

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

Student, by and through his Parents¹

v.

District²

Case No. 2023-0079

Leah Trinkala
Impartial Hearing Officer

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 5/148.02a et.seq.

PROCEDURAL BACKGROUND.

On October 28, 2022, the Petitioners (Parents) filed a due process complaint (Complaint) against the District on behalf of their eleven-year-old son (Student) with a disability.³ The Student has been eligible for an IEP under the primary category of Emotional Disability and the secondary category of Other Health Impairments, Attention Deficit Hyperactivity Disorder (ADHD).⁴ The Parents filed this Complaint alleging placement in the general education setting for 100% of the day is the least restrictive environment for the Student.⁵ The Parents were unable to obtain counsel and proceeded pro se. The District is represented by Katherine Swise of Miller, Hall & Triggs, LLC.

On November 2, 2022, the Illinois State Board of Education (ISBE) appointed the undersigned as the Impartial Hearing Officer (IHO) in this case.⁶ On November 6, 2022, the undersigned sent the initial status letter, Preliminary Order, Rights of Parties Related to Hearings, Hearing Process Guidelines, and a Standing Order to the parties.⁷

¹ Personally identifiable information is found in Appendix A.

² Personally identifiable information is found in Appendix A.

³ IHO Ex. 1.

⁴ IHO Ex. 22.

⁵ IHO Ex. 1.

⁶ IHO Ex. 2.

⁷ IHO Ex. 4.

The first telephonic status conference call occurred on November 15, 2022.⁸ The parties scheduled the resolution meeting for November 16, 2022.⁹ The Parents are trying to obtain counsel to represent them and are having difficulties locating an attorney who resides in their area.¹⁰ The Parents wished to participate in mediation if the matter is not resolved at the Resolution Meeting.¹¹ The District was concerned mediation would be counterproductive.¹² Another status conference was scheduled for November 29, 2022. On November 15, 2022, via email, the Summary of Status Meeting/Order was issued.¹³

The Resolution Meeting occurred on November 16, 2022 and the parties were unable to resolve this matter.¹⁴ The second telephonic status conference call occurred on November 29, 2022.¹⁵ The Parents requested a continuance to have additional time to retain counsel and the District did not object to the continuance.¹⁶ The parties agreed to hold another Status Conference on December 20, 2022 and to extend the timeline for this case until February 17, 2023.¹⁷ This is the final continuance for the Parents to retain counsel.¹⁸ On December 6, 2022, the undersigned issued, via email, a Summary of Status Meeting/Continuance Order.¹⁹

The third telephonic status conference call occurred on December 20, 2022.²⁰ The Parents have contacted thirty attorneys and still have not found an attorney to represent them.²¹ The Parents submitted a settlement proposal to the District and the District provided a counteroffer.²² The Parents sought additional time to consider the offer.²³ The Parties requested a continuance for additional time to resolve this matter and agreed to extend the 45-day timeline in this matter.²⁴ The Prehearing Conference was scheduled for January 25, 2023 and the new decision due date was extended to March 17, 2023.²⁵ On December 20, 2022, the undersigned issued, via email, a Summary of Status Meeting/Continuance Order and the Notice of the Prehearing Conference.²⁶

The fourth telephonic status conference call occurred on January 25, 2023.²⁷ The Parents requested a continuance of the Prehearing Conference scheduled for January 25, 2023

⁸ IHO Ex 11.

⁹ IHO Ex. 11

¹⁰ IHO Ex. 11.

¹¹ IHO Ex. 11.

¹² IHO Ex. 11.

¹³ IHO Ex. 11

¹⁴ IHO Ex. 12

¹⁵ IHO Ex. 13.

¹⁶ IHO Ex. 13.

¹⁷ IHO Ex. 13.

¹⁸ IHO Ex. 13

¹⁹ IHO Ex. 13.

²⁰ IHO Ex. 15.

²¹ IHO Ex. 15.

²² IHO Ex. 15.

²³ IHO Ex. 15.

²⁴ IHO Ex. 15.

²⁵ IHO Ex. 15.

²⁶ IHO Ex. 13.

²⁷ IHO Ex. 15.

because the Parents scheduled an interview with a potential legal agency to represent them, Prairie State Legal (Prairie State) and the District did not object.²⁸ The Prehearing Conference was rescheduled for February 28, 2023 and hearing dates were set for April 4, 2023 and April 5, 2023.²⁹ The new decision due date was April 19, 2023. February 2, 2023, the undersigned issued, via email, a Summary of Status Meeting/Continuance Order.³⁰

On February 27, 2023, via email, the parties filed their prehearing disclosures.³¹ The Prehearing Conference was convened on February 28, 2023.³² On March 6, 2023, via email, the Prehearing Report and Order was issued.³³ On March 10, 2023, via email, the District requested changes be made to the Prehearing Report and Order.³⁴ A Revised Prehearing Report and Order and the Virtual Hearing Protocols were issued on March 11, 2023, via email.³⁵

The last telephonic status conference call occurred on March 22, 2023.³⁶ The Parents requested a continuance of the scheduled hearing dates because the Parents were informed Prairie State had not received all of the students records necessary to determine if Prairie State would represent the Parents.³⁷ The District objected to the continuance because the core student records were submitted to Prairie State on March 3, 2023 and Prairie State misinformed the Parents the rest of the records were not received by March 16, 2023.³⁸ This IHO denied the request for another continuance because the Parents were afforded ample opportunity to obtain representation and the core records should be sufficient to determine if Prairie State will represent the Parents since the pending issue in this case pertains to a placement decision made in October, 2022.³⁹ On March 25, 2023, via email, a Summary of Status Meeting/Order was provided to the parties.⁴⁰

The District delivered its five business day hearing disclosures to the Parents, via email, on March 28, 2023. The Parents failed to provide their disclosures to the District on March 28, 2023.⁴¹ The Parents were informed they had until 11:59 p.m. on March 29, 2023 to submit their documents and witness list to the District; however, the Parents would be precluded from calling any witnesses and introducing any exhibits on the first hearing date.⁴²

²⁸ IHO Ex. 17.

²⁹ IHO Ex. 17.

³⁰ IHO Ex. 17.

³¹ IHO Ex. 19.

³² IHO Ex. 19.

³³ IHO Ex. 19.

³⁴ IHO Ex. 21.

³⁵ IHO Ex. 24.

³⁶ IHO Ex. 24.

³⁷ IHO Ex. 24.

³⁸ IHO Ex. 24.

³⁹ IHO Ex. 24.

⁴⁰ IHO Ex. 24.

⁴¹ IHO Ex. 25.

⁴² IHO Ex. 25.

The Parents emailed their witness list and documents to the District by the March 29, 2023 deadline.⁴³

On March 31, 2023, the parties, via email, submitted their Joint Stipulations of Fact.⁴⁴ On April 1, 2023, the District agreed to allow the Parents to call the District witnesses on the first day of the hearing since the parties intended to call the same District witnesses and intended to introduce the same exhibits.⁴⁵ On April 3, 2023 the parties filed their objections to the witnesses being called to testify.⁴⁶

The hearing took place remotely via the Zoom platform on April 4, 2023 and April 5, 2023. On April 4, 2023, prior to the commencement of the hearing, this IHO ruled on the unresolved objections to the Student's Substitute Teacher and a teacher from another school district testifying at this hearing. The IHO determined the testimony from the teacher from another school district would not be relevant since she has never observed the Student in the education setting, is not a certified special education teacher and the testimony regarding an inclusion class in another district would not be relevant. The Substitute Teacher was permitted to testify because she was the Student's teacher at the beginning of this school year and participated in the October, 2022 IEP meeting where the District IEP team members agreed to change the Student's placement. An objection was raised to the content of the Principal's testimony; however, the issue was resolved.

At this hearing, the Parent called one primary witness, the District called four primary witnesses and the parties called four joint witnesses to testify.⁴⁷ Admitted into the record were Parents' Exhibits 1 and 2 and the District's Exhibits 1 through 10.

On April 6, 2023, via mail, the District submitted its cited case law. The decision of the IHO is due within 10 business days of the conclusion of the hearing.⁴⁸ As such, the IHO did not have the benefit of a transcript and one was not needed. This decision is based on the IHO's copious personal notes and recollection of the testimony provided at the hearing. In rendering this decision, the IHO considered all the documents admitted into evidence, the testimony of the witnesses, the parties' closing arguments, the parties' suggested case law, as well as the IHO's own independent research. This decision was issued within ten business days as required by Illinois law.⁴⁹

ISSUES AND REQUESTED REMEDIES.

⁴³ IHO Ex. 25.

⁴⁴ IHO Ex. 26.

⁴⁵ IHO Ex. 28.

⁴⁶ IHO Ex. 29.

⁴⁷ Personally identifiable information is found in Appendix A.

⁴⁸ 105 ILCS 5/14-8.02a(g55)(5).

⁴⁹ 105 ILCS 5/14-8.02a(g55)(5).

The issue to be determined is as follows:

- a. Whether the District's proposed placement in a therapeutic day school at the 10/14/22 IEP meeting is the least restrictive environment to address the Student's academic and behavioral needs and refusals to leave the general education setting?⁵⁰

The Parent's remedy is as follows:

- a. Find the least restrictive environment for the Student is in the general education setting 100% of the date with a 1-1 aide.⁵¹

The District's remedy is as follows:

- a. Find the least restrictive environment for the Student is a therapeutic day school.⁵²

JOINT STIPULATION OF FACTS⁵³

The District and the Parents stipulated to the following facts:

1. The Student is eleven years old and was born on March 2, 2012.
2. Parent 1 and Parent 2 are the "Parents" of Student as that term is defined by 20 U.S.C. § 1401(23), 34 C.F.R. 300.30, and 23 Ill. Admin. Code § 226.75.
3. The Student resides with his Parents within the boundaries of the District.
4. The Student is a "child with a disability" as defined by 20 U.S.C. § 1401(3) and 34 C.F.R. §300.8.
5. The Student's primary disability is "emotional disability" as defined in 34 C.F.R. §00.8(c)(4).
6. The Student's secondary disability is "other health impairment" as defined by 34 C.F.R. § 300.8(c)(9).
7. The Student's "other health impairment" is related to his diagnosis of ADHD.

⁵⁰ IHO Ex. 22.

⁵¹ IHO Ex. 22.

⁵² IHO Ex. 22.

⁵³ IHO Ex. 26.

8. The Student is eligible for special education and related services.
9. The Student's initial evaluation for special education and related services was completed on May 13, 2020.
10. The evaluation and determination of eligibility is not at issue in this proceeding.
11. The Student's home school and current school of attendance is B School.
12. Student was home schooled by his Parents from October 28, 2021, through the end of the 2021/2022 school year.
13. On June 6, 2022, Parents notified the District they would be re-enrolling Student at B School for the 2022/2023 school year.
14. On August 12, 2022, the IEP Team met to develop an IEP for the 2022/2023 school year.
15. On August 12, 2022, the IEP placed the Student in the special education classroom for 79% of the day, with lunch, recess, music, and PE provided in the general education setting with the assistance of a 1:1 aide.
16. On August 12, 2022, the IEP also included a Behavior Intervention Plan to address Student's elopement or attempted elopement from his designated class and from the school building that had occurred during the 2021/2022 school year.
17. August 12, 2022 IEP is included in the District's Exhibit Book as Tab No. 4.
18. On August 12, 2022, after the IEP meeting had concluded, Parents emailed the District and said that Student did not "want to be in the handicapped" class and that Parents wanted to place Student in the general education classroom and push him into special education classroom for support in core subjects.
19. On August 15, 2022, Parents again emailed the District requesting that Student's placement be changed to the general education setting.
20. The IEP Team met on August 19, 2022, to address Parents' request to change Student's placement.

21. At the August 19, 2022, meeting, Student's placement was changed to 100% general education placement at the Parents' request.
22. Also at the August 19, 2022, meeting, the IEP Team agreed to reconvene after three weeks to evaluate Student's progress in the general education setting with his one-to-one aide.
23. A copy of the August 19, 2022, IEP is included in the District's Exhibit Book as Tab No. 3.
24. Between August 24, 2022, and September 9, 2022, Student was suspended from school on four separate occasions, for a cumulative total of seven days.
25. Copies of Student's suspension records are included in the District's Exhibit Book as Tab No. 5.
26. On September 13, 2022, the IEP Team met to evaluate Student's progress in the general education classroom.
27. The IEP Team changed the Student's placement to 38% of time spent outside the general education setting, with instruction in the special education classroom for math, guided reading, and study hall. Parents did not agree with this change and did not sign the final IEP.
28. The IEP Team also recommended an updated Functional Behavioral Assessment to address the Student's disruptive behavior and a consultation with a BCBA from Tazewell-Mason County Special Education Association.
29. The District received consent from Parents for the updated FBA on October 3, 2022. Parents did not consent to the BCBA consultation.
30. The Student was suspended on September 16, 2022, and September 28, 2022.
31. On September 16, 2022, the District emailed the Parents and stated that the Student continued to display disruptive and unsafe behaviors in the classroom and requested an IEP meeting to address them.
32. Parents agreed to schedule an IEP meeting but told the District that a change in placement was a "non-starter."
33. The IEP team met on October 14, 2022.

34. The IEP team recommended placement in a private therapeutic day school.
35. A placement was located at Menta Fresh Start Academy in Havana, IL, which is approximately a one-hour drive from B School. Transportation would be provided by Menta and paid for by the District.
36. The October 14, 2022, IEP proposed that placement at Menta commence on Monday, October 31, 2022.
37. A copy of the October 14, 2022, IEP is included in the District's Exhibit Book as Tab No. 1.
38. The Parents disagreed with the change in placement and did not sign the October 14, 2022, IEP.
39. The Parents filed their request for due process with the District on October 27, 2022.

FINDINGS OF FACT.

To the extent that a Finding of Fact adopts one version of a matter on which there is conflicting evidence, the evidence adopted has been determined more credible than the conflicting evidence. After considering and reviewing all of the evidence as well as the arguments of the parties, the IHO's Findings of Fact are as follows:⁵⁴

A. STUDENT'S RETURN TO THE DISTRICT.

1. The Student returned to B School in the District for the 5th grade in August, 2022. The Student was described as being very talkative, has a sense of humor, enjoys going to school, likes to play pranks, and plays hockey.⁵⁵ The District had limited academic information for the Student when he returned to the District since the Student had been home schooled since October 28, 2021.⁵⁶ Prior to being home schooled, the Student had been in a special education classroom in the District with a 1:1 aide for half days.⁵⁷ The Student's prior IEP did not contain any academic or math goals.⁵⁸ The Student had a

⁵⁴ All of the evidence admitted into evidence was reviewed in this case, however, the Findings of Fact only include the exhibits which support the Findings of Fact in this case.

⁵⁵ Testimony of Parents and the Substitute Teacher. See also, District Ex. 1, EPSD000005.

⁵⁶ District Ex. 4, EPSD000112.

⁵⁷ Testimony of Assistant Director.

⁵⁸ Testimony of Assistant Director.

behavior intervention plan (BIP) and the target behavior was elopement from the classroom and school grounds.⁵⁹

2. An IEP meeting was held on August 12, 2022. The IEP team agreed the Student would receive 50 minutes weekly of counseling services and be assigned an individual aide in the classroom.⁶⁰ The IEP Team agreed the Student's placement would be in the general education setting for less than 40% of the day.⁶¹ The Student would be placed in an instructional special education classroom which had a fewer student to staff ratio.⁶² This classroom typically contains 10 to 12 students.⁶³
3. The August IEP also contained the Student's prior Functional Behavioral Assessment (FBA) which indicated the Student's target behavior is failure to remain in an assigned area/elopement.⁶⁴ The BIP provided accommodations for the Student which included providing a daily written schedule, allowing for frequent breaks, providing for additional time to complete work, allowing for the Student to move around the classroom, permitting the Student to sit or stand, creating a calming area for the Student and allowing the Student to receive snacks.⁶⁵ The staff was supposed to provide the Student with a breakdown of multi-step directions, to check the Student understood the directions, to read directions aloud to the Student and to repeat/rephrase directions to ensure the Student understood.⁶⁶
4. Another IEP meeting was held on August 19, 2022 because the Parents decided they disagreed with the placement decision reached at the August 12, 2022 IEP meeting.⁶⁷ The Parents believed that the Behavioral Intervention Plan (BIP) and a 1:1 aide should be enough to meet the Student's needs in a general education setting.⁶⁸ The Parents shared they believed the Student was behind academically; however, they wanted the Student's social/emotional needs to come first.⁶⁹
5. To work collaboratively with the Parents at the August 19, 2022 IEP meeting, the District members of the IEP team agreed to place the Student in the general education setting with a 1:1 aide for 100% of the time.⁷⁰ The District IEP team members

⁵⁹ Testimony of Assistant Director.

⁶⁰ District Ex. 4, EPSD000129.

⁶¹ District Ex. 4, EPSD000130.

⁶² District Ex. 3, EPSD000103.

⁶³ Testimony of Assistant Director.

⁶⁴ District Ex. 4, EPSD000131.

⁶⁵ District Ex. 4, EPSD000119.

⁶⁶ District Ex. 4, EPSD000120.

⁶⁷ District Ex. 3, EPSD000091 and EPSD000096.

⁶⁸ District Ex. 3, EPSD000096 and Testimony of Parent 1 and 2.

⁶⁹ District Ex. 3, EPSD000103 and Testimony of Parent 1 and 2.

⁷⁰ District Ex. 3, EPSD000103.

conditioned this placement on holding another IEP meeting after three weeks to allow time to assess the Student's progress in the general education setting with a 1:1 aide and the District would collect data on his progress.⁷¹ Subsequently, the Student was placed in a general education classroom with 17 other students and five of the students had an IEP and there was also another 1:1 aide in the classroom for another student.⁷²

6. During this trial period, the Student's placement in the general education classroom was not working. From August 22, 2022 to September 14, 202, the Student was engaging in disruptive behavior in the classroom and was being derogatory toward the other students. The Former Aide I reported the Student stood up in class and told another student to go back to Mexico.⁷³ She also reported the Student would run around the room to turn in assignments and tell everyone he was representing God.⁷⁴ During the pledge, the Student slapped a student on the shoulder and told the student he was weird.⁷⁵ The Student was throwing things in the classroom, slamming and knocking over desks.⁷⁶ The Former Aide 1 reported that when the Student slammed things in the classroom, some of the other students would have panic attacks, some would jump and some of the Students asked to leave the room and some of the students would be on the ground in a fetal position during the Student's escalation.⁷⁷ The Student was also refusing to take his sensory breaks and sometimes ripped the visual cards.⁷⁸
7. The Student received several suspensions for engaging in unsafe behavior. On August 24, 2023, the Student threw his water bottle against the wall and threw his desk in the hallway which just missed hitting a staff member.⁷⁹ The Student then walked down the hallway slamming open doors and hitting and kicking the doors.⁸⁰ On August 30, 2022, the Student was repeatedly disrupting class by yelling and throwing objects in the classroom, refusing to follow prompts and fashioning his fingers as a gun and shooting at the other students and staff.⁸¹ The Principal had to complete a threat assessment due to his actions and determined the Student was not a threat.⁸² On September 7, 2022, the Student punched another student several times.⁸³ On September 9, 2022, the Student was reported to become angry while playing kickball at recess and pushed another

⁷¹ District Ex. 3, EPSD000103.

⁷² Testimony of Current Teacher

⁷³ Testimony of Former Aide 1.

⁷⁴ Testimony of Former Aide 1.

⁷⁵ Testimony of Former Aide 1.

⁷⁶ Testimony of Former Aide 1.

⁷⁷ Testimony of Former Aide 1

⁷⁸ Testimony of Former Aide 1

⁷⁹ Testimony of Principal, District Ex. 5, EPSD000136, and District Ex. 9.

⁸⁰ Testimony of Principal and District Ex. 5, EPSD000136.

⁸¹ Testimony of Principal and District Ex. 5, EPSD000138.

⁸² Testimony of Principal and District Ex. 5, EPSD000140.

⁸³ Testimony of Principal and District Ex. 5, EPSD000141.

student during the game and then walking towards the student with clenched fists, shouting and attempted to get the student while a staff member intervened.⁸⁴ The Student yelled “You’re a f’ing asshole,” and “F you.”⁸⁵ The Student then threw a lunch box, rocks and a pinecone towards a staff member and then eloped from school grounds without permission.⁸⁶

8. The Student was also behind his peers in Math when he returned to B School. On August 30, 2022, the Student participated in the i-Ready diagnostic math benchmark assessment.⁸⁷ The Student received accommodations for the testing which included taking the testing first thing in the morning, administering the test in chunks with breaks in between the testing, having the math portion read to him, and prepping for the test.⁸⁸ Despite the accommodations, the Student’s test scores were at the kindergarten level in the areas of number and operations, algebra and algebraic thinking, measurement and data, and geometry.⁸⁹ On September 9, 2022, the Student received the HMH Guided Reading Benchmark Assessment.⁹⁰ The Student scored a level R-end of fourth grade.⁹¹ This assessment included a reading accuracy check, a comprehension test and a retelling assessment.⁹²

B. SEPTEMBER 2022 IEP MEETING.

9. An IEP meeting was held on September 13, 2022 to review the data received regarding the Student’s progress and discuss the Student’s placement. Due to the results of the testing, the District members of the IEP team added a math goal to the Student’s IEP.⁹³ The Student’s special education teacher was supposed to implement the goal with the Student.⁹⁴ The District members of the IEP team changed the Student’s placement to inside the general education setting for 40% to 70% of the day.⁹⁵ The Student would receive instruction in the instructional special education classroom for math, guided reading and study hall.⁹⁶ The Parents explained the Student would not want to go to the special education classroom and the IEP team discussed ways to transition the Student

⁸⁴ Testimony of Principal and District Ex. 5, EPSD000143.

⁸⁵ Testimony of Principal and District Ex. 5, EPSD000143.

⁸⁶ Testimony of Principal and District Ex. 5, EPSD000143.

⁸⁷ District Ex. 2, EPSD000052.

⁸⁸ District Ex. 2, EPSD000052. Testimony of Assistant Director.

⁸⁹ District Ex. 2, EPSD000052.

⁹⁰ District Ex. 2, EPSD000052.

⁹¹ District Ex. 2, EPSD000052.

⁹² District Ex. 2, EPSD000052.

⁹³ District Ex. 2, EPSD000060.

⁹⁴ District Ex. 2, EPSD000060.

⁹⁵ District Ex. 2, EPSD000060.

⁹⁶ District Ex. 2, EPSD000060.

to the special education classroom.⁹⁷ The Parents verbally agreed to the placement change.⁹⁸ The Parents never signed the September 2022 IEP.⁹⁹

10. At this September IEP meeting, the District reviewed the behavioral data that was collected on the Student in 15 minutes intervals.¹⁰⁰ The District members of the IEP team recommended having another FBA done because the Student's target behavior of elopement in the Student's current BIP was not a significant concern now.¹⁰¹ The Student now did not want to leave the classroom and did not want to take breaks.¹⁰² The Student's classroom teacher reported the Student was frequently disrupting class by shouting out and talking over the teacher.¹⁰³ The Social Worker reported she was working on the Zones of Regulations with the Student so the Student would recognize when he needed to take a break since the Student did not want to leave the classroom.¹⁰⁴ The Social Worker explained the Student's behavior is impulsive and not intentional and that Student cannot focus when the Student is in a classroom full of students.¹⁰⁵
11. After the September 13, 2022 IEP meeting, the Student received two more suspensions for engaging in unsafe conduct. On September 15, 2022, the Student threw tennis balls off the bottom of his desk because he was upset.¹⁰⁶ On September 27, 2022, the Student entered the library dancing around the library and then sat down on a chair already occupied by another student and then the Student threw books in the library, slammed a chair down and gave the finger as he stormed out of the library.¹⁰⁷

C. OCTOBER, 2022 IEP MEETING.

12. On October 7, 2022, a Substitute Teacher, who was the Principal at B School when the Student was previously enrolled in the District and knew the Student then, taught in the Student's general education classroom and was unable to implement the BIP in place with the Student.¹⁰⁸ The Substitute Teacher tried to gain the Student's trust and told him that she and his aide loved him, and she hugged him.¹⁰⁹ The Student tried very hard

⁹⁷ Testimony of Assistant Director.

⁹⁸ Testimony of Assistant Director.

⁹⁹ Testimony of Assistant Director

¹⁰⁰ District Ex. 2, EPSD000077.

¹⁰¹ District Ex. 2, EPSD000077.

¹⁰² District Ex. 2, EPSD000077.

¹⁰³ District Ex. 2, EPSD000077.

¹⁰⁴ District Ex. 2, EPSD000077.

¹⁰⁵ District Ex. 2, EPSD000077.

¹⁰⁶ Testimony of Principal and District Ex. 5, EPSD000145.

¹⁰⁷ Testimony of Principal, District Ex. 5, EPSD000147 and District Ex. 10.

¹⁰⁸ Testimony of Substitute Teacher.

¹⁰⁹ Testimony of Substitute Teacher.

the first day to do his best for her; however, despite his attempts the Student became very disruptive and unfocused.¹¹⁰ The interruptions were extremely frequent as the Student was trying to gain the attention of his classmates by blurting out.¹¹¹ When the Student was upset, the Student would slam down the desks, leave the classroom, push the chairs and yell.¹¹² The Student refused to take breaks such as going for a walk or going to the sensory room.¹¹³ The interventions used in the classroom were not working. The Student was given a new rocking chair and fidgets and the Substitute Teacher used a puck system since the Student liked hockey¹¹⁴. The Student had goals throughout the day and hockey terms were used such as hat trick.¹¹⁵ The first day using this system went well and the Student got to play table hockey with a friend.¹¹⁶ This did not work afterwards because his anxiety increased if he did not win a point.¹¹⁷ Then jolly ranchers were provided as a reward and when the class did well, the Student passed out the jolly ranchers.¹¹⁸ If the class did not earn the jolly ranchers, the Student would become upset and became upset when another was allowed to pass out the jolly ranchers.¹¹⁹

13. Another IEP meeting was held on October 14, 2022 to address the Student's disruptive conduct in the classroom and his refusal to leave the classroom. The Student was refusing to go to Special Ed Math. He attended for 18 minutes one day and has refused to return.¹²⁰ The Former Aide 2, who was able to gain the Student's trust could not get the Student to return to Special Ed Math.¹²¹ The Student told the Former Aide 2 I am not dumb and I can do better math.¹²² The Former Aide 2 tried to motivate and pump up the Student and explained the math would get harder and prepare him for fifth grade math.¹²³
14. The District staff found the Student's targeted behavior changed since returning to school and was no longer eloping from the classroom and the school grounds. The school psychologist and a social worker conducted a new FBA at the beginning of October and observed the Student in the classroom on October 6, 2022 and October 7, 2022 and determined the targeted behavior is disruptive behavior.¹²⁴ The disruptive

¹¹⁰ Testimony of Substitute Teacher.

¹¹¹ Testimony of Substitute Teacher.

¹¹² Testimony of Substitute Teacher.

¹¹³ Testimony of Substitute Teacher.

¹¹⁴ Testimony of Substitute Teacher.

¹¹⁵ Testimony of Substitute Teacher.

¹¹⁶ Testimony of Substitute Teacher.

¹¹⁷ Testimony of Substitute Teacher.

¹¹⁸ Testimony of Substitute Teacher.

¹¹⁹ Testimony of Substitute Teacher.

¹²⁰ Testimony of Assistant Director.

¹²¹ Testimony of Former Aide 2.

¹²² Testimony of Former Aide 2.

¹²³ Testimony of Former Aide 2.

¹²⁴ District Ex. 1, EPSD000005. Testimony of Special Ed Teacher.

behavior was defined as any verbal or nonverbal behavior that intrudes into the activity or conversations of others.¹²⁵ The Student was found to lack impulse control and self-regulation skills and strongly desires social interaction.¹²⁶ The consequences of the Student's behavior is that the Student receives considerable attention from his peers and the disruptions make it difficult for learning to occur.¹²⁷ From observations in the classroom in October, it was determined that the target behavior occurred 35 times in 275 minutes which averaged to be approximately once every 7.9 minutes.¹²⁸

15. Since the schedule change, the Student has refused to transition to the instructional special education classroom despite the Social Worker meeting with him to discuss the schedule change.¹²⁹ The Student's behavior was affecting the Student's grades. For the midterm grades, the Student received a F in Conduct, Effort, Language, Math, and Science and received a Satisfactory for PE and Music.¹³⁰ The staff reported the Student completed limited academic work.¹³¹
16. At this October IEP meeting, the District members of the IEP team recommended the Student's placement be changed to a therapeutic day school.¹³² At the time of the meeting, there was only one therapeutic day school in the area accepting new students.¹³³ Now, more therapeutic day schools are starting to accept students which are closer to where the Parents' reside.¹³⁴
17. The Student requires placement in a therapeutic day school because the Student's social and emotional needs cannot be regulated in a general education setting. The District members of the IEP team indicated the Student's current IEP cannot be implemented in the general education setting nor in the cross categorical special education classroom.¹³⁵ The larger classroom has too many distractions for the Student and his social/emotional needs cannot be met.¹³⁶ The Student needs a smaller more individualized setting so his social and emotional and behavioral needs can be focused on.¹³⁷ The Assistant Director explained these need to be at a better level so the Student will be ready for learning.¹³⁸

¹²⁵ District Ex. 1, EPSD000044.

¹²⁶ District Ex. 1, EPSD000009

¹²⁷ District Ex. 1, EPSD000008

¹²⁸ District Ex. 1, EPSD000005.

¹²⁹ District Ex. 1, EPSD000011.

¹³⁰ District Ex. 1, EPSD000011.

¹³¹ District Ex. 1, EPSD000011.

¹³² District Ex. 1, EPSD000045.

¹³³ Testimony of Assistant Director.

¹³⁴ Testimony of Assistant Director.

¹³⁵ District Ex. 5, EPSD000145.

¹³⁶ District Ex. 1, EPSD000029.

¹³⁷ District Ex. 5, EPSD000145.

¹³⁸ Testimony of Assistant Director.

The Student is refusing to go to the cross categorical special education for math and even if he did not refuse the District members of the IEP team believed he needed a smaller environment.¹³⁹ The Substitute Teacher recommended a therapeutic day school because therapeutic day schools have many services available to help the Student with his social and emotional deficits and when these are addressed they can help the Student with his academics.¹⁴⁰ The Substitute Teacher explained the Student needs to learn how to function in the world.¹⁴¹ The Substitute Teacher observed the Student playing a game and when he was out of the game he was supposed to leave the square.¹⁴² The Student refused to move out of the square and the other students playing the game had to move elsewhere.¹⁴³

18. The BIP in the October IEP, which was designed to address the Student's disruptive behavior, cannot be implemented in the general education setting.¹⁴⁴ The BIP states the Student needs a highly structured and predictable environment where opportunities for behavioral and emotional self-regulation strategies can be incorporated throughout the day.¹⁴⁵ This instruction is most effective in a setting with a low-to-student ratio where there can be continued reinforcement and monitoring of behavior.¹⁴⁶ The Assistant Director iterated the Student needs a program where there is intensive instruction available throughout the day, where there is a BCBA on staff and other trained staff to address the social, emotional needs of the Student and has a lower student to teacher ratio.¹⁴⁷ The Assistant Director also explained the Student needs a highly structured and predicable environment which is not available at B School.¹⁴⁸ The Student reaction in the school is more intense than his peers because the Student lacks the self-regulation skills.¹⁴⁹ The Student also needs a small setting to address his increase in elopement from the building and his behaviors which are unsafe to the Student, the other students and the staff.¹⁵⁰ The Social Worker explained that in a smaller setting you do not see the Student dancing and blurting out.¹⁵¹

¹³⁹ District Ex. 5, EPSD000145.

¹⁴⁰ Testimony of Substitute Teacher

¹⁴¹ Testimony of Substitute Teacher.

¹⁴² Testimony of Substitute Teacher.

¹⁴³ Testimony of Substitute Teacher.

¹⁴⁴ Testimony of Assistant Director.

¹⁴⁵ District Ex. 1, EPSD000035.

¹⁴⁶ District Ex. 1, EPSD000035.

¹⁴⁷ Testimony of Assistant Director.

¹⁴⁸ Testimony of Assistant Director.

¹⁴⁹ Testimony of Assistant Director.

¹⁵⁰ District Ex. 1, EPSD000035.

¹⁵¹ Testimony of Social Worker.

D. STAY PUT.

19. After this IEP meeting, stay put went into effect since a due process complaint was filed. The effective IEP during stay put was the September, 2022 IEP.¹⁵² The Special Ed. Teacher explained the BIP in the October 14, 2022 IEP was being used; however, the September 13, 2022 BIP was not ignored.¹⁵³ The Special Ed Teacher indicated the BIP in the September 12, 2023 did not address the Student's disruptive behavior.¹⁵⁴
20. The Student's social and emotional needs and behavior are affecting the Student's access to his education. The Current Teacher explained the Student is not participating in group instruction and the Student sits by himself. ¹⁵⁵ The Student infrequently raises his hand to participate and when he does the Student's comment is not based upon the material but instead is a goofy comment.¹⁵⁶ The Student is turning in more assignments; however, the work product is not at a 5th grade level.¹⁵⁷ The answers are just one word answers and not related to the text.¹⁵⁸ The Student is given extra time to complete the assignments.¹⁵⁹ The Current Teacher has tried different strategies to help the Student with his work which includes being encouraging.¹⁶⁰ The Current Teacher even used hockey to try to motivate the Student and explained to the Student that he needs to practice every day to be successful at game time.¹⁶¹ The Student will either say he understands and does not need help or will become argumentative that his work is sufficient.¹⁶²
21. The Student's disruptive behavior is affecting the other student's access to their education. The Student takes his own breaks by getting up to get a pencil or Kleenex and dances around the room and cuts in the middle of the classroom or walks around the entire room during a class lesson.¹⁶³ The Student laughs uncontrollably at the other students' comments during the group discussion and blurts out comments not related to the class instruction in order to get attention from his peers.¹⁶⁴ The Student disrupts the

¹⁵² Testimony of Special Ed Teacher.

¹⁵³ Testimony of Special Ed Teacher

¹⁵⁴ Testimony of Special Ed Teacher

¹⁵⁵ Testimony of Current Teacher.

¹⁵⁶ Testimony of Current Teacher

¹⁵⁷ Testimony of Current Teacher

¹⁵⁸ Testimony of Current Teacher

¹⁵⁹ Testimony of Current Teacher

¹⁶⁰ Testimony of Current Teacher

¹⁶¹ Testimony of Current Teacher

¹⁶² Testimony of Current Teacher

¹⁶³ Testimony of Current Aude.

¹⁶⁴ Testimony of Current Teacher

class 30 to 40 times a day.¹⁶⁵ The Student also slams doors and his desk and yells and elopes from the room.¹⁶⁶ The Student's behavior causes the teacher to stop the class instruction.¹⁶⁷ Multiple students are crying or having panic attacks.¹⁶⁸ The Former Aide 1 who is still in the same classroom with the Student and is the lunch monitor, reported the other students still jump when they hear a loud noise.¹⁶⁹ Another student in the classroom asked the Student to be quiet in class and the Student punched him for making this remark.¹⁷⁰

22. The Student is not getting the special education math instruction as required in the September IEP. The Student still refuses to leave the room and the special education teacher provides materials for the Student to work on with his Current Aide who is not a teacher.¹⁷¹ Two rooms were offered to the Student to study his math and he refused.¹⁷² So there are two math classes going on at the same time in the room.¹⁷³ The Current Aide has stopped prompting the Student to leave the room for his math instruction.¹⁷⁴ The Parents are in agreement with the Student that he should not have to leave the room for his math instruction and should work on the materials in the general education classroom.¹⁷⁵ The Parents have not addressed this behavior with the Student.¹⁷⁶
23. The Student has refused to leave the classroom to receive his individual social work minutes. The Student is supposed to receive 20 minutes of individual counseling and 30 minutes of small group counseling with other special education students.¹⁷⁷ The Student used to go to the Social Worker's office when he was upset and stopped doing so.¹⁷⁸ The Social Worker had a binder in her office for the Student to use which contained coping strategies for him to work on alone or with his 1:1 aide.¹⁷⁹ The Student now wants to remain in the general education classroom and will no longer use his sensory room indicating it is for babies.¹⁸⁰ The Parents contend the Student does not want to go to the Social Worker's room because she had a discussion with the Student about adoption and

¹⁶⁵ Testimony of Current Teacher

¹⁶⁶ Testimony of Current Teacher

¹⁶⁷ Testimony of Current Teacher

¹⁶⁸ Testimony of Current Teacher

¹⁶⁹ Testimony of Former Aide 1.

¹⁷⁰ Testimony of the Principal.

¹⁷¹ Testimony of Current Teacher

¹⁷² Testimony of Current Teacher

¹⁷³ Testimony of Current Teacher

¹⁷⁴ Testimony of Current Aide.

¹⁷⁵ Testimony of Parents.

¹⁷⁶ Testimony of Parents.

¹⁷⁷ Testimony of Social Worker.

¹⁷⁸ Testimony of Social Worker.

¹⁷⁹ Testimony of Social Worker.

¹⁸⁰ Testimony of Social Worker.

he felt uncomfortable.¹⁸¹ Based on the testimony of the Current Teacher, Current Aide, Substitute Teacher, Former Aide 1 and 2, the Student has refused to leave the general education classroom to attend special ed math, to take breaks, and to go to the sensory room as well.¹⁸²

24. Due to the Student's refusal to leave the classroom for his social work minutes, the other students in the general education classroom are losing instruction time. The Student now goes to his individual therapy with two of his friends who do not require counseling.¹⁸³ The Student is receiving the small group therapy in the general education classroom with the other students who do not require social work minutes.¹⁸⁴
25. The Student's disruptive behavior is affecting his access to his education. For the third quarter, the Student received a F in Special Ed. Math, Conduct 5, Effort 5, a D+ in Reading 5, a C in Science 5, an A in Art and Social 5, a B in Language 5, and a Satisfactory in PE and a Satisfactory+ in Music 5.¹⁸⁵
26. The Student's disruptive behavior is also affecting his progress on his IEP goals. For the Student's Functional Goal 1 the goal is for the student to be independent in completing his assignments throughout the school day.¹⁸⁶ The Special Ed. Teacher reported the Student is regressing in the number of prompts as of March 26, 2023.¹⁸⁷ Previously the Student had started with three or less prompts and this has increased. For the Student's Functional Goal 2, the Student is to describe and display socially acceptable expressions and emotions.¹⁸⁸ The Special Ed. Teacher reported the Student met the first two benchmarks but did not meet the third benchmark – when prompted, the Student will learn and practice steps to using self-control.¹⁸⁹ The Student was at 50% accuracy as of March 26, 2023 and the goal was 80% accuracy.¹⁹⁰
27. The Student is still engaging in unsafe behaviors outside of the general education classroom. The Student was lining up with the other students and decided to not take his place in line and tried to move up in the line.¹⁹¹ The Current Aide instructed the Student to return to his place in line and explained this is not how we do this.¹⁹² The

¹⁸¹ Testimony of the Parents.

¹⁸² Testimony of Current Teacher, Current Aide, Substitute Teacher, and Former Aide 1 and 2.

¹⁸³ Testimony of Social Worker.

¹⁸⁴ Testimony of Current Teacher

¹⁸⁵ District Ex. 1, EPSD000305.

¹⁸⁶ District Ex. 1, EPSD000055.

¹⁸⁷ Testimony of Special Ed Teacher.

¹⁸⁸ Testimony of Special Ed Teacher.

¹⁸⁹ Testimony of Special Ed Teacher.

¹⁹⁰ Testimony of Special Ed Teacher.

¹⁹¹ Testimony of Current Aide.

¹⁹² Testimony of Current Aide.

Student yelled at his Current Aide and said f’ing asshole, chest charged him and then did a loop and went outside.¹⁹³ In PE class, the students were playing musical chairs with hula hoops and the Student exited the game early, slammed the door, hit the wall and walked out.¹⁹⁴ The other students have had to appease the Student and allow the Student to win at games to prevent his outbursts.¹⁹⁵

CONCLUSIONS OF LAW AND DISCUSSION OF THE ISSUE

A. Whether the District’s proposed placement in a therapeutic day school at the 10/14/22 IEP meeting is the least restrictive environment to address the Student’s academic and behavioral needs and refusals to leave the general education setting?

Based on the above Findings of Fact, the parties’ closing statements, and this IHO’s own legal research, the Conclusions of Law are as follows:

A school district must provide children with disabilities with a free appropriate public education (“FAPE”) and to the “maximum extent appropriate with nondisabled children.¹⁹⁶ Children with disabilities shall only be removed from the regular educational environment “when the nature or the severity of the disability is such that the education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.¹⁹⁷ IDEA creates a strong preference in favor of mainstreaming handicapped children by educating them in the least restrictive environment.¹⁹⁸ Regular classes, however, may not be the least restrictive environment for every child who possesses a disability.¹⁹⁹

The test is twofold. The first determination is whether the State complied with the procedures set forth in the Act.²⁰⁰ The second determination is whether the individualized educational program developed through the Act’s procedures is reasonably calculated to enable the child to receive educational benefits.²⁰¹ The Supreme Court in *Endrew F. v. Douglas County School District* further clarified the standard previously provided in the *Rowley* case, and requires the school district to “”offer an IEP reasonably calculated to enable the child to

¹⁹³ Testimony of Current Aide.

¹⁹⁴ Testimony of Current Aide.

¹⁹⁵ Testimony of Principal.

¹⁹⁶ *Beth B. v Van Clay*, 282 F.2d 493 (7th Cir. 2002). See also, 20 U.S.C. § 1412(a)(1) and 1412(a)(5).

¹⁹⁷ 20 U.S. C §1412(a)(5).

¹⁹⁸ *S. v. Reedsburg School District* 302 F. Supp. 2d 959 (W.D. Wis. 2003).

¹⁹⁹ *Questions and Answers on Endrew F. v. Douglas County School District Re-1*, 71 IDELR 68 (U. S. Dept. of Education, Dec. 2017).

²⁰⁰ *Bd. of Education v. Rowley* 458 US 176, 206-207, See also, *Beth B. v Van Clay* 282 F.2d 493 (7th Cir. 2002).

²⁰¹ *Bd. of Education v. Rowley* 458 US 176, 206-207.

make progress appropriate in light of the child’s circumstances” in order to meet the substantive obligations under the IDEA.²⁰²

Additionally, under the Illinois Code the IEP shall include the behavioral intervention plan for the student who has a behavioral issue.²⁰³ The IEP team is required to consider and if necessary to provide a FAPE which includes appropriate behavioral goals and objectives and services and support in the IEPs of children whose behavior impedes their own learning and the learning of their peers.²⁰⁴ The IDEA, however, does not provide substantive requirements for behavioral intervention plans.²⁰⁵ The appropriateness of an IEP “can only be judged by examining what was objectively reasonable at the time [the team created the IEP.]”²⁰⁶ An IEP may not be determined to be inadequate based upon testimony and evidence that were not before the school district when the IEP was developed.²⁰⁷

A placement decision is to be based on the IEP and is to be determined annually.²⁰⁸ The placement decision is to be made “by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data and the placement options.”²⁰⁹ The federal regulations and the Illinois Code require the school district to provide a continuum of alternative places to meet the needs of the child with a disability for special education and related services.²¹⁰ Under 34 CFR § 300.551(b)(1), the school district must maintain a continuum of program options which range from regular classrooms with supplementary aids to separate schools and residential facilities.²¹¹ The federal regulations indicate a child should not be removed from a regular classroom “solely because of needed modifications in the general education curriculum.”²¹²

The parents do not have a right though to force the school district to provide a special program or methodology.²¹³ The Act provides the state and the local educational agencies with the cooperation of the parents with the role of formulating the child’s education.²¹⁴ The school district, however, has the right to provide children with an education the school district considers more appropriate than the proposed education provided by the parents.²¹⁵

²⁰² *Endrew F. v. Douglas County School District RE-1*, 375 S. Ct. 988 (2017)

²⁰³ 23 ILL Admin. Code Sec. 226.230(b).

²⁰⁴ *Questions and Answers on Endrew F. v. Douglas County School District Re-1*, 71 IDELR 68 (U. S. Dept. of Education, Dec. 2017).

²⁰⁵ *D. W. v. Milwaukee Public Schools*, 61 IDELR 32 (7th Cir. 2013).

²⁰⁶ *B. G. v. City of Chicago Sch. Dist. 299*, 69 IDELR 177 (N. D. Ill, 2017) (quoting *M. B. v. ex rel. Berns v. Hamilton Southeastern Schools*, 668 F. 3d 851, 863 (7th Cir., 2011) (internal citations omitted.)). See also, *District of Columbia v. Walker*, 54 IDELR 271, 109 F. Supp.3d 58 (D.C. D.C. 2015).

²⁰⁷ *A. G. and JG v. Bd. of Ed. Of Arlington Cen. Sch. Dist.*, 69 IDELR 210 (S. D. NY). See also, *B.L. v. New Britain Bd. of Ed.*, 394 F. Supp.2d 522 (D. C. Conn. 2005)

²⁰⁸ 34 C.F. R. § 300.116(b).

²⁰⁹ 34 C.F.R §300.116(a)

²¹⁰ 34 C.F.R. §300.115. 23 Ill. Adm. Code § 226.300.

²¹¹ 34 C.F.R § 300.551(b)(1).

²¹² 34 C.F.R.§ 300.116(e).

²¹³ See, *Lachman v. Maine Township*, 852 F.2d 290 (7th Cir. 1988).

²¹⁴ See, *Lachman v. Maine Township*, 852 F.2d 290 (7th Cir. 1988).

²¹⁵ *Beth B. v Van Clay*, 282 F.2d 493 (7th Cir.2002).

The Seventh Circuit has not adopted any multifactor test for determining whether a child must remain in a regular school.²¹⁶ To determine if the placement is in the least restrictive environment, the inquiry is whether the child's education in the conventional school was satisfactory and if not whether reasonable measures would have made the child's education satisfactory.²¹⁷ The preference for mainstreaming must be balanced against the benefits that can be derived from the services that can be provided in a segregated setting.²¹⁸ It is not enough to show a child is obtaining "some benefit, no matter how minimal" to show a school district violated the least restrictive environment requirement.²¹⁹ In determining the least restrictive environment, consideration must be given to any potential harmful effects the placement may have on the child.²²⁰ Behavior of the child is a permissible factor in determining the least restrictive environment for the child's education and a school district is not required to place a child in a regular classroom where the child's behavioral problems interferes with the ability of the other students to learn or threatens the safety of the other students.²²¹

The IDEA requires that "during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then current educational placement of the child." 20 U.S.C. § 1415(j). Section 1415(j) of the IDEA preserves the status quo during the pendency of a proceeding and the status quo should be the last placement that the parents and the school district agree to be appropriate.²²² The Illinois School Code provides that during the pendency of any administrative or judicial proceedings, "the student shall remain in his or her present educational placement and continue in his or her present eligibility status and special education and related services, if any."²²³

The case law shows the meaning of educational placement "falls somewhere between the physical school attended by the child and the abstract goals of a child's IEP."²²⁴ In the 7th Circuit, the courts are directed to take a "fact-driven approach" to determine the student's current educational placement.²²⁵ In *Thomas v. Cincinnati Board of Education*, 918 F.2d 618 (6th Cir., 1990), the Court indicated the term is easily ascertainable when the dispute arises over a new IEP before the IEP is implemented and there is an IEP already in place. The current educational placement would "clearly be the previously implemented IEP."²²⁶

²¹⁶ *Bd. of Ed. Of Township High School District No. 211 v. Ross*, 47 IDELR 241 (7th Cir. 2007). See also, *Beth B. v. Van Clay*, 282 F.3d 493, 499 (7th Cir. 2002).

²¹⁷ *Bd. of Ed. Of Township High School District No. 211 v. Ross*, 47 IDELR 241 (7th Cir. 2007).

²¹⁸ *MR v. Lincolnwood Bd. of Ed., District 74*, 843 F. Supp. 1236, 20 IDELR 1323 (N. D. IL, 1994).

²¹⁹ *Bd. of Ed. Of Township High School District No. 211 v. Ross*, 47 IDELR 241 (7th Cir. 2007).

²²⁰ 34 C.F. R. § 300.116(d).

²²¹ *In re: Student with a Disability*, 117 LRP 20573 (ISEA, 2017). See also, *Clyde K and Sheila K v. Puyallup School Districts*, 21 IDELR 664 (9th Cir., 1994).

²²² *Paul Verhoeven v. Brunswick School Committee*, 207 F.3d 1 (1st Cir. 1999).

²²³ See, 105 ILCS 5/14-8.02a(j).

²²⁴ See, *D.C. & Dominique L v. Chicago Board of Ed. & ISBE*, 58 IDELR 166 (Ill. North. Dist. 2011).

²²⁵ See, *D.C. & Dominique L v. Chicago Board of Ed. & ISBE*, 58 IDELR 166 (Ill. North. Dist. 2011).

In the instant case, the Parents have not raised any procedural violations under the IDEA. The sole allegation in this case is that a therapeutic day school is not the least restrictive environment for the Student to receive a FAPE as recommended by the District IEP members at the October, 2022 IEP meeting. The Parents have to prove that the Student's education in the general education setting was satisfactory and that reasonable measures were not implemented to make the Student's education satisfactory. The District in an effort to collaborate with the Parents regarding the placement of the Student, trialed placement of the Student in the general education setting when the Student returned to the District, even though the District IEP team members had recommended the Student be placed in the general education setting for less than 40% of the day.²²⁷ The District is not required under the law to adopt a program or placement specified by the Parents. The Findings of Fact demonstrate the District provided the Student with a full time 1:1 aide and the Student's BIP from his prior time in the District.²²⁸ Despite these accommodations, the Student's placement was not satisfactory in August and September, 2022. The Student was suspended from school seven times and was engaging in unsafe behaviors.²²⁹ The Student's disruptive behavior in the classroom took away instruction time from the Student and from the other students in the classroom and even caused some students to have panic attacks.²³⁰ The Student was also not getting the necessary math instruction in the general education setting. The subsequent testing showed the Student was performing at a kindergarten level in the area of math.²³¹

The District, as promised, held another IEP meeting in September 2022 to address the Student's behavioral issues occurring in the general education setting. The District IEP team agreed to place the Student in a more restrictive environment – 38% of the time outside the general education setting.²³² The District IEP team obtained consent from the Parents to conduct a new FBA because the Student's targeted behavior had changed since the Student returned to B School.²³³ The Parents continued to refuse to work collaboratively with the District. The Findings of Fact show the Parents refused to allow a BCBA to conduct the FBA to allow a fresh set of eyes to examine the Student's current behavior in the school environment and never signed the September IEP.²³⁴

The Findings of Fact establish this placement change made in September 2022 was also not satisfactory. The Student refused to leave the general education setting to receive the special education instruction, continued to be very disruptive in the classroom and received additional suspensions for engaging in unsafe conduct.²³⁵ The Student's behavior continued to interfere with learning in the classroom for the Student and for the other students because the

²²⁷ Joint Stipulation of Facts 15,21 & 22 and FOF 2, 4 &5.

²²⁸ Joint Stipulation of Facts 16 and FOF 3 &5.

²²⁹ Joint Stipulation of Facts 24 & 31 and FOF 7.

²³⁰ FOF 6.

²³¹ FOF 8

²³² Joint Stipulation of Facts 27 and FOF 9.

²³³ Joint Stipulation of Facts 29.

²³⁴ Joint Stipulation of Facts 29 and FOF 9.

²³⁵ Joint Stipulation of Facts 30 & 31 and FOF 11-15.

Student continued to repeatedly engage in disruptive behavior to gain attention from his peers.²³⁶ The interventions used by the staff members were not regulating the Student's emotional and social needs.²³⁷ The District was pro-active and convened another IEP meeting in October, 2022 to address the Student's disruptive behavior and changed the Student's placement to full time in a therapeutic day school.²³⁸ The staff also created a new FBA and BIP to address the Student's new targeted behavior which was disruptive behavior.²³⁹ The Parents continued to disagree with any placement change and wanted the Student to remain in the general education setting with a full-time aide. The Parents argued at the hearing that the District was not implementing the new BIP after the October meeting. Stay put; however, was in effect at this time and under the law the stay put IEP in place was the September IEP and the prior BIP to address the Student's elopement from the classroom and the school grounds.²⁴⁰ The staff members were trying to implement parts of the October BIP to address the disruptive behaviors.²⁴¹ This BIP; however, cannot be implemented in the general education setting.²⁴² The BIP provided that the plan would be most effective in a setting with a lower to teacher ratio.²⁴³ The Findings of Fact show the Student required a smaller setting and a highly structured and predictable environment that is not available at the B School. At the B School, the general education classroom has 18 students, and the special education classroom has 12 students. The Student is engaging in disruptive behavior to obtain attention from his peers and both settings have too many students. The Student also requires additional support not available at B School. The Student needs a social and emotional program that is impeded in the instruction throughout the day and needs staff members more experienced in addressing and regulating the Student's behavior. The Current Teacher in the B School does not have time to work extensively with the Student because there are 17 other students who needs his attention and need to receive instruction in the classroom.²⁴⁴ The other students are already losing instruction time in order to accommodate the needs of the Student.²⁴⁵

The Findings of Fact unequivocally demonstrate the general education setting continues to be an unsatisfactory placement for the Student while stay put is in effect and show the Student's placement needs to be changed to a therapeutic day school. The Student's disruptive behavior is affecting his access to his education and the Student is not receiving a FAPE.²⁴⁶ The Student is not participating in class and is not completing his assignments properly despite having a full-time aide.²⁴⁷ The Student is also not accessing his special education instruction in

²³⁶ FOF 13.

²³⁷ FOF 13.

²³⁸ Joint Stipulation of Facts 34 and FOF 16.

²³⁹ FOF 14.

²⁴⁰ FOF 3 & 19.

²⁴¹ FOF 19.

²⁴² FOF 18.

²⁴³ FOF 18.

²⁴⁴ FOF 5.

²⁴⁵ FOF 21 & 23.

²⁴⁶ FOF 20, 22, 23, & 25.

²⁴⁷ FOF 20.

math and instead is receiving instruction for his math from his Current Aide who is not a special education teacher and is not even a licensed teacher.²⁴⁸ Additionally, the Student is not receiving his required social work minutes in his IEP as planned. Instead, the Student is receiving his individual counseling with two of his friends and his small group instruction with his general education peers.²⁴⁹ The Student's behaviors are affecting the other students' access to their education by disrupting the classroom and having the other students engage in his counseling minutes instead of receiving classroom instruction.²⁵⁰ The Student is also still engaging in unsafe conduct outside of the classroom which is affecting his peers.²⁵¹ Based on the foregoing, the least restrictive environment for the Student to receive a FAPE is full-time placement in a therapeutic day school.

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

1. The least restrictive environment for the Student is a full-time placement at a separate therapeutic day school.
2. The Parents' claim and requested relief are hereby denied.

NOTICE OF RIGHT TO REQUEST CLARIFICATION

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 must specify the portions of the decision for which clarification is sought. A copy of the request must 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.

²⁴⁸ FOF 22.

²⁴⁹ FOF 23.

²⁵⁰ FOF 21 & 24.

²⁵¹ FOF 21 & 27.

Dated: April 18, 2023

Leah Trinkala
Impartial Hearing Officer

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

APPENDIX A

[REDACTED] v. [REDACTED] [REDACTED] School District [REDACTED]

ISBE Case No. 2023-DP-0079

Child/Student	[REDACTED]
Location of the Hearing	Remote Hearing
B Elementary	[REDACTED] Elementary School
Parent 1/Mom 1/Parents	[REDACTED]
Parent 2/Mom 2/Parents	[REDACTED]
District	[REDACTED] School District [REDACTED]
Former Aide	[REDACTED]
Social Worker	[REDACTED]
Current Aide	[REDACTED]
Former Aide 2	[REDACTED]
Principal	[REDACTED]
Special Ed Teacher	[REDACTED]
Teacher	[REDACTED] – Current Classroom Teacher
Substitute Teacher	[REDACTED] – Director of Curriculum and Instruction and the Student’s Former Substitute Classroom Teacher
Assistant Director	[REDACTED] – Assistant Director of Special Services

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the Final Decision and Order was sent to the District through its respective counsel identified below and to ISBE by UPS (signature required) and electronic mail and a true and copy of the Final Decision and Order was mailed to the Parents by UPS (signature required) and directed to:

Ms. Katherine Swise, Esq.
Miller, Hall & Triggs, LLC

[REDACTED]
[REDACTED]
[REDACTED]

and

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

and

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On April 18, 2023

Leah M. Trinkala
Impartial Hearing Officer

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