

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

■, a minor, by and through his/her Parent,
Student/Respondent,

v.

■ School District # ■
District/Petitioner.

Case No. 2024-DP-0015

Mary Jo Strusz

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., the Illinois School Code, 105 ILCS 5/14-8.02a, and their respective implementing regulations.

BACKGROUND

Petitioner is the Parent of ■ ("Student"), a seven-year-old student who is eligible for special education and related services under the primary category of Other Health Impairment ("IHO") with a secondary disability category of Specific Learning Disability ("SLD"). The Student has been enrolled in the District since preschool and was initially found eligible for special education services on December 4, 2019. Student has an IEP but is not currently receiving education services due to a disagreement between the District and the Parent as to the brick-and-mortar location in which the IEP services will be provided.

On July 26, 2023, the District requested a due process hearing seeking an Order from this Hearing Officer determining Student's placement and ordering the Parent to sign consent applications to all private therapeutic day programs approved for the Student's eligibility within a 25-mile radius of the District. (IHO Exhibit 1).

The Parent's Attorney filed an appearance on August 7, 2023. (IHO Exhibit 5). The Parent did not file a Response to the Complaint.

The Parties waived participation in resolution or mediation. (IHO Exhibits 6,7). A prehearing conference was scheduled for August 28, 2023. (IHO Exhibit 6) On August 28, 2023, the parties filed an Agreed Joint Motion for Continuance of the prehearing conference (IHO Exhibit 11). The Order rescheduling the prehearing conference for September 21, 2023, was entered on August 28, 2023.

The Prehearing Conference was held on September 21, 2023. At the prehearing conference the Parties agreed to schedule the hearing for this case on February 5 and 6, 2024. (IHO Exhibit 18).

The original 45-day timeline was set for October 4, 2023. Due to the scheduling of the Hearing, the Hearing Officer requested an extension. The Parent objected to the extension, and the District filed a Motion to Continue the 45-day timeline on September 22, 2023 (IHO Exhibit 15). Same was granted for good cause shown pursuant to this Hearing Officer's Order of September 25, 2023, which extended the decision date to February 21, 2024 (IHO Exhibit 16).

The Prehearing Report and Order was issued, following the statutory review period, on October 4, 2023. (IHO Exhibit 18.)

The Parent opted for an open hearing, Parent's attorney acknowledged that the educational privacy laws regarding the Student cannot be adhered to in an open hearing and Student's privacy rights could not be protected. (IHO Exhibit 18-E). The Parent's attorney reaffirmed Parent's request for an open hearing at a status conference on January 30, 2024. (IHO Exhibit 27).

The Due Process Hearing was held on February 5 and 6, 2024. Stephanie Jones from the law firm of Kriha Boucek was the lead attorney representing the District. Jed Stone from Stone Associates represented the Parent. A court reporter was present.

The District presented two witnesses.¹ The sole witness on behalf of the Student was the Mother (“Parent”). The District presented nineteen exhibits which were admitted into evidence. The Parent did not present any exhibits. There were no joint exhibits and no stipulations of fact. The Hearing Officer’s Exhibits were IHO Exhibits 1-31. Both parties submitted oral closing statements and a written outline thereof. The District presented copies of any case law relied upon.

ISSUES

This is solely a District complaint which presents the following issues and requested relief for determination by this Hearing Officer. I have determined that I have the authority to hear the issues listed below.

Issue 1. Whether the District’s IEP proposed for the Student on October 6, 2022 provides Student with a Free Appropriate Public Education (“FAPE”) in the least restrictive environment (“LRE) and if so:

Issue 2: What is the District’s responsibility, if any, once the District has provided the offer of services, and the Parent will not agree to cooperate with the placements that are available for the Student.

Parent Response: The District does not have a current and proper IEP and the District must provide the Student with current evaluations to update the Student’s services.²

To remedy the issues identified above, the District requests this Impartial Hearing Officer order the following relief:

- A. The Parent to sign consent for application to all therapeutic day programs approved for Student’s eligibility within a 25-mile radius of the District.

¹ Witnesses are identified in Appendix A.

² Parent did not file a formal Response to the due process complaint. The response was provided by the Parent at the Prehearing conference. The Parent did not file a due process complaint.

- B. Any other relief deemed appropriate by the Hearing Officer.

FINDINGS OF FACT

This Hearing Officer did not have the benefit of a transcript with respect to the testimony heard when writing this decision. Therefore, the following is based upon this Hearing Officer's personal notes and recollection. This Hearing Officer carefully considered the testimony of all witnesses presented and all documents introduced and admitted into evidence whether or not specifically referred to or cited when making her final determination. After considering all the evidence, as well as the arguments of both the District's attorney and the Parent's attorney this Hearing Officer's Findings of Fact are as follows:

1. The District has a wide continuum of special education services. For initial special education services, the District uses a social academic instructional learning program ("SAIL"), which includes a higher staff to student ratio, and provides more behavior support for students. If a Student is showing significant behavior challenges and an inability to access their academics, the data collected in the SAIL program is used to determine additional services and placement. For students needing a more restrictive placement, the District recommends using ██████████ Academy Elementary, which is a public therapeutic day school and part of the ██████████ educational cooperative³ (the District is a member). Upon the recommendation of a student's IEP team, the District does send students to private therapeutic day schools and residential schools. (HC Testimony).⁴
2. When an IEP team determines a student's placement to be a private therapeutic day school, the District will search the Illinois State Board of Education ("ISBE")

³ ██████████ is a cooperative of member districts throughout the northern Chicago suburbs to provide access to special education services. (Testimony of HC).

⁴ HC is the Assistant Superintendent of Student Services at the District; she has been employed in this position for 5 years. She holds a Doctor of Education, a master's in educational leadership and administration, a masters in curriculum instruction. She has a variety of duties, one of her primary duties is special education.

database, by eligibility, age, and location, to identify ISBE approved potential private placements. The District asks parents to sign releases with more detailed information to locate appropriate schools with openings. If there is an opening the District requests parental consent to send a referral package, which includes Student's IEP, so the schools can decide of whether they can meet the student's needs. If there is an acceptance, the parents are notified, a tour/intake meeting is scheduled, a start date is identified, and transportation is arranged. Since the pandemic, placement opportunities are more difficult to locate. Non ISBE approved placements are considered but because there is no ISBE oversight to ensure accountability, and they require the parent and district to sign a legal agreement. (HC testimony).

3. The District uses the EMBRACE system to manage and store IEPs. EMBRACE can be challenging to use. Dates in the system are automatically updated. If there is an amendment to the IEP, the calendar date will update and it will show as amended on the lower portion of the document and is included in the most recently opened IEP. There can be several amendments within one IEP document. The District admits the user challenge of the EMBRACE system has resulted in several technical errors within Student's IEP(s), but the contents are accurate. (Testimony of HC).
4. The Student was born in 2016, she is female, and is currently age 7. Student's current grade placement for the 23-24 school year is second grade. (Exhibit 5-121). Student began in the District in the early childhood program. (HC testimony and Exhibit SD 11). Student was initially found eligible for special education services on December 4, 2019, at three years-nine months old, under the primary category of Developmental Delay (Exhibit SD 23-388 and HC testimony).
5. In the fall of 2021, Student transitioned from Pre-K to Kindergarten at one of the

District Elementary Schools. The Student was placed in the SAIL program. (Exhibit SD12-392). At an IEP meeting on December 9, 2021, Student's behavior was reviewed with the Parent. It was noted that Student's behavior was escalating, and she was making no academic progress. During the meeting, based upon no academic progress and unsafe incidents, the team agreed that Student's placement did not offer enough support and a placement at the cooperative's public therapeutic day school ("NSAE") was recommended and implemented. (Exhibit SD12-471 and HC testimony).

6. In March 2022 an IEP meeting was held at NSAE to review Student's IEP as implemented. The IEP specifies that one of the Parent's concerns is Student's behavior. (Exhibit 10-283). At this meeting, Student's IEP was amended to include a behavior intervention plan ("BIP") targeting Student's noncompliance. (Exhibit SD10-299).
7. Student participated in extended school year ("ESY") 2022 at NSAE. During the ESY program Student's behavior escalated including punching, pinching, kicking, and choking. In response, the staff implemented problem solving interventions, and there was regular communication with the Parent. (TCW testimony)⁵
8. Student's behaviors continued into the start of the 2022-2023 school year. The behaviors included elopements and hitting other students and staff causing multiple injuries (including two concussions). (Testimony of JCW and HC).
9. On September 8, 2022, an IEP meeting was held to review Student's academic and behavioral data. District staff and both Parents were present. (Exhibit SD9-277). Parents expressed concerns about the District's staff's unprofessional treatment of the Student, which included alleged physical slapping and

⁵ TCW is the principal of NSAE. She holds a PhD in organizational leadership, and a masters in counseling, in addition to her undergraduate degree.

“squishing” Student’s arms and back. (Exhibit SD9-277). The Father told the team he would “consider going to the authorities” if the treatment continued.⁶ (Exhibit SD9-277). The IEP meeting was continued to September 15, 2022, to problem solve and discuss Student’s behaviors. (JCW testimony and Exhibit SD9-278).

10. During the September 15, 2022, meeting, the District IEP members and the Parents were present. Father expressed concerns about Student being in isolation. He admitted that since he first reported Student being mishandled by District staff, the incidents/allegations have subsided. (Exhibit SD9-279). Student was never placed in any type of punitive isolation. Student was moved to a quiet office/conference room with staff present so she could work on academics (JCW testimony). Student’s inability to access academics due to her dysregulated behaviors was discussed. Student’s expected academic work time has been reduced to ten minutes versus peers which is forty minutes. (HC and JCW testimony) Student’s behaviors as of September 7, 2022, and the interventions which were implemented to attempt to address the behavior were reviewed. These included: 2-1 support, an if/then chart, token board, preferred seating, visual schedule, and adjusted work expectations. A rewards system was implemented. (Exhibit SD8-263) The team discussed a comparison chart of Student’s escalating behaviors (SD 8 265-270 and JCW testimony). There was a discussion about whether a new placement should be considered, however no conclusions were reached at this meeting because it was determined additional data collection was necessary. (Testimony of HC and JCW. Exhibit 9-280). The IEP team agreed to meet again in two weeks to review the new data and consider placement options. Parents agreed they would explore potential new placements.

⁶ The Mother filed a complaint with DCFS, the District cooperated with the investigation. DCFS determined the report was unfounded. (JCW testimony).

(JCW testimony). At the Parents' request September 29 was selected as a meeting date to review two weeks' worth of data. (Exhibit SD9-279 and HC testimony). The meeting was not held on September 29, 2022, due to the Student's suspension for aggressive behavior.⁷ (Testimony of HC and JCW).

11. The IEP team, including the Parent met via Zoom, on October 6, 2022. The stated purpose of the meeting was to discuss Student's current support and academic goals, classroom support, accommodations, behavior plan and placement. The school therapist⁸ reported that since August 2022 Student had 39 unsafe incidents. Due to the intensity of Student's behaviors, Student was receiving the support of 2 staff members to transition to any activity, compared with the previous school year and ESY when Student did not need this intensive level of support.⁹ (Exhibit SD 254-255) After the review, the team, including Parent, agreed Student was not receiving the level of support she requires at the public therapeutic school. Parent expressed the opinion that a private therapeutic placement would be the best option, and the school team agreed. (HC Testimony and Exhibit SD 254-255). The Parent's procedural rights were explained. (Exhibit SD8-255) Due to Student's escalation, the team was unable to collect the data necessary to consider the modification of Student's IEP goals. Student's IEP did identify the target behaviors, provided adequate supports, and placement. (HC Testimony).
12. The District's representative suggested two possible placement options: [REDACTED] and [REDACTED] (HC testimony and Exhibit SD 8-255), the Parent rejected both of these options due to the distance from Student's residence.

⁷ There was no testimony presented on the basis for the suspension, and JCW testified she could not remember.

⁸ School therapist did not testify at the hearing.

⁹ The [REDACTED] representative acknowledged staff decided to increase the level of support due to reported issues from Student regarding physical issues.

(Exhibit SD8-255).

13. Parent was provided with her procedural safeguards and the 10-day period to challenge the IEP was explained. Parent did not challenge the October 6, 2022, IEP or Student's placement at a private therapeutic day school. The District sent releases for the Parent's signature and Parent confirmed receipt on October 8, 2022. These releases were necessary to allow the District to forward confidential information about the Student to potential placements. A follow up email was sent requesting the releases on October 11, 2022. The Parent refused to sign any releases for application to private therapeutic schools. (HC testimony).
14. The District did not send any applications to schools without the Parent's consent. (HC testimony).
15. On October 17, 2022, the District received a release from the Parent for ██████████ Academy ████████ in Lake Forest. An application was sent, but Student was rejected on the basis that the school could not meet the Student's needs. (HC testimony).
16. The Parent obtained the assistance of an educational advocate ("advocate")¹⁰ who requested an IEE for the Student. (Exhibit SD 7-230). The District agreed and on October 25, 2022, the District held a domain meeting for the IEE at which Parent and her advocate were present. The District agreed to have Student evaluated in the areas of academic achievement, functional performance, cognitive functioning, communication, health, hearing, vision, motor abilities, and social emotional functioning. The Parent and her advocate selected the evaluator. (HC testimony and Exhibit SD7-239).
17. The Parent signed a consent, and an application was sent to ██████████ Day

¹⁰ Advocate did not testify at the hearing.

School (Exhibit 7-243 and HC testimony), but Student was not accepted for placement (Exhibit SD4-107). The advocate was working on additional placement options at [REDACTED] and [REDACTED] (Exhibit SD4-106), however, there is no evidence that Parent signed consents or requested placement at these schools.

18. The Parent signed a consent, and an application was sent to [REDACTED] School. (Exhibit SD 7-243 and HC testimony). The District was able to secure a placement at [REDACTED], and requested Parent complete the intake documents and tour the facilities. (SD 4-109). Initially, Parent's advocate rejected the placement. When Parent notified the District she would consider that placement it was no longer available. The District reapplied for a placement, but there were no openings. (HC testimony and Exhibit SD 1-001).
19. There was an application sent to [REDACTED] School ("JSS"), and the District was advised a placement would be available within 30-days. On December 8, 2022, the Parent rejected this placement stating she was being "disrespected" by the director¹¹ at JSS. In a follow up call, the director stated he had talked to the Parent on the telephone, asked an identifying question, and the Parent hung up. (HC testimony and SD1-001.) The District secured a placement at [REDACTED], which the advocate rejected as inappropriate due to [REDACTED] students' cognitive profile. (Exhibits SD 1-001 and SD4-111) [REDACTED] later withdrew the acceptance. (HC testimony).
20. As of November 1, 2022, the advocate advised the District the Student was going to be privately placed at [REDACTED] Academy ([REDACTED] (SD4-108). The District disagreed with the placement at [REDACTED] as it is not an ISBE approved

¹¹ The director was not called to testify.

placement. Once [REDACTED] was identified, the Parent refused to cooperate with the District in locating other potential placements. (HC Testimony).

21. The District responded by filing a due process complaint¹² to obtain Parent's consent to apply to ISBE approved therapeutic day schools. (HC Testimony).
22. Student's IEE is dated December 15, 2022. The clinical psychologist who completed the evaluation was not called to testify. The evaluation diagnosis was Autism Spectrum Disorder (level 1); Attention Deficit/Hyperactivity Disorder, Combined Presentation, Specific Learning Disorder, with impairment in reading, written expression, and mathematics. The Evaluation concludes the qualifying special education eligibility categories (in the order specified in the evaluation) as Specific Learning Disorder, Autism, Other Health Impairment (ADHD). (Exhibit SD13-494) The evaluation recommends a placement in a therapeutic school setting that works with autistic students.¹³ (Exhibit SD 13-494 and HC testimony).
23. During mediation on the District's due process complaint, Student's private evaluation was discussed, and the Parent expressed her opinion that Student was not autistic. The autism diagnosis, and that it might open additional placement options for Student, was discussed. The District agreed with the Parent that autism did not need to be Student's primary disability. There was a mediation settlement, the Parties agreed to change Student's eligibility to other health impairment ("OHI"), based on the ADHD diagnosis, and Specific Learning Disability ("SLD"). There was a mediation agreement regarding the eligibility amendment and the amendment of Student's educational placement to [REDACTED]

¹² The District filed two due process complaints to obtain consent, this was the first filing.

¹³ The Student's IEP record from October 5, 2023, includes a letter from a Doctor of [REDACTED] at the [REDACTED] Medical Group which states: "She [Student] does NOT meet criteria for Autism Spectrum Disorder based on CARS2 test and clinical observation" SD5-174. No testimony was presented about this medical evaluation.

██████████. (HC testimony).

24. The mediation agreement culminated in an IEP meeting on January 10, 2023, which amended Student's eligibility to a primary eligibility of OHI and a secondary eligibility of SLD. (HC Testimony and SD 6-200, 204). Student was placed by the District at ██████████ in mid-February 2023, (HC testimony), the earliest ██████████ ██████████ documentation admitted into evidence identifies the date as February 13, 2023. (Exhibit SD16-530).
25. Student was not successful at ██████████ exhibiting aggressive behaviors (kicking, hitting staff and peers, using racially charged language). ██████████ incident reports document the behavior, including a report from March 1, 2023, when Student punched two different teachers in the face and threw a chair necessitating that her peers be moved to a different area for safety. (Exhibit SD14-508). During an incident on March 17, 2023, the incident report describes that the classroom needed to be cleared of students and furniture to keep the environment safe, and quotes student as saying "tomorrow I'm going to court for the court case with Mom and we're going to throw you in jail. We are going to own ██████████ and all the teachers are going to jail" and "all the ██████████ teachers are racist and my mom said y'all hate us." (Exhibit SD14-32). The District received an email on March 20, 2023, from the director of ██████████¹⁴ notifying the District that due to Student's behaviors, and the actions of the Parent, Student was no longer welcome to attend ██████████. By telephone the Director of ██████████ explained that the Parent was blaming school staff for Student's behaviors, and Staff would leave if Student was allowed to stay. (HC testimony).
26. Following the dismissal, Student was placed on homebound services, and the

¹⁴ The Director was not called to testify.

District provided Student with an iPad, directions on its use, and a virtual teacher. The District had no staff willing to go into the home to provide homebound services.¹⁵ (HC testimony).

27. Once she received legal representation, Parent provided additional consents for private therapeutic schools. (HC testimony).
28. Following the October 2022 IEP agreement to change Student's placement to a private therapeutic school, the District submitted 27 placement applications (Exhibit SD 1), some with consent of the Parent and others being redacted applications that did not contain identifiable Student information due to lack of consent. (HC testimony). The District sent multiple applications to some schools. (Exhibit SD 1). It is uncertain whether the applications made after December 2022 contained the results of the Student's IEE. The District's witnesses testified she believed they did, but the documentary evidence of the submission package did not include Student's IEE evaluation. (Exhibit 3). The only other acceptance the District received in response to the applications was from [REDACTED] (HC testimony and Exhibit SD 1-2). Student has not received any other acceptances. (HC testimony and Exhibit SD-2). The District has applied to every school within a 20-mile radius, and the only available placement is the one the Parent refuses to consent. (SD-5-156).
29. At an IEP meeting on October 5, 2023, Parent was present along with her attorney, the advocate, and a community representative. Exhibit SD 5-154 and 168.¹⁶ The team discussed, and approved, placing Student in a non-ISBE approved placement with an educational consulting group, with the District

¹⁵ There was no testimony regarding the basis for the refusal, during the Parent's testimony she referenced the District's unwillingness to provide services because of the Father.

¹⁶ The community representative was not called to testify.

offering transportation. (HC Testimony). The District's representative on the team stated the District would be willing to consider alternative placement suggestions. (HC testimony and Exhibit SD 5-156). Student was temporarily placed at the educational consulting group, but the placement was terminated when Parent refused to sign the District's contract with the educational consulting group. (HC testimony).

30. Parent testified that she moved to the District to ensure her children grow up in a safe environment. Parent is familiar with the District's proposed placement at [REDACTED] and believes it is not an appropriate placement due to security at the school, the appearance of the building, and the neighborhood¹⁷ Parent acknowledged that she has refused to sign anything for the District. Parent acknowledged the District has agreed to apply to any schools the Parent suggests. Parent conceded that she has not filed any due process complaint challenging the Student's October 6, 2022 IEP or the placement in a private therapeutic school.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of the Parent and the Attorney for the District, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

The Individuals with Disabilities Education Act ("IDEA") is a law that makes available a free appropriate public education to eligible children with disabilities and ensures special education and related services to those children. A student is eligible for special education if he

¹⁷ Parent testified the neighborhood has "gang bangers" selling drugs. No basis for this statement was provided.

or she has a disability as defined under the IDEA "by reason thereof needs special education and related services." 20 U.S.C. § 1401.

Special education means "specially designed instruction to meet the unique needs of a child with a disability" and related services are the supportive services required to assist a student to benefit from their education. 20 U.S.C. § 1401 (9); 34 CFR §300.34; 34 CFR §300.39.

The IEP is "the centerpiece of the of the statutes education delivery system for disabled children" *Andrew F. ex rel Joseph F. v. Douglas Ct Sch. Dist.*, No 15-827, 137 S.Ct. 988, 994 (U.S. Mar. 22, 2017), citing *Honig v. Doe* 484 U.S. 305, 311, 108 S.Ct. 592 (1988). A comprehensive plan prepared by a child's "IEP Team" (which includes teachers, school officials, and the child's parents), an IEP must be drafted in compliance with a detailed set of procedures 20 U.S.C. § 1414(d)(1)(B). These procedures emphasize collaboration among parents and educators and require careful consideration of the child's individual circumstances. The IEP is the means by which special education and related services are tailored to the unique needs of a particular child. *Andrew id.* citing *Board of Ed of Hendrick Hudson Central School District., Westchester City v. Rowley*, 458 U.S. 176 at 181 (1982).

As recently clarified by the United States Supreme Court, under the IDEA, a school satisfies its substantive obligation to provide a free appropriate public education by offering a child "an IEP reasonably calculated to enable a child to make progress in light of the child's circumstances." *Andrew F. ex rel Joseph F. v. Douglas Ct Sch. Dist.*, No 15-827, 137 S.Ct. 988, 999 (U.S. Mar. 22, 2017). "The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials, informed by their own expertise and the views of the child's parents, any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal...the degree of progress contemplated by the IEP must be appropriate in light

of the child's circumstances." pp 991-993. Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. *Andrew* at 999, citing *Rowley* at 206-207.

The IDEA does not require states to develop IEPs that "maximizes the potential of handicapped children" *Rowley* 458 U.S. at 189, 102 S.Ct at 3042. What the statute guarantees is an "appropriate education, "not one that provides everything that might be thought desirable by loving parents." *Tucker v. Bay Shore Union Free Sch. District*, 873 F.2d 563, at 567(1989).

The Seventh Circuit has ruled that under the Rowley standard, an "IEP passes muster provided that it is ..."likely to produce progress, not regression or trivial educational advancement." *Alex R. v. Forrestville Valley Community Unit School District #221*, 375 F.3rd 603 at 615 (7th Cir. 2004), cert denied, 125 S. Ct. 628 (2004), quoting *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245, 258 (5th Cir. 1997). See also *Richard Paul E. v. Plainfield Community Consolidated School District 202, No 202, 07 C 6911*, 2009 WL 995459 (N.D.Ill. April 9 2009) which found a school district did not violate a child's rights under IDEA when an IEP was reasonably calculated to provide him with educational benefits by addressing his behavioral and learning disabilities.) The Seventh Circuit has opined that the "critical issue [is] whether the school administrators were unreasonable" when making placement and service determinations. *School District of Wisconsin Dells v. Z.S.* 296 F. 3d 671, 676 (7th Cir. 2002).

A school district must provide FAPE to the maximum extent appropriate, with nondisabled children ("least restrictive environment" or "LRE") 20 U.S.C. § 1412(a)(5), cited by *Beth V. v. Van Clay*, 282 F. 3rd 493 (2002). Each state is required to have procedures which ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. 34 C.F.R §300.115. The continuum of educational placements ranges from the least restrictive to the most restrictive, regular

classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. ID.

In Illinois, school districts have a statutory obligation to present evidence “that it has properly identified and evaluated the nature and severity of the student’s suspected or identified disability and that, if the student has been...determined eligible for special education and related services, that [the district] is providing or has offered a free appropriate public education to the student in the least restrictive environment.” 105 ILCS 5/14-8.02a(g-55). This statute only requires the district to present evidence that the needs of the child have been appropriately identified.

In the Instant case Parent’s Counsel argues the District denied the Student a FAPE because the IEP created by the District is not “reliable, accurate and trustworthy”, Counsel elaborated, stating that Congress and the Illinois legislature intentionally left this standard out of IDEA, and related legislation, because they did not have to remind the district (and their lawyers) that the IEP needed to be reliable, accurate, and trustworthy. Counsel’s assertion does not accurately state the legal standard for analysis in a due process case.

The testimony and documentary evidence introduced at the hearing is uncontroverted by the Parent and reveals that the District is a member of a special education cooperative that provides access to a wide continuum of special education services. Not only does the District take advantage of services offered by the cooperative, but the District also sends students to private therapeutic and residential schools. (FF 1). Student was initially found eligible for special education services in preschool (FF 4). The District updated the Students services as she progressed from preschool to Kindergarten (2021-2022), in Kindergarten the Student’s behavior escalated and she was not making academic progress. In December 2021, the IEP team determined Student needed the more supportive placement of a public therapeutic day school and Student was transferred to the cooperative’s public therapeutic school (FF 5), where,

in March 2022, Student's IEP was amended to include a BIP. (FF 6). During ESY 2022, there was a dispute between the District and Student's Parents regarding Student's behavior, the District alleging Student was the aggressor and the Parents alleging the Student was being abused by District staff. The District acknowledged Parent's accusations and took action to investigate and secure Student's safety. (FF 11) In September 2022, Student's problematic behaviors included hitting other students and staff resulting in injuries and elopements. (FF 8). The IEP team met on September 8 and 15, 2022 to attempt to address Student's behavior but placement discussions were stymied by Parents allegations of staff's unprofessional treatment. (FF 9, 10). Ultimately, the team began collecting additional behavior data to update Student's IEP, in collaboration with the Parents, and to manage Student's behavior and address the Parental concerns. (FF 10). This proved impossible when in late September 2022, Student's aggressive behavior resulted in a suspension. (FF 10), An IEP meeting was held on October 6, 2022, and the team, Parents included, amended Student's placement to a private therapeutic day school. (FF 11) At no time did Parent challenge this placement. (FF 30). The evidence has shown that throughout Student's educational career, the District has appropriately responded to address Student's behaviors. When Student's problematic behaviors began to occur, the District responded. When during the kindergarten year, the behaviors began to escalate, the District responded, providing Student a more structured educational environment in a public therapeutic school and a BIP. When those supports did not effectively address Student's behaviors, the IEP team, including the Parents, agreed a private therapeutic placement was necessary. No testimony or documentary evidence was presented by the Parent challenging the Student's placement in a private therapeutic school, the IEP goals, the provision of related services, the BIP, or the implementation of Student's IEPs. Therefore, based on the uncontroverted testimony and documentary evidence introduced at hearing, it is the finding of this Hearing Officer that the District provided the Student with an appropriate IEP on October 6, 2022, including Student's placement in a private therapeutic day school, which is found to be

Student's least restrictive environment and provides her with a free and appropriate public education (FAPE).

Testimony was presented by the District admitting clerical errors within the IEP. (FF 3). Parent argues these clerical errors make Student's IEPs untrustworthy and unreliable and appears to argue this is a procedural error which violates the Student's right to FAPE. Procedural errors are governed by 20 USC §1415(f)(3)(E)(ii), which specifies a hearing officer may find a child did not receive a free appropriate public education only if the procedural inadequacies- (I) impeded the child's right to a free appropriate public education; (II) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or (III) caused a deprivation of educational benefits. The Court in *R.P. v. Alamo Heights Independent School District*, 57 IDELR 64, 111 LRP 54124 (US Dist. Ct. W.TX 2011), [affirmed by the 5th U.S. Circuit Court of Appeals at 60 IDELR 60], explained procedural errors and minor implementation failures are insufficient to establish a denial of FAPE determining "given the numerous [IEP] meetings and teacher conferences in this case, any isolated failures did not result in a denial of FAPE." The IDEA's FAPE standard does not demand perfect performance by a district and following the District's clarification testimony in response to questions posed by the IHO, it is found that the clerical errors were sufficiently explained. Parent did not present any evidence to strengthen their argument that the clerical errors resulted in a denial of FAPE and this Hearing Officer finds the identified errors were *deminimus* and did not rise to a procedural error resulting in the denial of FAPE .

Next the Parent has asserted that the District must provide the Student with current evaluations to update the Student's services. The District's issue presented in this case centers around Student's October 2022 IEP. The only evidence presented regarding Student's evaluation, at or near the time of this IEP, is the fact that following Parent's request for an IEE,

in November 2022, Student received an IEE through Parent's requested provider. (FF16). The Parent presented no evidence that the Parent requested or Student needed any additional evaluations.

Issue 2: What is the District's responsibility, if any, once the District has provided the offer of services, and the Parent will not agree to cooperate with the placements that are available for the Student.

The District proffered evidence that the District representative diligently pursued opportunities where the agreed upon IEP placement of a private therapeutic day school could be implemented. (FF 27). The District has established a pattern of parental rejection or interference with placement options. The District offered evidence of having made no less than 27 attempts for placement. This number does not include repeat requests to some schools. (FF-27). This clearly establishes the District's intention to provide the Student with the IEP placement and services the team agreed upon. In fact, the District agreed to a placement at the Parent's choice non-ISBE approved ██████████ Academy (FF 24), which was terminated based on Student's behavior as well as perceived threats against ██████████ Staff. (FF 25). Parent or Parent's advocate rejected several possible placements or procrastinated in moving forward with a possible placement causing the placement to be lost (FF 18, 19) The Parent rejected a potential placement alleging she was "disrespected", when the school's position was that it had minimal contact with the Parent. (FF 19). A non-ISBE approved interim placement was terminated when the Parent refused to sign the contract. (FF 29). Although assisted by an advocate and attorney, Parent has not put forth any testimony or evidence that she was able to locate a potential therapeutic placement willing to accept the Student and the District refused to cooperate in obtaining the placement. In *KB v. Department of Education, State of Hawaii*, 77 IDELR 300, 120 LRP36840, affirmed at 78 IDELR 249, 121 LRP 16998, the Court adopted the hearing officer's findings that the parent of the student caused the student's IEP to be delayed because the parent was "obstructionist and or/uncooperative." Here, I find that the Parent has refused or obstructed the District's many efforts to place Student in a therapeutic placement.

Remedy: The sole remedy requested in this case is for this Hearing Officer to order the Parent to sign consent for application to all therapeutic day programs approved for Student's eligibility within a 25-mile radius of the District.

In this instant case, the Parent has not contested the Student's educational placement in a therapeutic school. Parent is only contesting the brick and mortar setting in which Student will receive those educational services and is asserting her parental right to reject that setting. The District has not provided any argument or authority to establish this Hearing Officer's ability to order the Parent to provide consent.

Under 34 CFR §300.9 Consent means (a) the parent has been fully informed of all information relevant to the activity for which consent is sought; and (b) the parent understand and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (c) (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. And (2) if a parent revokes consent, that revocation is not retroactive (i.e. it does not negate an action that has occurred after the consent was given and before the consent was revoked). The consent language in the Illinois administrative code is consistent with the Federal Code. 23 IL Ad. Code 226.540. There are states which have enacted laws that require a district to obtain parental consent before changing a student's IEP or placement and may be able to use IDEA consent override procedures to make the change of placement without consent. See Letter to Anonymous 80 IDELR 23, 121 LRP 38602 (2021). Illinois is not one of those states.

The District may have a remedy under the Family Education Rights and Privacy Act (FERPA) 20 U.S.C. § 1232 g, 34 CFR part 99 and the Illinois School Student Records Act, 105 ILCS 10/6 Sec. 6. The FERPA regulations specify the conditions under which personally identifiable information may be disclosed from student education records without the written

consent of the parent. Letter to Anonymous Student Privacy Policy Office 122 LRP 14844 (2021). This Hearing Officer has no authority over FERPA actions.

By requesting this Hearing Officer order a parent to consent to school placement applications, it appears the District is attempting to implement the consent override procedures provided by the IDEA. These procedures are written to protect a district attempting to evaluate or reevaluate a student for the provision of INITIAL (emphasis added) special education services if the parent refuses to consent. This is not an initial IEP, or a request to evaluate. It is clear that in Illinois, the consent override statute is not intended to cover a student, with an IEP and evaluation, when a parent refuses to consent to the application for placement and services included in the IEP. The IHO has no authority to provide the relief requested by the District.

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

1. The Student's October 6, 2022, IEP provides Student with a free appropriate public education in the least restrictive environment, which is a therapeutic day school is appropriate. The District need not take any action.
2. This Hearing Officer does not have the authority under the IDEA to override the Parent's refusal to provide consent to apply to therapeutic day schools. The District's request for relief is denied.

Dated: February 21, 2024

/S/Mary Jo Strusz
Mary Jo Strusz, Impartial Hearing Officer

[REDACTED]

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 shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street., Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.

Dated: February 21, 2024

/S/Mary Jo Strusz
Mary Jo Strusz, Impartial Hearing Officer

Appendix "A"

WITNESS NAME	TITLE	ACRONYM
[REDACTED]	Mother	Parent
Dr. [REDACTED]	Assistant Superintendent of Student Services.	HC
[REDACTED]	Principal of [REDACTED] Academy Elementary School	JCW

CERTIFICATE OF SERVICE BY EMAIL AND
CERTIFIED UNITED STATES POST OFFICE MAIL

I the undersigned, Mary Jo Strusz, certify that on February 21, 2024, a copy of the FINAL DETERMINATION AND ORDER, was served upon the following persons via email transmission by attached document in pdf format to the email addresses below and a copy of the printed document with original signatures were placed in the United States Postal Service, Certified Mail and address to the parties at the addresses below:

Parent:

Jed Stone, Esq.
Stone & Associates, LTD.

[REDACTED]

District:

Stephanie Jones, Esq.
Cassie Black, Esq.

[REDACTED]

Illinois State Board of Education:

Mr. Andy Eulass
Due Process Coordinator
100 N. First St.
Springfield, IL 62777-0001
AEulass@ISBE.net

February 21, 2024

/S/ Mary Jo Strusz
Mary Jo Strusz, Impartial Hearing Officer

[REDACTED]