

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

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District<sup>1</sup>

v.

Case No. 2023-DP-0171

Student, by and through his Parent<sup>2</sup>

Leah Trinkala  
Impartial Hearing Officer

Expedited Hearing

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**FINAL DETERMINATION AND ORDER**

**JURISDICTION.**

The undersigned has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S. C. §1400 et seq. and the Illinois School Code, 105 ILCS 5/148.02a et.seq.

**PROCEDURAL BACKGROUND.**

On March 8, 2023, the Petitioner (District) filed an expedited due process complaint (Complaint) against the Parent and her six-year old son (Student) with a disability.<sup>3</sup> The Student is currently eligible for an IEP under the primary category of Multiple Disabilities<sup>4</sup> The District is seeking to place the Student in an interim alternative program for 45-days because maintaining the Student in his current placement is likely to result in injury to the Student or others.<sup>5</sup> Initially, the Parent was not represented by Counsel. On March 21, 2023, the Parent retained Olga Pribyl, Evelyn Ayay and Christine Kinsella of Equip for Equality to represent her.<sup>6</sup> The District is represented by Merry Rhoades of Tueth, Keeney, Cooper, Mohan & Jackstadt, P. C.

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<sup>1</sup> Personally identifiable information is found in Appendix A.

<sup>2</sup> Personally identifiable information is found in Appendix A.

<sup>3</sup> IHO Ex. 1.

<sup>4</sup> IHO Ex. 1.

<sup>5</sup> IHO Ex. 1.

<sup>6</sup> IHO Ex. 12.

On March 9, 2023, the Illinois State Board of Education (ISBE) appointed the undersigned as the Impartial Hearing Officer (IHO) in this case.<sup>7</sup> On March 11, 2023, the undersigned sent the initial status letter, Preliminary Order, Rights of Parties Related to Expedited Hearings, Hearing Process Guidelines, and a Standing Order to the parties.<sup>8</sup>

The first telephonic status conference call occurred on March 15, 2023.<sup>9</sup> The parties agreed to waive the resolution meeting and proceed with mediation.<sup>10</sup> Hearing dates were set for March 28, 2023 and March 29, 2023.<sup>11</sup> On March 15, 2023, via email, the Summary of Status Meeting/Order and the Notice of Prehearing Conference were issued.<sup>12</sup> On March 16, 2023, via email, a Revised Summary of Status Meeting/Order and a Revised Notice of Prehearing Conference were issued to correct the dates.<sup>13</sup>

The second telephonic status conference call occurred on March 21, 2023 to discuss the status of the case since the Parent had retained Counsel.<sup>14</sup> The parties informed the undersigned that mediation was now scheduled for March 23, 2023.<sup>15</sup> On March 21, 2023, the undersigned issued, via email, a Summary of Status Meeting/Order.<sup>16</sup>

On March 21, 2023, via email, the parties filed their prehearing disclosures.<sup>17</sup> The Prehearing Conference was convened on March 22, 2023.<sup>18</sup> This IHO issued a Prehearing Report and Order on March 22, 2023.<sup>19</sup> On March 23, 2023, the parties informed this IHO that the matter was not resolved at mediation.<sup>20</sup>

The parties exchanged their 2 business day hearing disclosures, via email, on March 24, 2023. On March 27, 2023, the District filed a Motion in Limine (Motion) and the Parent filed a Response on March 27, 2023.<sup>21</sup> The hearing took place remotely via the Zoom platform on March 28, 2023 and March 29, 2023.

On March 28, 2023, prior to the commencement of the hearing, this IHO ruled on the Motion. The Motion sought to restrict the testimony of the Parent and the Private BACP's testimony regarding the interventions the District could have implemented.<sup>22</sup> The District also sought to restrict testimony regarding the appropriateness of the Student's IEP, the Parent's testimony regarding the Student's fingernails and the proposed placement.<sup>23</sup> The Parent

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<sup>7</sup> IHO Ex. 2.

<sup>8</sup> IHO Ex. 3.

<sup>9</sup> IHO Ex. 8.

<sup>10</sup> IHO Ex. 8.

<sup>11</sup> IHO Ex. 8

<sup>12</sup> IHO Ex. 8

<sup>13</sup> IHO Ex. 10.

<sup>14</sup> IHO Ex. 15.

<sup>15</sup> IHO Ex. 15

<sup>16</sup> IHO Ex. 15.

<sup>17</sup> IHO Ex. 14.

<sup>18</sup> IHO Ex. 16.

<sup>19</sup> IHO Ex. 16.

<sup>20</sup> IHO Ex. 18.

<sup>21</sup> IHO Ex. 22 and 24.

<sup>22</sup> IHO Ex. 22.

<sup>23</sup> IHO Ex. 22.

countered the District failed to meet its burden to establish the evidence would not be relevant and the motion only hypothesizes what testimony may be offered.<sup>24</sup> The Parent further opined that the granting of the Motion would restrict the presentation of the Parent's case without allowing the Parent an opportunity to lay a foundation for the evidence and testimony to be presented.<sup>25</sup> The Motion was denied because the Motion was too restrictive on the Parent's presentation of her case and the Parent's and the Private BACP's testimony would be relevant to determine if the District made reasonable efforts to minimize the harm to the Student. The District was informed objections to the relevancy of the testimony and evidence could still be raised during the hearing.

At this hearing, the Parent called four primary witnesses and the District called seven primary witnesses to testify.<sup>26</sup> Admitted into the record were the following Joint Exhibits: J 1 through J 8. The following District Exhibits were admitted into evidence: D 1-, D 2, D 4, D 6 – D 8, D 11- D 12, D 14, D 16-17, D 19, D 22- D 23, and D 25 – D 27. The following Parent's Exhibits were admitted: P 1 – P 2, P 5, P 9 – P 16, P 18 – P 19 and P 21 – P 22.

On March 30, 2023, the parties provided courtesy copies of their case law and their closing statements of legal authority to the IHO.<sup>27</sup> The decision of the IHO is due within 10 school days of the conclusion of the hearing.<sup>28</sup> 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 school days as required by Illinois law.<sup>29</sup>

### **ISSUES.**

The issues to be determined is as follows:

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

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<sup>24</sup> IHO Ex. 24.

<sup>25</sup> IHO Ex. 24.

<sup>26</sup> Personally identifiable information is found in Appendix A.

<sup>27</sup> IHO Ex. 27.

<sup>28</sup> 105 ILCS 5/14-8.02a(g55)(5).

<sup>29</sup> 105 ILCS 5/14-8.02a(g55)(5).

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

105 ILCS 5/14-8.02(b)

### **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:<sup>30</sup>

#### **A. BACKGROUND OF THE STUDENT.**

1. The Student is currently 6 years old and is blind.<sup>31</sup> The Student can only distinguish between a bright and dark room. The Student has sensory issues due to his blindness. The Student can become overwhelmed in loud environments such as the park and a large mall.<sup>32</sup> The Student has a heightened sense of touch, sound and smell.<sup>33</sup> The Student has other health conditions which includes lung disease, hypothyroidism, panhypopituitarism with secondary adrenal insufficiency, bilateral septo-optic dysplasia, and XYY Syndrome.<sup>34</sup> The Student requires a health plan to address his needs. The Student needs a daily dose of Hydrocortisone while at school.<sup>35</sup> In case of an emergency, the Student requires an immediate injection of Solu-Cortel.<sup>36</sup>

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<sup>30</sup> 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.

<sup>31</sup> Parent's Testimony.

<sup>32</sup> Parent's Testimony.

<sup>33</sup> Parent's Testimony.

<sup>34</sup> Parent Ex. 1, P-0065.

<sup>35</sup> Parent's Testimony. Parent Ex. 1, P-00065.

<sup>36</sup> Parent Ex. 1, P-0065.

2. The Student was described as being very bright and inquisitive.<sup>37</sup> The Student enjoys informative videos about car repair and medical procedures and likes to give head kisses.<sup>38</sup> The Student can count numbers in eight languages.<sup>39</sup>
3. The Student attended pre-school in another school district for two hours a day and went there through October 2021 for approximately one and half years.<sup>40</sup> The Parent removed the Student from the pre-school because the school did not have a nurse in the building that could meet his medical needs.<sup>41</sup>

**B. FIRST GRADE AT G SCHOOL.**

4. The Student transferred to this District in August 2022 for the 2022-2023 school year and attended the kindergarten class at G Elementary.<sup>42</sup>
5. The District had a meeting to plan for the arrival of the Student in August, 2022.<sup>43</sup> The Student was provided with a certified nurse assistant (CNA) to be his designated aide based upon the Student's prior IEP and the Student was placed in the general education classroom with approximately 25 students.<sup>44</sup> The general classroom was not appropriate for the Student due to the noise level in the classroom.<sup>45</sup> The Student was reported to have 8 behavioral crises in a period of 8 days in August, 2022.<sup>46</sup> In September, 2022, the Student had 11 behavioral crises and had only been in attendance for 20 days.<sup>47</sup>
6. In response to the Student's emotional dysregulation, IEP meetings were held in August and September, 2022 to discuss a different transition plan for the Student since the current placement in the general education setting was not appropriate for the Student.<sup>48</sup> The IEP team agreed to move the Student to a smaller classroom, to conduct a reevaluation of the Student and to obtain a paraprofessional to work with the Student's vision needs.<sup>49</sup>
7. A Functional Behavior Assessment (FBA) and a Behavior Intervention Plan (BIP) were started on August 25, 2022 and the District hired a registered behavioral technician to

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<sup>37</sup> Parent's Testimony.

<sup>38</sup> Parent's Testimony.

<sup>39</sup> Parent's Testimony.

<sup>40</sup> Parent's Testimony. Parent Ex. 1, P-0061.

<sup>41</sup> Parent's Testimony.

<sup>42</sup> Parent's Testimony and Director's Testimony.

<sup>43</sup> Director's Testimony

<sup>44</sup> Director's Testimony.

<sup>45</sup> Director's Testimony

<sup>46</sup> Parent Ex. 1, P-0007.

<sup>47</sup> Parent Ex. 1, P-0007.

<sup>48</sup> Director's Testimony

<sup>49</sup> Director's Testimony

work with the Student on September 6, 2022.<sup>50</sup> The Student had two registered behavioral technicians who worked with him.<sup>51</sup> One registered behavioral technician worked with the Student three days a week and the other registered behavioral technician worked with the Student two days a week.<sup>52</sup> The District also hired a 1:1 aide to work exclusively with the Student.<sup>53</sup> The District searched for a paraprofessional who had a college degree or passed a test to register as a paraprofessional.<sup>54</sup>

8. The Student's placement was changed to a cross categorical classroom.<sup>55</sup> There were four special education students in the classroom full-time and two students who were in the room on a part-time basis for approximately 30 to 40 minutes at a time.<sup>56</sup> The Teacher had one assistant in the classroom.<sup>57</sup>
9. The reevaluation results showed the Student needs consistency in the school environment. As part of the Student's reevaluation, an occupational therapy evaluation was conducted. The OT who conducted the evaluation has worked with less than ten students who have had a vision impairment.<sup>58</sup> The Sensory Profile 2 questionnaire was provided to the Teacher and the Parent to complete.<sup>59</sup> The OT was unable to provide a standardized score on the results of the questionnaires because many of the questions were not applicable due to the Student's visual impairment.<sup>60</sup> The OT explained there are other tests available for visually impaired children but this assessment was administered since this assessment is the most commonly used.<sup>61</sup> The results from the Sensory Profile showed that the Student becomes distressed in the home and the school environment when there is a change in plans, routines and expectations.<sup>62</sup> For Auditory Processing, the Parent reported the Student becomes overwhelmed in chaotic and noisy situations and can be set off by city sirens, loud horns etc.<sup>63</sup>
10. The reevaluation also included an FBA. The targeted behavior was determined to be safe with words, body and objects and the antecedent was determined to be a non-preferred directive.<sup>64</sup> The targeted behavior was the Student being verbally and physically

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<sup>50</sup> Testimony of Director.

<sup>51</sup> Testimony of Director.

<sup>52</sup> Testimony of RBT and District BCBA.

<sup>53</sup> Testimony of Director.

<sup>54</sup> Testimony of Director.

<sup>55</sup> Teacher's Testimony.

<sup>56</sup> Teacher's Testimony.

<sup>57</sup> Teacher's Testimony.

<sup>58</sup> OT's Testimony.

<sup>59</sup> OT's Testimony. Parent Ex. 1, P-0060.

<sup>60</sup> OT's Testimony. Parent Ex. 1, P-0060.

<sup>61</sup> OT's Testimony.

<sup>62</sup> Parent Ex. 1, P-0061.

<sup>63</sup> Parent Ex. 1, P-0060.

<sup>64</sup> Parent Ex. 1, P-0046.

aggressive by hitting, kicking, scratching, biting, throwing things, yelling cuss words and making verbal threats.<sup>65</sup> The behavior was determined to occur throughout the school day.<sup>66</sup>

11. A BIP was developed as part of the reevaluation. For all three target behaviors, the interventions to be used included a visual/tactile schedule, preferential seating, a designated safe area within the classroom, sensory resources when needed (Fidget spinner, pillow and braille board), alternate learning environment.<sup>67</sup> The BIP also provided for braille, choices of learning materials and a classroom aide.<sup>68</sup> Rewards included redbird feathers to earn preferred activity time, a personalized token economy (earn Aaron buck; earn mom points), verbal praise, non-contingent breaks from classroom and non-contingent breaks with attention from staff.<sup>69</sup>
12. The Student's eligibility for special education and services was changed to Multiple Disabilities.<sup>70</sup> The October 18, 2022 IEP provided for the Student to receive 20 minutes weekly of orientation/mobility; 300 minutes weekly of vision itinerant consult services and 205 direct vision itinerant services; 15 quarterly minutes of physical therapy and occupation therapy consult minutes and 420 minutes quarterly of social work services.<sup>71</sup>
13. As a result of the reevaluation, the District provided sensory supports in the hallway and in the classroom to address the Student's sensory needs. The Student was provided with his own area in the back of the classroom with two different chairs to use and was given sensory items to use inside the classroom and outside of the classroom.<sup>72</sup> The sensory items included fidgets, a wiggle seat, a rocking chair weighted vest, a trampoline, a chew necklace.<sup>73</sup> The Student was provided with a daily tactile schedule in the room that the Student uses every day and the schedule is marked with wicki sticks when an item is completed.<sup>74</sup>
14. The District trained the staff members working with the Student on how to implement the BIP and the list of interventions were posted in the classroom.<sup>75</sup> The two registered behavior technicians were trained by the District BCBA. The District BCBA and the

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<sup>65</sup> Parent Ex. 1, P-0046.

<sup>66</sup> Parent Ex. 1, P-0046.

<sup>67</sup> Testimony of BCBA. Parent Ex. 1, P-0046.

<sup>68</sup> Parent Ex. 1, P-0039.

<sup>69</sup> Parent Ex. 1, P-0039.

<sup>70</sup> Joint Ex. 4, Page 28 or 122.

<sup>71</sup> Parent Ex. 1, P-0043

<sup>72</sup> Testimony of OT and Teacher.

<sup>73</sup> Testimony of OT and Teacher

<sup>74</sup> Testimony of Teacher.

<sup>75</sup> Testimony of District BCBA. District Ex. 9, Page 169 of 251.

registered behavior technicians also modeled the interventions for the Aide,<sup>76</sup> and the registered behavior technicians observed the Aide implement the interventions in the classroom and provided the Aide with feedback.<sup>77</sup>

15. As of December 1, 2022, the Student made progress academically and behaviorally with the interventions in place from the October, 2022 IEP meeting. At the December 1, 2022 IEP meeting, the Teacher reported the Student improving with his peer relationships by tolerating the other students better and by complimenting the other students.<sup>78</sup> The Teacher also reported the Student is following directions and beginning to engage in the classroom and learning and the Student's outbursts are minimal.<sup>79</sup> The social worker reported the Student is making progress in her sessions and indicated the social work minutes may be able to decrease from 60 minutes to 30 minutes.<sup>80</sup> The District BCBA reported the Student is becoming more of an active participant and a learner and the time on task has steadily increased.<sup>81</sup> The Student had three straight days of no cursing and two straight days before that.<sup>82</sup> The peers in the classroom have not had to leave the classroom and the self-injurious behavior decreased and the aggression towards others had decreased.<sup>83</sup>
16. After the December meeting, on December 19, 2022, the Student had to be placed in a two team hold by the social worker and the Principal.<sup>84</sup> The Student had been removed from the classroom for throwing over the furniture and dumping tubs and throwing center pieces.<sup>85</sup> In the Principal's office the Student was throwing books and papers and toppling furniture.<sup>86</sup> It was reported the Student had scratched a staff member.<sup>87</sup>
17. After returning to school in January, 2023, the Student received several out of school suspensions. As a result of the suspensions and a hold used on the Student, the Parent requested an IEP meeting and an IEP meeting was scheduled for January 11, 2023.<sup>88</sup> The Parent informed the District members of the IEP team she was concerned with the Student's suspensions and the consistency of the staff since the Vision Itinerant would be out for the rest of the term and expressed her disapproval of the hold used on the

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<sup>76</sup> Testimony of District BCBA and Aide.

<sup>77</sup> Testimony of Aide.

<sup>78</sup> Joint Ex. 1, Page 6 of 122.

<sup>79</sup> Joint Ex. 1, Page 5 of 122.

<sup>80</sup> Joint Ex. 1, Page 6 of 122.

<sup>81</sup> Joint Ex. 1, Page 6 of 122.

<sup>82</sup> Joint Ex. 1, Page 6 of 122.

<sup>83</sup> Joint Ex. 1, Page 5 and 6 of 122.

<sup>84</sup> Testimony of Principal and Joint Ex 2, Page 10 of 122.

<sup>85</sup> Joint Ex. 2, Page 11 of 122.

<sup>86</sup> Joint Ex 2, Page 11 of 122.

<sup>87</sup> Joint Ex. 2, Page 13 of 122.

<sup>88</sup> Joint Ex. 3, Page 14 of 122.

Student.<sup>89</sup> The District members of the IEP team recommended the Student’s placement be changed to M School, a public therapeutic day school in the District.<sup>90</sup> The Parent disagreed with this recommendation and the Parent ended the meeting to obtain an advocate.<sup>91</sup>

18. Despite all of the supports and interventions implemented for the Student, the District reported an increase in the unsafe behaviors and an increase in the intensity in the Student’s unsafe behaviors commencing in January, 2023. Previously, the Student’s behavior would last for approximately 10 minutes and has now increased to 30 to 40 minutes.<sup>92</sup> The chart shows an increase in the frequency of the behaviors from the time frame of November 30, 2022 - January 9, 2023 to the time frame of January 10, 2023 to January 26, 2023.<sup>93</sup> The behavioral data was as follows:

Behavior	Frequency: 11/30/22-1/9/23	1/10/23 – 1/26/23
Scratched	1	8
Bite	1	22
Kicking	0	5
Property destruction/ Throwing materials	11	19
Pinching	1	6
Hitting with hands	0	4
Self injurious behaviors	4	3
Head butting others	0	3
Cursing	2	3 <sup>94</sup>

19. Due to the escalating aggressive and unsafe behaviors of the Student, the Student was suspended from school for fifteen days as of March 7, 2023 even though the behaviors were determined to be a manifestation of his disability due to his developmental delay in the area of social/emotional development which adversely affects his ability to manage his emotions, control verbal and physical aggression and comply with requests of directions.<sup>95</sup>

19a. The aggressive behaviors causing the Student to be suspended included threats to staff, hitting another student, kicking, and biting staff, pulling hair, throwing shoes, and flipping desks. On January 26, 2023, the Student was reported to have bitten, hit and

<sup>89</sup> Joint Ex. 3, Page 18 of 122.

<sup>90</sup> Joint Ex. 3, Page 19 of 122.

<sup>91</sup> Joint Ex. 3, Page 18 of 122.

<sup>92</sup> Testimony of District BCBA.

<sup>93</sup> Joint Ex. 4, Page 31 of 122 and Testimony of District BCBA.

<sup>94</sup> Joint Ex. 4, Page 31 of 122.

<sup>95</sup> Joint Ex. 4, Page 24 and 33 of 122. Joint Ex. 6, Page 73 of 122. Joint Ex. 7, Page 85 of 122.

drawn blood from scratching a staff member.<sup>96</sup> The Student had been denied extra time for his break and tipped his chair, threw braille cards, a pencil box and kicked the one on one assistant in the head.<sup>97</sup> On February 1, 2, 9 and 14, 2023, the Student's behavior involved throwing items, flipping desks, biting his Aide, scratching a staff member, kicking a staff member, throwing a shoe which hit a staff member and hitting someone in the head.<sup>98</sup> The Student told another student to leave or he would hit her and when redirected he said "you know what I think I will" and then hit the other student in the head.<sup>99</sup> On February 22, 2023, the class was getting ready to go to the Black History Museum in the gym.<sup>100</sup> The Student became very upset about going to the event even though he was informed he did not have to go.<sup>101</sup> The Student hit the Aide and pulled her hair and would not let go.<sup>102</sup> On March 3, 2023, the Student was playing with keys and was getting louder.<sup>103</sup> The Aide asked the Student to stop and gave him a minute with a timer and when the timer went off the Student threw the keys, tipped his desk, scratched a staff member and attempted to bite the Aide but the Aide wore a protective sleeve.<sup>104</sup>

20. The Student's unsafe behaviors continued after the March 7, 2023 IEP meeting and the Student was refusing to work on his assignments. The Aide explained the self-injurious behavior has escalated in the past few weeks.<sup>105</sup> On March 14, 2023, the Student did not want to eat in the cafeteria and was taken to the nurse's office.<sup>106</sup> In the nurse's office, the Student was banging his head on the cot and kicking.<sup>107</sup> Then the Student was pulling on a phone cord and the Nurse was afraid he was going to be injured and tried to cut the cord with scissors.<sup>108</sup> There were concerns someone could have been injured with the scissors.<sup>109</sup> The Student was also kicking the file cabinet and was throwing items onto the floor.<sup>110</sup> The Student tried to bite and hit the Aide.<sup>111</sup>

21. The Student's dysregulation is affecting the Student's progress with his vision goals. The Vision Itinerant had reported progress on the Student's third quarter vision goals;

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<sup>96</sup> Joint Ex. 4, Page 28 of 122.

<sup>97</sup> Joint Ex. 4, Page 28 of 122.

<sup>98</sup> Joint Ex. 6, Pages 61 – 70 of 122.

<sup>99</sup> Joint Ex. 4, Page 70 or 122.

<sup>100</sup> Joint Ex. 7, Page 82 of 122.

<sup>101</sup> Joint Ex. 7, Page 82 of 122.

<sup>102</sup> Joint Ex. 7, Page 82 of 122.

<sup>103</sup> Joint Ex. 7, page 90 of 122.

<sup>104</sup> Joint Ex. 7, Page 90 of 122.

<sup>105</sup> Testimony of Aide.

<sup>106</sup> Testimony of Aide.

<sup>107</sup> Testimony of Aide and the Director.

<sup>108</sup> Testimony of the Director.

<sup>109</sup> Testimony of the Director.

<sup>110</sup> Testimony of the Director and the Aide.

<sup>111</sup> Testimony of the Director and the Aide

however, explained the Student would progress better if the behaviors were under control. The Student engaged in conduct in March where he refused to do his braille work. On March 16, 2023, the Student refused to work on his math and braille.<sup>112</sup> The Student told the Aide, “I f’ing hate you. I want to eat you. I want to kill you.”<sup>113</sup> Then the Student was kicking and continued to swear and started banging a paint brush and throwing materials from the braille table onto the ground in the hallway and escalated in his attempts to bite and scratch staff and a safety mat was used.<sup>114</sup> The Student started banging on the glass doors with his hands, feet, and head.<sup>115</sup> On March 22, 2023, the Student did not want to work on his braille with the Vision Itinerant and threw a chair, scratched, and bit staff.<sup>116</sup> The Student bit himself and hit his head on the floor multiple times.<sup>117</sup>

22. The Student’s dysregulation is also affecting his progress with his IEP goals for verbal and physical aggression. The Teacher had reported progress on the Student’s goals in the areas of verbal and physical aggression for the third quarter.<sup>118</sup> The Principal explained the Teacher did not record the data correctly.<sup>119</sup> The Testimony of the Vision Itinerant, the Director, the District BCBA support the Principal’s Testimony that the Student’s verbal and physical aggression have intensified in the past few months and the behaviors resulted in the Student being suspended for fifteen days.<sup>120</sup>

### **C. PLACEMENT AT M SCHOOL**

23. The District is now seeking to place the Student in an interim alternative program at the M School for 45 days. The M School is a public therapeutic day school in the District.<sup>121</sup> The M School has two buildings: one building for kindergarten through 8th grade and one building for 9<sup>th</sup> through 12th grade. The Student would be in a program for only special education children and would be mentored by older students.<sup>122</sup> The M School has a program to work on the behavioral and social and emotional needs of the students to return the students to the general education setting.<sup>123</sup> The M School has trauma

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<sup>112</sup> District Ex. 26, Page 197 of 251.

<sup>113</sup> District Ex. 26, Page 197 of 251.

<sup>114</sup> District Ex. 26, Page 197 of 251.

<sup>115</sup> District Ex. 26, Page 197 of 251.

<sup>116</sup> District Ex. 4, Page 93 of 251.

<sup>117</sup> District Ex. 4, Page 93 of 251.

<sup>118</sup> Testimony of Teacher.

<sup>119</sup> Testimony of G Principal.

<sup>120</sup> Testimony of Vision Itinerant, Direct and the District BCBA.

<sup>121</sup> M Principal’s Testimony.

<sup>122</sup> M Principal’s Testimony.

<sup>123</sup> M Principal’s Testimony.

informed practices which include a regulation coach, a regulation room and a recovery room.<sup>124</sup> Everyone in the building is trained for crisis intervention.<sup>125</sup>

24. The M School has staff support to implement the Student's related services in his IEP. There are two social workers on staff and the Student's Vision Itinerant has been to the school and can provide the vision services at M School and the Vision Itinerant testified she would be willing to provide the vision services at M School.<sup>126</sup> The M School has not had a blind student before; however, the M Principal would discuss programming for the Student with the Parent and the Vision Itinerant.<sup>127</sup> The two social workers provide individualized therapy, group therapy and also family therapy.<sup>128</sup> The Student's OT also provides services at the M School and there is a physical therapist on staff.<sup>129</sup> The M School also has a contract with a BCBA.<sup>130</sup> M Principal explained the M School employs the services of a BCBA, [REDACTED], who is very experienced with creating FBAs and BIPs and is employed by the same company where the District BCBA is employed.<sup>131</sup>
25. The M School has the resources to address the Student's emotional dysregulation so the Student can return to the District. The Student will be placed in a separate classroom by himself until he learns how to transition in the new building and integrate with the other staff members.<sup>132</sup> The Student is affected by loud environments and will have a quieter environment in a therapeutic school setting than in a general education building.<sup>133</sup> The Parent explained the Student does better in a quieter environment such as a small mall than a large mall.<sup>134</sup> The G Principal explained the M School has a quieter environment and the hallways are quiet.<sup>135</sup> When the G Principal had visited the only activity she observed in the hallway was a student walking with a staff member.<sup>136</sup> M School has been successful in transitioning students back to their home schools with their program.<sup>137</sup> The G Principal, the Vision Itinerant, and the District BCBA believe the M School will be able to assist the Student with his dysregulation so the Student can return to G School.<sup>138</sup>

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<sup>124</sup> M Principal's Testimony.

<sup>125</sup> M Principal's Testimony.

<sup>126</sup> M Principal's Testimony.

<sup>127</sup> M Principal's Testimony.

<sup>128</sup> M Principal's Testimony.

<sup>129</sup> M Principal's Testimony.

<sup>130</sup> M Principal's Testimony.

<sup>131</sup> Testimony of M Principal.

<sup>132</sup> M Principal's Testimony.

<sup>133</sup> M Principal's Testimony and G' Principal's Testimony.

<sup>134</sup> Testimony of Parent.

<sup>135</sup> G Principal's Testimony.

<sup>136</sup> G Principal's Testimony

<sup>137</sup> M Principal's Testimony.

<sup>138</sup> Testimony of G Principal, District BCBA and Vision Itinerant.

26. The District does not have the resources to extinguish the Student's current behavioral outbursts. The Private BCBA opined the Student's current behavior could be extinguished in his current placement.<sup>139</sup> There is a regulation room in the building that has not been used with the Student.<sup>140</sup> The Principal and the District BCBA explained the room is too far away to use.<sup>141</sup> The Student would have to be taken down the hall and through the gym and up a set of stairs and go behind the stage to reach the regulation room.<sup>142</sup> The Principal indicated she does not have enough staff to make sure the Student will not hurt himself and does not have the staff with the expertise to change the Student's behaviors and to try to increase the positive behaviors.<sup>143</sup> Find the Principal's testimony more credible than the Private BCBA, who just observed the Student for only one day.
27. The Private BCBA recommended the District try to implement other interventions at the current placement before changing the Student's placement. The Private BCBA opined that it is best practices to conduct a new FBA and amend a student's BIP. The FBA is necessary to determine if the target behavior has changed. In the Private BCBA's expert opinion, the current plan may be reinforcing the Student's behavior.<sup>144</sup> The Private BCBA did not provide any support that a new FBA and a BIP would dysregulate the Student's behavior. The District BCBA who has collaborated with the staff at G School to regulate the Student's behavior explained there is nothing more than can be implemented by the District to regulate the Student's behavior.<sup>145</sup>

### **CONCLUSIONS OF LAW AND DISCUSSION OF THE ISSUES**

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:

The IDEA and the Illinois Administrative Code provide as follows:

Requests for expedited due process hearings shall be made in accordance with 34 C.F.R. §300.532 and §300.533 and Section 14-802(b) of the Illinois School Code [105 ILCS 5/ 14-8.02b], Specifically 23 Illinois Administrative Code §226.655. which reads:

- a) The hearing officer shall determine:
  - 1) whether the child shall be placed in the proposed alternative educational setting; or

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<sup>139</sup> Private BCBA's Testimony.

<sup>140</sup> Testimony of Principal, District BCBA and OT.

<sup>141</sup> Testimony of Principal and District BCBA.

<sup>142</sup> Testimony of Principal and District BCBA

<sup>143</sup> Testimony of Principal.

<sup>144</sup> Testimony of Private BCBA.

<sup>145</sup> Testimony of District BCBA.

- 2) whether the local school district has demonstrated that the child's behavior was not a manifestation of the child's disability.
- b) The hearing officer shall consider the following factors in determining whether an interim alternative placement is appropriate:
- 1) Whether the local school district has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;
  - 2) Whether the child's current placement is appropriate;
  - 3) Whether the district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
  - 4) Whether the interim alternative educational setting will permit full implementation of the student's IEP and includes services and modifications designed to prevent the undesired behavior from recurring.
- c) If all the conditions set forth in subsection (b) of this Section are met, the hearing officer shall order a change in the child's placement to an appropriate interim alternative educational setting for not more than 45 school days. If the district demonstrates that the student is substantially likely to injure himself or herself or others if returned to the placement that was used prior to the student's removal, the hearing officer may order that the student remain in the interim setting for subsequent periods of up to 45 school days each.

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

**A. SUBSTANTIALLY LIKELY TO CAUSE INJURY.**

The District has demonstrated by substantial evidence that maintaining the Student's current placement is substantially likely to result in injury to the Student or others. The Parent argued extensively that the Student is not substantially likely to injure himself or others because at this time the Student never required medical treatment and the staff members never missed work due to an injury or needed emergency care. The Parent also reiterated that since the Student is blind the Student never intended to hurt anyone when he was throwing objects in the school environment. The case law provides guidance to provide a

definition of what actions constitute a substantial risk of injury to oneself or others. The Courts have held that there is no requirement that a child must intend to cause injury and there is no requirement that the child must first have drawn blood or have caused an emergency visit before there can be a finding that there is a substantial risk of injury.<sup>146</sup> The Findings of Fact show the Student's aggressive behaviors which include hitting, biting, scratching, pulling hair and throwing objects and threats have escalated and intensified since January, 2023 and the Student was even recently aggressive toward another student. (FOF 18, 19 & 19a). Additionally, the Student has continued to engage in self-injurious behavior by biting himself and hitting his head on objects in the school setting. (FOF 20). Allowing the Student's aggressive behaviors to continue in this environment is likely to result in substantial injury to the Student, the staff members, and the other students.

### **B. CURRENT PLACEMENT IS INAPPROPRIATE.**

The second factor the District has to prove is that the current placement is inappropriate. The District has met its burden of proof to show the current placement is not appropriate for the Student. The Finding of Facts unequivocally show the current placement is not appropriate for the Student. Despite the extensive support provided by the Aide and the two registered behavior technicians in the classroom, and the implementation of the BIP, the Student's aggressive behaviors have become more frequent and intense. (FOF 18, 19 & 19a). The Student has been suspended for fifteen days which prevented him from accessing his education and the Student's dysregulation has interfered with the Student's progress on his IEP goals. (FOF 17, 19, 21 & 22). Moreover, the Student is already placed in a small cross categorical classroom with only four full time students and two part-time students and has two staff members in the classroom entirely devoted to working with him. (FOF 7 & 8) Despite the individualized attention, quieter environment, and all of the additional support implemented by the District, the Student's unsafe and aggressive behaviors have not been regulated. (FOF 7, 8 and 16-20). The Student now requires an interim alternative placement which has more experienced staff to address the unsafe behaviors and the available resources to address and extinguish the Student's physical and verbal aggressive behavior.

### **C. REASONABLE EFFORTS TO REDUCE THE HARM.**

The third factor the District has to prove is whether the District has made reasonable efforts to minimize the risk of harm in the Student's current placement, including the use of supplementary aids and services. The District also met its burden of proof on the third factor. The District has been proactive since the Student enrolled in the District for first grade. The Findings of Fact show the Student struggled as soon as the Student was placed in a general education setting and the District responded by holding IEP meetings, changing the Student's

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<sup>146</sup> *Light v. Parkway C-2 School District*, 41 F.3d 1223 (8<sup>th</sup> Cir. 1994). See also, *In re Student*, 119 LRP 34 (CSEA) 2019).

placement to a special education room 100% of the time, reevaluating the Student and creating an FBA and a BIP designed to meet the individual needs of the Student. FOF 6-12). The District also hired a full time Aide and two registered behavior technicians to work exclusively with the Student to try to regulate the Student's behavior in the school setting and to change the Student's behavior so the Student would not engage in physical and verbal aggression. (FOF 7). The interventions had worked for a short time frame and then stopped working with the Student. (FOF 15) The Parent was unable to present any evidence that the District has not made reasonable efforts to minimize the risk of harm in the Student's current placement. The Parent suggested the use of weighted desks and chairs; however, this change would not reduce the biting, kicking, hitting, and scratching of staff members and would not prevent the Student from banging his head and biting himself. The Findings of Fact show the District has made reasonable efforts to regulate and decrease the unsafe behaviors of the Student and the District no longer has any more resources that could be implemented in this environment to minimize the risk of harm to the Student, the staff members, and the other students. (FOF 6-11, 13, 14 and 27).

#### **D. INTERIM ALTERNATIVE EDUCATIONAL SETTING'S IMPLEMENTATION OF THE IEP.**

The fourth factor is whether the proposed interim alternative setting will permit full implementation of the Student's IEP and include services and modifications designed to prevent the undesired behavior from recurring. The District has met its burden of proof for the fourth factor. From the Findings of the Fact the M School has the staff and the resources to regulate the Student's behavior where the District was unable to do so. There are two social workers available to work with the Student and they have a regulation room and a recovery room available to work on de-escalating and extinguishing the Student's verbal and physical aggression. (FOF 23). The M School employes the necessary staff to implement the Student's minutes in his current IEP. (FOF 24). Additionally, it is uncontroverted that the Student needs to be placed in a quieter environment due to his sensory needs. The Student becomes overwhelmed and distressed in loud environments. (FOF 1 & 9). The M School has a quieter environment for the Student and also has empty rooms for the Student to use. (FOF 25). The Findings of Fact show the Student was overwhelmed in the G School in all of the settings and even being in a classroom with only four full time students in the classroom at all times and with the additional support of an aide and a registered behavior technician. (FOF 5, 6, & 19 - 22). The Findings of Fact show the M School has not worked with a blind student; however, the M Principal was willing to work with the Vision Itinerant and the Parent to discuss programming for the Student. (FOF 23). The Student requires access to the trauma related practices available at the M School to prevent the undesired behavior from recurring.

## **ORDER**

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

1. The District's requested relief to change the Student's placement to an appropriate interim alternative educational setting, specifically M School, for not more than 45 days is granted.
2. Within 5 school days of receipt of this Final Determination and Order, the District shall contract for a 45-day interim alternative educational setting placement at M School.
3. Within 45 calendar days of receipt of this Final Determination and Order, the District shall submit proof of compliance to:

Illinois State Board of Education  
Program Compliance Division  
100 N. First St.  
Springfield, IL 62777-0001

### **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.

Dated: April 11, 2023

Leah Trinkala  
Impartial Hearing Officer

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

**APPENDIX A**

[REDACTED] CUSD [REDACTED], v. [REDACTED]

ISBE Case No. 2023-DP-0171

Child/Student	[REDACTED]
Location of the Hearing	Remote Hearing
G Elementary	[REDACTED] Elementary School
M School	[REDACTED] School
Child's Parent/Mother	[REDACTED]
RBT	[REDACTED]
Principal	[REDACTED] of [REDACTED]
Vision Itinerant	[REDACTED]
Director	[REDACTED] – Director of Special Ed.
Teacher	[REDACTED] – Special Ed. Teacher
T Principal	[REDACTED] – Principal of [REDACTED]
OT	[REDACTED] - Occupational Therapist
Private BCBA	[REDACTED]
Aide	[REDACTED]
District BCBA	[REDACTED]

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. Merry Rhoades, Esq.  
Tueth, Keeney, Cooper, Mohan  
& Jackstadt, P. C.  
101 W. Vandalia, Suite 210  
Edwardsville, IL 62025  
*Email: mrhoades@tuethkeeney.com*

and

Ms. Olga Pribyl, Esq.  
Ms. Evelyn Ayay, Esq.  
Ms. Cristina Kinsella, Esq.

Equip for Equality

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

and

Ms. Misty Gordon

[REDACTED]  
[REDACTED]

and

Mr. Andy Eulass  
Due Process Coordinator  
Illinois State Board of Education  
100 N. First Street  
Springfield, IL 62777-0001  
*Email: aeulass@isbe.net*

On April 11, 2023

[REDACTED]

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Leah M. Trinkala  
Impartial Hearing Officer

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