly, fat." SD 92, 93. Several staff tried to redirect him, including: Ms. U., the assistant principal; Ms. M., the BCBA; the school social worker, Ms. E. S.; and, Ms. J., the MTSS coordinator. SD 91-94; Testimony, Ms. U.; Ms. M.; Ms. E.S. and Ms. J. The social worker was "very concerned" about the intensity of the student's behaviors. Testimony, Ms. E. S. Ms. U. reported that the student hit and kicked staff, stood on chairs, called staff names, and pounded and kicked the door. SD 93. The incident lasted a couple hours. Testimony, Ms. E. S.
3. Ms. M., who is with the Exceptional Learners Collaborative (ELC), was part of the support staff on January 26th. SD 93. The ELC is a co-operative program that serves several districts through providing staff and parent trainings, conducting functional behavior assessments, and providing staff and parent trainings. Testimony, Ms. M. Ms. M. is a Board Certified Behavior Analyst (BCBA). *Id.* This was Ms. M.'s first interaction with the student. *Id.* She played a game with the student that he had developed and stayed with him until his mother arrived at 1:40 p.m. SD 93. The district sent the mother a Discipline Offense Form, which describes the incident. SD 91. Ms. M. worked with the staff on collecting behavioral data on the student, which she used to understand the antecedents and functions of his behaviors. Testimony, Ms. M. The data collection instrument includes the frequency and degree of the behaviors and the antecedent and functions of the behaviors. *Id.* After the January 26th incident, Ms. M. began giving the student daily support on Tuesdays through Fridays. *Id.*
4. School staff, including the assistant principal Ms. U., met with the student's parents on January 27, 2022 to develop a support plan to address the student's difficult behaviors. SD 62, 212; Testimony, Ms. U. The plan includes positive supports such as building relationships around his interests, breaks as needed, using a calm voice, positive physical proximity, having him be a helper in the classroom, social work support, and using two staff when he becomes escalated and an observer at a distance if necessary. SD 62, 212; Testimony, Ms. U. and Ms. E.S. The plan also identifies signs that the student is escalating (talking loudly, yelling, throwing items) and a plan to respond to his escalation. SD 62, 63. Ms. E.S. provides direct support to the student in the classroom at least two

days/week in non-crisis situations and checks in with the student in the mornings. Testimony, Ms. E.S. She is trained in crisis intervention and cognitive behavioral therapy and has worked with students with high intensity behavioral needs for two years. *Id.* The assistant principal also became a 1:1 support person for the student. *Id.*

5. The student received a disciplinary referral on January 28<sup>th</sup> for being aggressive, refusing to follow directions, and running out of the classroom. Testimony, Ms. E.S.; SD 95, 96. The student was dysregulated at the start of the day and unable to do his school work. SD 95, 96. His dysregulation included throwing items, playing with scissors, and ignoring teacher prompts. SD 96. He ran out of the classroom and went to the Stem Room, where he played calmly with some Legos. *Id.* He then ran to the administrative office, where his dysregulation continued. *Id.* School staff tried to contact the mother by telephone but could not reach her. SD 95. Staff then notified the mother by text message. SD 96.
6. On January 31<sup>st</sup>, the student was frustrated and refused to do his school work. Testimony, Ms. E.S.; SD 98. He took a break in the hallway with the school social worker; however, the break turned into his throwing objects down the hallway, screaming, kicking, and punching. SD 98; Testimony, Ms. E.S. The incident, including the time it took him to de-escalate, lasted two to three hours. *Id.* The mother was informed of the incident. SD 97.
7. Two days later, on February 2<sup>nd</sup>, the student left the classroom after becoming very dysregulated and went to the second floor. SD 99, 100; Testimony, Ms. E.S. He went into an office with the assistant principal and settled briefly; however, when prompted to return to class, his behavior escalated to hitting staff, tearing signs in the office, throwing papers and chairs across the office towards staff, and writing on the office door. SD 100. Staff put him in a CPI child's hold when he tried to put his hand in the paper shredder. *Id.*; SD 101-103; SD 106-108; Testimony, Ms. E.S. The district filled out the mandated ISBE physical restraint form. SD 101. The student also tore paper office signs and emptied the cold water container onto the floor. SD 100. The parents were called to pick up the student due to his physical aggression. SD 100; Testimony, Ms. E.S. Based on her observations and interactions with the student, Ms. E.S. opined that the student needs an evaluation in a diagnostic placement. *Id.* She testified that he is "substantially likely to injure himself or others" if he remains in his current placement. *Id.*
8. The district updated the student's support plan on February 3<sup>rd</sup> to include more supports for him: 1:1 support from a CPI certified staff member, planned ignoring for off-task but safe behaviors, limited proximity to the door, a visual

schedule, increased frequency of rewards, noise cancelling headphones as needed, a break space and a quiet work space, and access to the sensory room as needed. SD 63; Testimony, Ms. S. The school social worker was concerned about the student's lack of emotional regulation, functional skills, and social/emotional skills and the impact of the foregoing on his ability to learn. Testimony, Ms. E. S.

9. On February 4, 2022, the student ripped up his work and threw everything off his desk at the start of the school day. SD 105. He agreed to take a break, but upon reaching the hallway, he ran from staff and pushed over lunch bins and books. *Id.* Staff helped him to the sensory room, where his behaviors continued and escalated to hitting and kicking the staff. *Id.*; SD 107. The school principal, Mr. P., was involved in the incident and restrained the student using a CPI child's hold. Testimony, Mr. P.; SD 106-108. The student remained in the sensory room for the rest of the day due to his escalated behaviors and work refusals. *Id.* Staff completed the ISBE mandated Physical Restraint and Time Out Form, which indicates that he was restrained three times for less than one minute/restraint. SD 106. The parents were notified of the incidents. SD 108.
10. Ms. L.S. informed the parents via email on February 7, 2022 that the district would hold a meeting on February 18th to discuss an evaluation for the student. SD 218. On February 11th, Ms. L.S. emailed the parents again about the upcoming meeting to "review the data and information we have about (the student), the interventions currently in place, gather information from you about (the student's) needs and/or any concerns you have related to his education and discuss an evaluation." SD 219.
11. On February 8, 2022, the student received an out of school suspension. SD 111. He had difficulty from the start of the school day and refused to do work, kicked and pushed staff, and hit a school administrator twice with a telephone receiver. *Id.* The district called the parents and asked them to pick up the student "due to the intensity of his physical aggression." *Id.*
12. On February 14, 2022, the parents asked the assistant principal not to support the student any longer as she had "put him in danger" by having candy with peanut butter in it. Testimony, Ms. U. The student has a peanut allergy. *Id.*
13. The student was suspended on February 17, 2022 after he ran out of class and hit and kicked the principal and the behavior specialist. SD 112. Ms. M., the BCBA, sustained "bruises, contusions, and other blunt injuries" during the incident and was medically evaluated. SD 43, 44. The classroom had to be evacuated because of the student's behaviors. Testimony, Ms. M.

14. The district held a domain meeting on February 18, 2022 to discuss evaluating the student for special education. SD 66, 68<sup>1</sup>. The parents did not attend the meeting, and staff called them but got no response. SD 67, 68. Ms. M. discussed the behavioral data on the student at the meeting and stated that a functional behavior assessment (FBA) should be done. Testimony, Ms. M. Based on her observations, Ms. M. stated that the student should have two staff with him at all times. *Id.*
15. The district recommended formal academic achievement testing since it had little data on the student's academic functioning. SD 68. The IEP team recommended obtaining data on the student's functional and behavioral needs, health history, sensory processing and visual motor, self-regulation, and social-emotional functioning. *Id.* The meeting notes report that despite significant interventions, the student "has been unable to access instruction for much of the school day and his behaviors of concern are increasing." *Id.* Between January 25, 2022 when the student began in the district and the date of the meeting, the student had eight "major office referrals," required 1:1 support for all days in attendance, and had two CPI interventions. SD 71.
16. Based on the student's needs and the intensive supports provided during the day, the team recommended that the student be evaluated in a diagnostic placement in a therapeutic setting. SD 68. The recommendation was based on the district's finding that despite the significant interventions it had put in place for the student, he was unable to access his educational instruction for most of the day, and his behaviors were increasing. *Id.* The district determined that the student should be assessed in the following areas: functional behavioral assessment (FBA), review of health history, hearing screening, informal occupational therapy assessment related to fine and visual motor coordination, formal and informal evaluation of sensory processing, records review, social developmental history, behavior rating scales, and interviews with student, parents, and teachers. SD 71-73. Because the parents did not attend the meeting, staff planned to follow up with them to discuss the evaluation process. SD 68
17. Ms. L.S. emailed the mother to discuss the February 18th meeting about the student and the district's evaluation request. SD 77, 224. The student's mother informed the district that she did not agree with the district's recommendation and wanted to file a due process complaint or request mediation SD 77, 224. <sup>2</sup>

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<sup>1</sup> The meeting notes have two different dates. On the top line of the form, the date is noted as 2/17/2022. The notes of the meeting indicate a date of 2/18/2022.

<sup>2</sup> It is noted for the record that this hearing officer has received no documentation that the parents have filed a due process complaint or requested mediation.

18. On February 22nd, Ms. S. emailed the mother to request her consent for the district to evaluate the student in a diagnostic placement, which would “provide the needed support for (the student) while completing the evaluation.” SD 226. The district attached the Procedural Safeguards and forms to request due process and mediation with its email. *Id.*
19. The student received full-day support from the BCBA from February 22 through February 25, 2022. SD 63.
20. On March 2, 2022, the student received a half day suspension for climbing on a chair and table, pulling books off shelves, and hitting and kicking staff after being prompted to go to physical education. SD 113. The mother was informed of the incident. SD 227. The district asked to set a time to talk with her. *Id.* On March 8, 2022, the student tried to run out of the building and was physically aggressive to Mr. P., the school principal. Testimony, Mr. P.; SD 114. The student was unable to calm down and “hit and kick staff members repeatedly” and hit Mr. P. with the telephone receiver. *Id.* The parents were called to pick up the student. *Id.* The student was given an out-of-school suspension for March 8th (half day) and March 9th. SD 114. On March 15, 2022, the student was physically aggressive toward staff and damaged school property. SD 115. The school asked the parents to pick up the student. SD 117. He was then suspended on March 16th and 17th. SD 114-116.
21. Ms. M.C. is the executive director of the ELC. Testimony, Ms. M.C. She has a master’s degree in special education, a principal’s certificate, and is working on her Ph.D. *Id.* Her background includes both direct teaching and administrative experience. *Id.* She observed the student on March 10th at the request of the district superintendent. *Id.* When she arrived, the student was off-task but able to be re-directed. *Id.* He left the classroom, and both Ms. M.C. and the BCBA followed after him. *Id.* On March 18th, she did a second observation. *Id.* When she arrived, the student was in the special education office and agitated and “completely dysregulated.” *Id.* His thought process “was not completely sensible.” *Id.* He tore up papers, destroyed toys, drew on the furniture, and threatened to put thumbtacks in his mouth. *Id.* She had staff contact the mother, who talked with him on the phone. *Id.* The grandmother picked him up later. *Id.* Ms. M.C. testified that the student “absolutely” needs to be evaluated and that the evaluation should be conducted in a diagnostic placement. *Id.*
22. Mr. M. is the ELC’s private placement coordinator. Testimony, Mr. M. He has a master’s degree in educational leadership, is a reading specialist, and has taught in a therapeutic school that serves grades 3 through 5. *Id.* Mr. M. was at the student’s school on March 10, 11, and 15 to support the student and help him

remain safe and on-task. *Id.* On March 10<sup>th</sup>, Mr. M. reported that the student laid on the floor rather than doing the task other students were engaged in. *Id.* When the class began to transition to the library, the student ran down the hallway and ripped things off the hallway walls. *Id.* In the library, the student did not engage in the activity for that time. *Id.* He was “somewhat” more engaged when Mr. M. visited the following day. *Id.* However, when Mr. M. visited on March 15<sup>th</sup>, the student “needed lots of support” and was unable to work on his own. *Id.*

23. Based on his review of information on the student and his own observations, Mr. M. recommended Connections South as an appropriate program in which the student could be evaluated. Testimony, Mr. M. A diagnostic placement is for 60 school days, and during that time, staff evaluate a student and determine eligibility. *Id.* The Connections South classrooms have 8 to 10 children per classroom, and all classes have a paraprofessional or an additional teacher. *Id.* The clinical staff are well trained and work with the students every day. *Id.* The student needs to be evaluated in a diagnostic setting because of his extreme behaviors. *Id.* This student’s behaviors are significantly different from those of a typical second grader: he cannot follow classroom directions or activities; when he becomes escalated and is re-directed, his response is to run out of the room; and, he has not developed coping skills. *Id.*
24. Ms. B. is Director of Professional Growth and Shared Services for the ELC. Testimony, Ms. B. She has a B.A. degree in elementary education and a M.A. in elementary administration. *Id.* Ms. B. visited the student’s classroom on four separate days. When she arrived at noon on March 11<sup>th</sup>, the student was sitting at his desk reading a graphic novel. *Id.* He asked to read the novel to Ms. B. *Id.* The teacher provided reinforcement to keep him engaged in the activity. *Id.* On March 14<sup>th</sup> Ms. B. visited again. *Id.* The class was doing math, and the student was reading a graphic novel as he had no interest in math. *Id.* She repeated the math tasks on a white board for him, and noted that he had “good mental math skills.” *Id.* He was very engaged when the class had two specials: art and physical education. *Id.*
25. On March 15, 2022, the superintendent contacted Ms. B. and asked her to come to the student’s school. Testimony, Ms. B. She had not been scheduled to go to there on that day. *Id.* When she arrived, the student was in the office with the BCBA and the special education coordinator. *Id.*, SD 118. He had not had a good day and did not want to talk about it. *Id.* The suspension notice states that the student “pushed over a free standing sign, threw things in the library, ran up and down the upstairs hall ripping student materials off lockers and hit/kicked staff.” SD 115. Ms. B. talked with the student’s mother on the telephone, and the student became agitated, knowing that they were talking about him. Testimony, Ms. B.

The student's mother came to the school and talked with Ms. B. SD 118, 119. The student was suspended for March 16th and 17th. SD 115.

26. Ms. M.C. conducted a second observation of the student on March 18, 2022. Testimony, Ms. M.C. When she arrived at the school, the student was in the office and did not want to go back to class. *Id.* He was agitated, and his thought processing "was not completely sensible." *Id.* Ms. M.C. tried various strategies to get the student back to class but was unable to engage him. *Id.* During her time with him, he varied from being calm to agitated. *Id.* He tore down the bulletin board, drew on the furniture with markers, and threatened to put thumbtacks in his mouth. *Id.* He was "completely dysregulated" and could not think things through. *Id.* The student's grandmother came to pick him up. *Id.* Ms. M.C. testified that the student "absolutely" needs an evaluation in a diagnostic placement so that a plan can be made to address his "significant behaviors." *Id.*
27. The student was suspended for two days, March 21<sup>st</sup> and 22<sup>nd</sup>, for damaging and destroying student work and fidgets and for aggression towards staff. SD 120, 121. He returned to school on March 23<sup>rd</sup>. SD 120.
28. Ms. B. visited again with the student on March 23<sup>rd</sup>. Testimony, Ms. B.; SD 125. When she arrived, the class was returning from physical education. *Id.* The student "was passive" and not engaged. *Id.* He requested a sensory break, and he and Ms. B. walked to another room, where they did some math problems. *Id.* His behavior quickly changed, and he became very agitated. *Id.* He called Ms. B. a monster and walked away from her. *Id.* The student threw water bottles and pencils across the room, pulled items off the students' desks, grabbed students' work, threw a computer on the floor, and threw an eraser at a staff person, hitting the staff person in the face. SD 129. He broke the glass in a framed piece of art, threw food around the room, and hit staff in the head as he grabbed items. SD 129, 130; photos SD 131-143. His dysregulated behaviors continued for about 90 minutes. *Id.* Ms. B. called the mother regarding the student's behavior but was not able to reach her. *Id.* Ms. B. then called K.J., who suggested that she talk with the student about some of his interests. SD 126. Ms. B. called K.J. several more times in an attempt to reach the mother. *Id.* Staff considered calling 911 because of the student's dysregulation. SD 126. School staff were concerned about the level and length of the student's agitation. *Id.* At noon, the district spoke with the student's mother, who was on her way to pick up the student. *Id.* The parents picked up the student shortly before 1:00 p.m. SD 127.
29. The student was suspended from school on March 24 and 25, 2022 for damaging student and school property and for aggression toward staff on March 23<sup>rd</sup>. SD 123, SD 131-143. The record includes extensive documentation of the student's

behaviors during the school day from January 27, 2022 through March 23, 2022. SD 147-210.

30. Ms. B. testified that the student has significant needs and should have an evaluation. Testimony, Ms. B. The evaluation should be conducted in a therapeutic setting by an unbiased team. *Id.*
31. The district proposes that the student be evaluated at Connections South. All ELC staff agreed that the student should be evaluated in a therapeutic setting, where he will receive the therapeutic supports to address his needs during the evaluation process. Testimony, Ms. M.B. Connections South is a small school with eight to ten students/ class. Testimony, Mr. R.M. All classes have a paraprofessional or another teacher, and therapeutic support is built into the program. *Id.* The clinical team has a high level of training, and works with the students daily. *Id.* This student has extreme behaviors and his “level of aggression is a concern.” *Id.* When the student becomes escalated, he cannot use his coping skills. *Id.* The diagnostic placement is for 60 school days. *Id.* School staff would be able to work with the student during the evaluation process and support him. Testimony, Ms. M.C.
32. There is no evidence in the record that the mother has consented to the district’s request to evaluate the student. The district filed its due process complaint to override the parent’s lack of consent. SD 218-221.

#### CONCLUSIONS OF LAW

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

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

Whether maintaining the student in his current educational placement is substantially likely to result in injury to the student or to others;

The evidence shows that since January 2022, when the student enrolled in and began attending school in the district, he has engaged in numerous physically aggressive incidents towards staff. On January 26th, he hit and kicked a paraprofessional who had taken him to the hallway for a break after he was disruptive in the classroom. ¶ 2. He was non-compliant with staff directives, and his behavior was dysregulated: hitting and kicking staff, calling staff names, tearing work off students' lockers, and pounding and kicking the door. *Id.* Two days later, his behavior was so dysregulated that he was unable to do school work. ¶ 5. On January 31st, his dysregulation included kicking and punching a staff person. ¶ 6. He was physically aggressive towards staff and tried to put his hand in a paper shredder on February 2nd. ¶ 7. Staff used a CPI hold to prevent him from injuring himself. *Id.* On February 4th, his dysregulation included ripping up his schoolwork and hitting and kicking staff. ¶ 9. Ms. M. obtained a medical evaluation for injuries she received during an incident with the student on February 17th. ¶ 13. The student's behaviors continued throughout February and March. ¶ 13, 19, 20. The parents were called to pick up the student on March 8th due to the intensity of his physical aggression. ¶ 20. In light of the student's dysregulated and aggressive behaviors, which required physical restraints at times, the undersigned finds that there is substantial evidence that maintaining the student in his current educational placement is likely to result in injury to the student or to others. *Light v. Parkway C-2 School Dist.*, 41 F.3d 1223 (8th Cir. 1995).

Whether the district made reasonable efforts to minimize the risk of harm in the student's current general education placement, including the use of supplementary aids and services;

The school district must show that "it has made reasonable efforts to accommodate the child's disabilities so as to minimize the likelihood that the child will injure herself or others." and concerning behaviors in the classroom since shortly after he enrolled in the district. The student's behaviors include non-compliance with staff directives, physical aggression toward staff, destroying other students' work, severe dysregulation, throwing objects, emptying the cold water container on the floor, work refusal, trying to put his hand in the paper shredder, and yelling and screaming. ¶ 2, 3, 5-7, 14-16, 18, 19, 23, 24, 27, 28, 30. Trained staff have restrained the student when his dysregulation is severe. ¶ 7, 15, 16.

The evidence shows that three days after the student began attending school in the district, the district and parents met to develop a positive support plan to address the student's behaviors and minimize the risk of harm to the student or others. ¶ 4; SD 62. The plan includes positive supports: building relationships around his interests, breaks as needed, using a calm voice and positive physical proximity, having him be a helper in class, and social work support. *Id.* The student receives direct support in the classroom at least two days/week in non-crisis situations. *Id.* The staff have restrained

the student when his dysregulation is severe. ¶ 7, 15, 16. On February 3rd, in response to the student's increased dysregulation, the district updated the plan. ¶ 8. On February 22 through 25, the district provided full day BCBA support for the student. SD 63.

Based on the foregoing evidence, the undersigned finds that the district made reasonable efforts to minimize the risk of harm in the student's general education placement.

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

The evidence clearly supports a finding that district personnel expressed their concerns about the student's patterns of behavior to the special education director and supervisory personnel. ¶ 2, 4, 17. The evidence further shows that district staff who provided direct services to the student worked closely with administrative staff to address the student's behavioral needs. ¶ 2, 7-9, 14.

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

A district must obtain informed consent from a student's parent before conducting an initial evaluation to determine if a student qualifies as a student with a disability under the IDEA. 20 U.S.C. § 1414(a)(1)(D)(i)(I); 34 CFR § 300.300(a)(1)(i). If a parent does not provide consent, the district may pursue the initial evaluation of the child through due process procedures. 20 U.S.C. § 1414(a)(1)(D)(ii)(1); 34 C.F.R. § 300.300(a)(3)(i); *Maritime Academy Charter School*, 121 LRP 20255 p.4 (Pa. SEA, May 6, 2021); *In re: Student with a Disability*, 106 LRP 42794, p. 3 (Okla. SEA, May 29, 2003).

The evidence shows the district implemented several regular education interventions prior to requesting parental consent for an evaluation. The district developed a support plan, which uses positive supports, and also planned for steps to take when the student became escalated. ¶4. The district also assigned staff to work with the student in non-crisis times. *Id.*

The uncontroverted evidence shows that the district convened a meeting on February 17, 2022 to discuss evaluating the student.¶ 14. The mother was informed of the meeting by email but did not attend. ¶ 10, 14. At the February meeting, the district proposed conducting formal academic achievement testing and obtaining data on the student's functional and behavioral needs, health history, sensory processing and visual-motor, self-regulation, and social-emotional functioning. ¶ 14-16. The district also recommended that the evaluation be conducted in a diagnostic placement. ¶ 16. Based on the foregoing evidence, this hearing officer finds that the mother has refused to

provide consent for the district to conduct an initial evaluation of the student.

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

A diagnostic placement is a temporary placement in which a student may be placed as part of the evaluation process. 1999 IDEA – Part B regulations, Question 14, Appendix A (1999). *In re: Student with a Disability*, 115 LRP 32147 (SEA NM May 21, 2015). A diagnostic placement is a method of evaluation, not an educational placement. *Middletown Bd. of Educ.*, 10 ECLRP 22 (SEA Ct. 2013).

The district has requested that the student be placed at Connections South as a diagnostic placement. The class size at that school is 8 to 10 students. ¶ 23. Each classroom has a paraprofessional or an additional teacher. *Id.* Highly trained clinical staff work with the students every day. *Id.*; ¶ 31. Based on their experience with the student, the district determined that the student should be evaluated in the following areas: functional behavior assessment; review of health history, hearing screening, informal occupational therapy assessment of his fine and visual motor coordination, formal and informal evaluations of his sensory processing, social developmental history, records review, behavior rating scales, and interviews with the student and parents. SD 71-73. The therapeutic setting will address the student’s needs during the evaluation period. *Id.*

Based on the evidence presented in this case, the undersigned finds that the district may place the student at Connections South for not more than 45 school days for his initial evaluation for special education.

IT IS SO ORDERED.

DATE: April 19, 2022

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Mary Schwartz  
Impartial Hearing Officer

**ORDER**

Based on the above Findings of Fact and Conclusions of Law, it is hereby ordered that the district may place the student at Connections South for not more than 45 school days for an initial evaluation for special education and related services.

**NOTICE OF RIGHT TO REQUEST CLARIFICATION**

This is the final administrative decision in this matter. Pursuant to 105 ILCS 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 to the Illinois State Board of Education, Program Compliance Division, 100 N. First Street, Springfield, Illinois 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.

DATE: April 19, 2022

\_\_\_\_\_

Mary Schwartz  
Impartial Hearing Officer

**CERTIFICATE OF SERVICE**

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

Ms. [REDACTED]

Ms. [REDACTED]

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

Ms. [REDACTED]

Robbins-Schwartz

55 W. Monroe Street, Ste. 800  
Chicago, Illinois 60603

[REDACTED]

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

On April 19, 2022.

[REDACTED] \_\_\_\_\_

Mary Schwartz  
Impartial Hearing Officer

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