

ILLINOIS STATE BOARD OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING

IN THE MATTER OF
BS

v.

) ISBE CASE NO. 2023-DP-0049
)
) **D. Michael Risen, PhD**
) Impartial Due Process
) Hearing Officer

Introduction

1. The DPCN came before the IHO on Parent's on or about September 7, 2023.¹ The District filed the District's response on September 21, 2023.² The parties held a resolution meeting on September 20, 2023 but failed to reach any agreement.³ The HO conducted the pre-hearing conference (PHC) on October 30, 2023.⁴ The HO issued a PHC summary and order on the same day.⁵
2. The HO conducted the hearing on five consecutive days beginning on January 29, 2024, and ending on February 2, 2024. Mr. Joseph Krause, Esq., represented the Parent and Ms. Michelle Todd, Esq., and Ms. Jessica Nguyen Esq., represented the District.
3. On October 26, 2023, the Parent filed a motion seeking to disqualify Ms. Todd as the District's attorney and include Ms. Todd as a witness for the Parent.⁶ The District filed a response to the Parent's motion on November 3, 2023.⁷ On the same date, the HO filed the ruling denying the Parent's motion to disqualify Ms. Todd and denying the Parent's motion to have Ms. Todd testify.⁸
4. On October 31, 2023, the District filed a joint motion to continue the 45-day timeline to February 16, 2024, and the HO issued an order approving same and extended the deadline when a decision is due accordingly.⁹
5. On November 2, 2023, the Parent filed a motion seeking authority for the testimony of the Student's Uncle, Mr. [REDACTED] which the HO denied.¹⁰

¹ Hearing officer exhibits are identified as "HO" followed by the exhibit/page number; Parent's Exhibits will be referred to as "P" followed by the exhibit/page number; and District Exhibits will be referred to as "D" followed by the exhibit/page number.

² See HO Exhibit (6) p. 52-61.

³ See HO Exhibit (5) pp. 50-51.

⁴ See HO Exhibit (26) pp. 145-153.

⁵ Ibid.

⁶ See HO Exhibit (14) pp. 99-104.

⁷ See HO Exhibit (19) pp. 132-133.

⁸ See HO Exhibit (40) pp. 237.

⁹ See HO Exhibit (31) at pp. 157-160.

¹⁰ See HO Exhibits (35-41) pp. 188-240

6. On December 22, 2023, the Mother of the Student submitted an *ex parte* email to the HO regarding the Student and informing the HO the Student continued to remain at home and not in school. The HO emailed the parties regarding the *ex parte* communication and scheduled a status call to discuss same on the same day and provided the parties with a summary of the status call also on the same day.¹¹ The status call reflects: The District agreed to reimburse the Parent for costs related to Wilson tutoring provided by the Parent on the condition the Parent submit proper documentation to the District. The District committed to continued support of the Wilson tutoring costs beginning with the start of the new school year in January of 2024. The District agreed to provide ABA therapy in the home during the pendency of the DPCN, and to collaborate with the Parent to find a suitable therapeutic day school for the Student.¹²
7. On January 16, 2024, the District emailed the HO seeking four subpoenas and a request to conduct a status call to discuss the Parents' pending divorce proceedings, and a motion to delay the hearing.¹³ On January 18, 2024, the HO conducted the status call and denied the request to discuss the Parent's divorce proceedings, asked the District why there has been a delay in the Student's reevaluation (the District did not have that information at hand) and denied the District's motion to delay the hearing.¹⁴
8. On January 19, 2024, the Parent submitted a formal motion to quash the four subpoenas requested by the District.¹⁵ On January 23, 2024, the District filed a response to the Parent's motion to quash.¹⁶ On January 24, 2024, the HO filed the ruling denying the Parent's motion to quash the four subpoenas requested by the District.¹⁷

Jurisdiction

9. The HO conducted the hearing and rendered a decision in the DPCN pursuant to the Individuals with Disabilities Education Act (IDEA)¹⁸ 20 U.S.C. §§ 1400 *et. Seq.*, and its implementing regulations, 34 C.F.R. §§ 300.1 *et. Seq.*, and the Illinois School Code, 105 ILCS 5/14-8.02a *et. Seq.*, and its implementing regulations, 23 Ill Admin. Code § 226`0 *et. Seq.*

¹¹ See HO Exhibits (46-51) pp. 252-266.

¹² See HO Exhibit (51) pp. 263-266.

¹³ See HO Exhibit (63) pp. 306-307.

¹⁴ See HO Exhibit (86) pp. 441-445.

¹⁵ See HO Exhibit (77 and 84) pp. 364-368 and 434-438.

¹⁶ See HO Exhibit (90) pp. 449-456.

¹⁷ See HO Exhibit (91) pp. 457-463.

¹⁸ In 2004, Congress reauthorized the Individuals with Disabilities Education Act as the Individuals with Disabilities Improvement Act. See Pub. L. No. 108-446, 118 Stat. 2647 (Dec. 3, 2004), effective July 1, 2005. The amendments provide that the short title of the reauthorized and amended provisions remains the Individuals with disabilities Education Act. See Pub. L. 108-446, § `0, ``8 Stat. at 2647; 20 U.S.C. §1400 (2006) ("This chapter may be cited as the 'Individuals with Disabilities Education Act.'").

Background

10. At the time of the filing of this DPCN, the complaint involved a seven-year-old male Student who last attended ██████ Elementary school in the first grade during the 2022-2023 school year. During the past 2023-24 school year, the Student has not been attending school pending the Student's placement in a suitable therapeutic day school (TDS) while receiving in-home services either provided for or funded by the District. The Student is a student with a disability and the District identified the Student's eligibility category as Developmental Delay with medical diagnoses including Autism Spectrum Disorder and Attention Deficit Hyperactivity Disorder (ADHD).¹⁹ The Parent filed the DPCN due to disagreements as to the appropriate placement for the Student.

Issues and Proposed Relief

11. During the pre-hearing conference, the Parent identified nine (9) issues.²⁰
- i. Did the District dupe the Parent into agreeing to a therapeutic day school for the Student and make the placement without securing the Parent's informed consent?
 - ii. Did the District actively conceal the District's multiple obligations to evaluate the Student prior to changing the Student's placement?
 - iii. Did the District conceal from the Parent ongoing staffing issues that resulted in the District failing to provide the Student with a one-to-one paraprofessional as required by the Student's IEP?
 - iv. Did the District know, or should have known, that the Student's need for a therapeutic day school was not available when the District made the recommendation for a therapeutic day school?
 - v. Should the District have conducted a functional behavior assessment (FBA) and complete a behavior intervention plan (BIP) prior to recommending a change in the Student's placement?
 - vi. Did the District either lie or misrepresent to the Parents the following:
 1. The Student would benefit from a placement at Little Friends while knowing there was not a placement available.
 2. Informed the Parent that the Parent was not locked into anything.
 - vii. Did the District fabricate the Student's math and reading goals in the Student's IEP for the Student's school placement change?
 - viii. Did the District falsify behavior data to support the Student's

¹⁹ See HO Exhibit (13) pp. 88-98.

²⁰ See HO Exhibit (27) pp. 145-153.

placement change to a therapeutic day school?

- ix. Did the District's contumacious disregard of its obligations to the Student deny the Student a Free Appropriate Public Education (FAPE)?

12. Should the preponderance of the evidence support the Parent, the Parent seeks the following relief:

- i. Implement ██████ 308 IEP as amended June 14, 2021: or
- ii. Placement into a self-contained classroom at ██████ with a true one-to-one aide required by the ██████ IEP and which the D58 IEP team admitted the Student needs;
- iii. Provide a comprehensive re-evaluation including an FBA and BIP;
- iv. If supported by the re-evaluation, placement of the Student in a therapeutic day school located in DuPage County;
- v. If a therapeutic day school cannot be secured, provide compensatory services until an appropriate placement can be located and agreed to by the Parents. (Parent must provide the specific compensatory services sought – include the service, the duration in terms of time required per day, and an estimate of the cost of the service).²¹

Findings of Fact

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

1. On May 26, 2021, the ██████ School District developed the first IEP for the Student. The ██████ IEP provided the Student a placement of 81% in the general education classroom with a one-to-one paraprofessional assigned to the Student.²²
2. On September 3, 2021, the ██████ school district reduced the Student's time in school from one hour per day to 20 minutes per day. The Parent expressed concerns that the IEP did not reflect the reduced time and that the Student's reduction in time resulted in removing him from his non-disabled peers due to behavior without an IEP team meeting.²³
3. On or about mid-September of 2021, the Parent withdrew the Student from the ██████ Schools and home-schooled the Student.²⁴
4. On January 16, 2023, the Parent and the Student met with administrators of the

²¹ Ibid.

²² See Parent Exhibit (20) at p. 373 and testimony of BEST Classroom Teacher

²³ See District Exhibit (5) at p. D00112.

²⁴ See Testimony of Parent.

Behavior Emotional and Social Training (BEST) program and the classroom teacher.²⁵ The Parent raised the issue of a TDS for the Student during this meeting as something that might need to be considered.²⁶ During the meeting, the Student became highly dysregulated. The Student began running around the room, grabbed scissors and play dough from the teacher's desk and threw the play dough hitting one of the school administrators. Additionally, the District recommended a partial day to start at one hour per day in the BEST program and the Parent agreed. The Parent did not request any placement time in the general education classroom.²⁷

5. On January 23, 2023, the Student began in the District's BEST program for one hour per day. The Parent agreed to the schedule to enable the Student to become acclimated to school again.
6. Also on January 23, 2023, the District adopted the Student's ██████ of May 26, 2021, IEP. The ██████ IEP included a one-to-one paraprofessional. The District did not provide this to the Student. The Student's BEST teacher served as the Student's one to one paraprofessional. Additionally, the BEST program included two full time equivalent (FTE) paraprofessionals assigned to the Student's classroom for all eight students in the room. One paraprofessional had 14 years' experience in the BEST classroom and the other had four years' experience in the BEST classroom. The BEST program also provided a dedicated social worker (SW) and occupational therapist (OT). The SW and OT worked in the Student's classroom and if the teacher could not provide the one-to-one attention required by the Student, either the SW or OT would provide the needed services. Further, all certified staff developed a positive rapport with the Student.²⁸ The Student presented as highly dysregulated. The behaviors exhibited by the Student in the classroom included verbal and physical aggression directed towards the staff in the classroom. Verbal aggression included statements of: "I am going to kill you, I will burn you in an incinerator, I will put you in a woodchipper." At least half of the class demonstrated fearful behavior as a result. The fearful behaviors

²⁵ See Testimony of BEST Classroom Teacher

²⁶ See Testimony of Associate Superintendent of Special Services and BEST program administrator.

²⁷ Ibid.

²⁸ See Testimony of BEST Classroom Teacher, BEST Social Worker, and BEST occupational therapist. The Student's teacher acknowledged that attempting to be both the classroom teacher and the Student's one to one support person proved very difficult and acknowledged that she could have used more help and the arrangement placed a strain on everyone. The teacher also indicated that she believed she was able to provide the Student with the necessary support, although it proved difficult at times. The teacher's testimony made it noticeably clear that the teacher cared deeply for the Student. This was apparent as the teacher became emotional and teary four times during her testimony when specifically discussing the Student. When asked what triggered the emotion, the teacher indicated she had developed a strong bond with the Student and that she just wanted the Student to be successful.

included crying and hiding under the desk. Due to the Student's need for redirection every two to three minutes, the program only focused on functional behavior for the classroom and did not present the Student with any academic demands. The two experienced paraprofessionals in the classroom were afraid of the Student.²⁹

7. Throughout the spring of 2023, the District communicated daily with the Parent via emails and contact before and after school when either the Parent or grandparents delivered and/or picked the Student up from school.³⁰
8. In early February 2023, during parent teacher conferences, the teacher and occupational therapist (OT) explained to the Parent concerns about the Student's behaviors and suggested that a TDS might be more appropriate for the Student.³¹
9. On February 9, 2023, the Parent sought an evaluation of the Student. The District delayed the evaluation until the Student became more acclimated to school due to the Student's homeschooling for more than a year.³²
10. On February 13, 2023, a pediatric neuropsychologist and licensed clinical psychologist completed a neuropsychological evaluation of the Student and submitted the report to the Parent and the District.³³ The Student's behaviors included aggression, inattention, and impulsive behaviors which were noted as consistent with school observations/evaluations.³⁴ The evaluation reflected valid results, albeit an underrepresentation due to the Student's behaviors during testing that included placing the Student's feet on the evaluator's desk, leaving the testing room, and punching the evaluator in the stomach. The evaluation reflected a full-scale IQ in the low average range of 89. The Student's Verbal Comprehension Index reflected a score in the superior range of 124.³⁵ Overall academic skills ranged from impaired to low average.³⁶ The Student struggles with overall executive function skills related to behavioral, emotional, and cognitive regulation. The Student experiences difficulties shifting between tasks and problem-solving.³⁷ The limitations of the evaluation resulted from the Student's difficulty persisting on tasks that the Student found

²⁹ See Testimony of BEST Classroom Teacher.

³⁰ Ibid.

³¹ See Testimony of BEST Classroom Teacher and BEST social worker.

³² See District Exhibit (69) at p. D00817 and testimony of Associate Superintendent for Special Services. The IHO notes that the Parent's independent evaluator agreed the Student should not have an evaluation before the Student demonstrated acclimation to the classroom environment. The independent evaluator further testified that the evaluator would want a minimum of five days in school but preferably 10 days in school prior to initiating any testing of the Student.

³³ See District Exhibit (10) at pp. 00294-00305.

³⁴ Ibid at page 00295.

³⁵ Ibid at p. 00296.

³⁶ Ibid.

³⁷ Ibid at page 00298.

challenging which frequently led to work refusal and aggression.³⁸ The Student presented with a diagnosis consistent with Autism Spectrum Disorder, without cognitive or language impairment, Level 2 Social Communication and Repetitive Restrictive Behaviors (RRB), Attention-Deficit Hyperactivity Disorder (ADHD), moderate, and the need to rule out Dyslexia in the future. The Student demonstrated weaknesses in skills that contribute to reading including rapid symbolic naming and phonological awareness.³⁹ The evaluation recommended over 30 identified strategies designed to address the Student's behavioral needs.⁴⁰

11. On February 14, 2023, the District informed the Parent of several behavioral incidents during his one hour of attendance at school.⁴¹
12. On February 16, 2023, during related services therapy with the social worker, the Student became highly dysregulated and punched the social worker in the mouth.⁴² The (Restraint Time Out) intervention from the social worker and other certified staff. The District reviewed the incident with the Parent at the March 9, 2023, IEP team meeting.⁴³
13. On February 23, 2023, the Parent requested that the Student attend an additional 15 minutes daily in the BEST program. The proposed in-home applied behavior analysis (ABA) therapy company could not start for another month.⁴⁴ The Student frequently demonstrates tantrums, outbursts, and aggressive behavior at home.⁴⁵
14. On February 28, 2023, the BEST teacher suggested the District add a reading and math goal for the Student in the Student's IEP.⁴⁶ The Parent, a certified special education teacher, provided home schooling to the Student during the day when the Student returned home. The District collaborated with the Parent to develop the Student's reading and math goals for the Student's IEP.⁴⁷
15. On March 1 and 2, 2023, the Student's teacher collaborated with the Parent regarding the development of academic goals for the Student.⁴⁸
16. On March 9, 2023, the District completed the first [REDACTED] IEP for the

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid at pp. 00299-00301.

⁴¹ See Parent Exhibit (21) at p. 446.

⁴² See Testimony of BEST social worker.

⁴³ Ibid.

⁴⁴ See Parent Exhibit (21) at p. 447.

⁴⁵ Ibid.

⁴⁶ See Parent Exhibit (21) at P. 450.

⁴⁷ See Testimony of BEST classroom teacher.

⁴⁸ See District Exhibit (68) at pp. 00814-00815 and testimony of BEST Classroom Teacher

Student.⁴⁹ The IEP reflected academic goals in reading and math based upon prior consultation with the Parent.⁵⁰ After completing the other required components of the IEP, the IEP team discussed placement. At the time of the IEP discussion, the Student spent 1 ½ hours per day in the BEST program. The team did not have concerns with supporting the Student behaviorally during the Student’s 1.5 hours of attendance. The Student required considerable time from a 1:1 certified personnel support to address his needs, and the current level of support provided to the Student was not sustainable in the BEST program if the Student’s day extended beyond 1 ½ hours per day. The IEP team agreed the Student required a 1:1 paraprofessional. A current hiring shortage required the use of substitute paraprofessionals, and such inconsistency would be harmful to the Student.⁵¹ The District provided three certified staff members assigned to the BEST program who took turns serving as the Student’s one-to-one support person.⁵² A TDS placement was agreed to by the IEP team and the Parent. The Parent sought a program that could enable the Student to attend for a full day.⁵³ The Behavior Intervention Plan (BIP) found in the Student’s ████████ IEP dated May 26, 2021, continued to target current behaviors displayed by the Student. Testing the Student at this time would result in triggering the Student’s dysregulation.⁵⁴ The baseline behavioral data from the ████████ Functional Behavior Assessment (FBA) did not require any changes in the Student’s FBA since there had not been a change in the Student’s targeted behaviors.⁵⁵ The ████████ May 26, 2021, BIP adopted by the District reflected the Student’s behaviors were related to a “skill deficit.”⁵⁶ The District’s IEP reflected a change to a “performance deficit.”⁵⁷ The District continued the use of the behavioral strategies listed in the ████████ IEP to address this “performance deficit.”⁵⁸

⁴⁹ See District Exhibit (3) at p. 32.

⁵⁰ See Testimony of BEST Classroom Teacher.

⁵¹ See Parent Exhibit (19) at p. 249.

⁵² See Testimony of Associate Superintendent of Special Services, BEST Classroom Teacher, BEST OT, and BEST program administrator. The IHO notes that the BEST Classroom Teacher acknowledged that attempting to serve as the Student’s one-to-one support person was challenging and that additional support in the classroom would have been beneficial.

⁵³ See Testimony of Mother.

⁵⁴ See Testimony of BEST Classroom Teacher.

⁵⁵ See Testimony of BEST OT.

⁵⁶ See District Exhibit (6) at p. 00154.

⁵⁷ See District Exhibit (3) at p. 00063.

⁵⁸ See Testimony of BEST Classroom Teacher, BEST OT, and the Associate Superintendent for Special Services. The IHO notes that the Parent’s paid expert witness, a board-certified behavior analyst (BCBA) and school psychologist, testified that utilizing behavior strategies to address a performance deficit originally identified as a skill deficit might result in serving as a trigger for the Student’s dysregulation. No other testimony or documentation addressed this concern. Additionally, however, the BCBA also noted that the ████████ BIP called for the Student to report to a calming room each day upon arrival and this presented as effective. The District’s IEP changed this procedure to the Student’s choice. The Student could

17. On March 10, 2023, the Parent confirmed the Parent’s commitment “we should seriously look into the therapeutic day school route.” The Parent wanted the placement to begin after spring break to effectuate the Student’s return to a full day of programming.⁵⁹ The District responded with the process, including the need to secure signed record releases (which the Parent provided) from the Parent in order to move forward and reassured the Parent that the Parent was not locked into any specific decision at this time.⁶⁰The Parent expected that the Student would begin after spring break, attend ESY in the summer and then return to the Student’s homeschool of ██████ in the fall of 2023.⁶¹
18. On March 12, 2023, the Parent again confirmed the Parent preferred to move forward with the TDS placement.⁶² That same date, the District began an extensive search for a TDS that would be appropriate for the Student and amenable to the Parent. From this date through July 10, 2024, the District reached out to ten separate TDS.⁶³
19. On March 15, 2023, the Parent requested an update on the TDS status.⁶⁴ The District indicated the only current TDS opening date was for ESY of 2023.⁶⁵ The Parent sought to have the Student continue in the BEST program and increase the Student’s time to more closely approximate a full day of school.⁶⁶ The District’s was willing to “do anything and everything to help (the Student) be successful” and requested a time to meet with the Parent.⁶⁷
20. On March 17, 2023, the Student’s level of dysregulation required restraint time out (RTO) by classroom certified staff trained and certified in Crisis Prevention Institute

report to the calming room located across the hall from the Student’s classroom if the Student chose to do so. The impact of this student choice could be dysregulating. If the Student desired to avoid a certain activity, the student could consciously act out and then choose the calming room. When the Student reported daily to the calming room, the ██████ BIP required that the ██████ staff provide the Student with an activity to perform while in the calming room, thereby still requiring the Student’s participation in an activity. The District’s procedures did not require the task. Thus, the Student’s dysregulation might be intentional to avoid a non-preferred activity. Further, the District utilized verbal de-escalation strategies which the BCBA asserted were a known trigger and therefore negative reinforcement. No other testimony or documentation supported this assertion.

⁵⁹ See District Exhibit (67) at p. 00811. Also, see testimony of BEST program administrator.

⁶⁰ Ibid at pp.00808-00809. The IHO notes that the District documents do not contain a page 00810. The signed Parental releases are located at pp. 00812-00813,

⁶¹ See Testimony of Mother.

⁶² See District Exhibit (67) at p. 00809.

⁶³ See District Exhibit (26).

⁶⁴ See District Exhibit (66) at p. 00807.

⁶⁵ Ibid at p. 00806.

⁶⁶ Ibid.

⁶⁷ Ibid.

(CPI).⁶⁸ The District notified the Parent via email at 3:00 pm on the same day.⁶⁹

21. On March 18, 2023, the District provided the Parent with information relative to another TDS placement and informed the Parent of the District's continued efforts with the TDS known as Giant Steps (a placement of preferred interest by the Parent.)⁷⁰
22. On or about April 2, 2023, the District began utilizing the charting system recommended by the BEST program utilized for managing behavior. The charting system provided three levels for the students with the third level resulting in the Student exiting from the BEST program into a regular education setting. The charting system included six distinct behaviors including, "stay in designated area, use respectful language/tone/and volume, completing work on time, utilize coping skills to request wants/needs, keep hands/body/feet/and objects to self, and following directions."⁷¹ For the Student, the data reflected the number of teacher prompts required to achieve the aforementioned tasks. The data recorded the time periods for each category for the approximate 2-3 hours the Student attended school. The District collected this data over the remaining school days of the 2022-23 school year. The teacher inflated the data to help the Student maintain regulation when the Student left for home for the day. The teacher shared the data results with the Student at the end of each day. The teacher knew from experience that any failure by the Student to achieve a desired result triggered the Student's dysregulating behaviors. The teacher hoped that the inflated data would enable the Student to report home in a regulated state to avoid adding more issues for the Parent when the Student arrived home.⁷² The District also charted this behavior and compared the Student's behavior in a graph to another Student in the BEST program.⁷³
23. On April 6, 2023, the District utilized a system of tracking the Student's behavior and communicating same with the home. From this date to the end of the school year, the District provided 54 daily reports home reflecting the Student's day and his progress relative to targeted behaviors. The data reflects nine reports of inappropriate behavior and 45 reports of compliant behavior or no report at all. This computes to a success rate of 83.3%. The District completed the reports each day with the Student to enable

⁶⁸ See Testimony of BEST social worker, BEST occupational therapist, and BEST psychologist. Also, District Exhibit (19) at pp. 00387-00392. The IHO notes the form filed failed to indicate whether the District filed the form with the State.

⁶⁹ See District Exhibit (19) at p. 00391.

⁷⁰ Ibid at p. 00805 and testimony of Mother.

⁷¹ See Parent Exhibit (17).

⁷² See District Exhibit (23) at pp. 00421-00501 and the testimony of BEST Classroom Teacher.

⁷³ See District Exhibit (20-21) at pp. 00393-00417 and testimony of the OT.

the Student to understand the progress the Student made.⁷⁴ The District also inflated this data for the purpose of avoiding the Student's dysregulation when going home and is therefore data that is unreliable.

24. On or about April 27, 2023, the District began recording antecedent, behavior, consequence data (ABC data) and reflected the results in a chart that ended on May 10, 2023. The chart demonstrated that 80% of the time, the ABC data demonstrated the antecedent cause of the Student's behavior resulted in either verbal or physical aggression 90% of the time. Consequences reflected either verbal or physical redirection 90% of the time, 50% planned ignoring of the behavior, and 20% CPI protocols (three instances).⁷⁵
25. On May 4, 2023, the Student's level of dysregulation required RTO.⁷⁶
26. On May 10, 2023, the District met with the Parent to review the restraint, time out (RTO) for the Student. The Parent agreed to the delay in the meeting due to schedule conflicts. The District agreed to implement recommendations from the Student's outside therapist to help the Student during future severe dysregulation. These recommendations included lessening demands on the Student, providing time to recharge, and ask the Student if the Student has a specific need.⁷⁷
27. On May 18, 2023, the Student experienced another episode of serious dysregulation that required the District to implement RTO procedures. The District informed the Parent of the incident on the same day via an in-person consultation.⁷⁸
28. On May 27, 2023, the Parent responded to the District's proposed placement at a TDS known as ██████████. The Parent indicated that her visit to and review of ██████████ ██████████ on LinkedIn and feedback from another person about the agency caused the Parent to decide "This is not the place for (the Student)."⁷⁹
29. Also on May 27, 2023, the Parent sought information relative to 11 different topics/questions the Parent had relative to the Student's continuing education. The Parent continued to believe that the BEST program at ██████████ Elementary would be the Student's placement for the 2023-2024 school year (2nd grade for the Student). The

⁷⁴ See District Exhibit (24) at pp. 502-569.

⁷⁵ See District Exhibit (22) at pp. 00418-00420. The IHO notes that the BEST Classroom Teacher noted that the teacher had created a curriculum within the curriculum or classroom within the classroom for the Student and the teacher did not believe this was sustainable over a full day of instruction.

⁷⁶ See District Exhibit (17) at p. 00380 and testimony of BEST Classroom Teacher and BEST program administrator.

⁷⁷ Ibid.

⁷⁸ See District Exhibit (16) at pp. 00374-00379 and the testimony of BEST social worker, BEST Classroom Teacher, and BEST behavioral coach.

⁷⁹ See District Exhibit (65) at p. 00803 and testimony of Associate Superintendent of Special Services.

District's sought a placement that would "...address an initial goal of simply increasing (the Student's) time to be more typical with same age peers but will work to evaluate that as a longer-term placement this summer. We have been unable to do this safely within our current environment which is why therapeutic day school remains the recommendation."⁸⁰

30. On June 6, 2023, the IEP team met with the Parent to continue to explore placement.⁸¹ The Student's Present Levels of Academic, Developmental, and Functional Performance reflected behavior data collected two years prior (April of 2021) when the Student participated in a pre-school program in another school district.⁸² The anecdotal update reviewed by the IEP team reflected the Student's participation in school as three hours each day and continued to reflect the Student required continued redirection for behaviors related to emotional regulation, focus and behaving in a larger environment.⁸³ The IEP reflected approximately 32 distinct accommodations and supports needed for the Student.⁸⁴ The Student's IEP continued to reflect placement in a TDS with continuing parental support.⁸⁵
31. On June 20, 2023, the District emailed the Parent with notice of two more TDS placements available for the Student. The Parent declined the offer of the TDS known as Parkland Prep due to the distance required for travel. The Parent signed a release for the other TDS known as ██████████⁸⁶
32. On June 25, 2023, the Superintendent of Schools responded to an email concern from the Parent. The Superintendent explained that the Superintendent cannot legally intervene when there is a dispute amongst the IEP team and that only the IEP team can resolve the dispute. The Superintendent encouraged the Parent to collaborate with the team to reach a resolution.⁸⁷
33. On June 28, 2023, the District reached out to the Parent to provide the Parent with agencies who could assist the Parent at home with any safety concerns the Parent might have regarding the Student's safety. The District's safety assessment determined the Student did not have the "intent or means" to implement the threats made. The District provided the Parent with nine area agencies to consider if needed.⁸⁸

⁸⁰ Ibid at pp. 00803-00804.

⁸¹ See District Exhibit (2).

⁸² See District Exhibit (3).

⁸³ Ibid at p. 0036.

⁸⁴ Ibid at pp. 00058-00059.

⁸⁵ See District Exhibit (2) at p. 00023.

⁸⁶ See District Exhibit (61) at p. 00774.

⁸⁷ See District Exhibit (60) at p. 00772.

⁸⁸ See District Exhibit (59) at p. 00770-00771.

34. On June 29, 2023, the TDS known as ██████ contacted the District informing the District that the Parent and Student scheduled a tour and interview.⁸⁹
35. On July 24, 2023, the ██████ TDS notified the District that the TDS could not accommodate the Student's needs due to the significant level of dysregulation displayed by the Student during the Parent and Student visit to the facility.⁹⁰
36. On August 8, 2024, the District received communication from the TDS known as Little Friends that the agency did not believe their services were appropriate for the Student.⁹¹
37. On August 14, 2023, the Parent notified the District of her intent to reenroll the Student at ██████ on the first day of school and formally requested an evaluation of the Student. The District reminded the Parent the Student's IEP called for a TDS and enrollment at ██████ would not be appropriate. The District asked the Parent if the Parent would sign releases to share documents with 10 TDS listed in the communication. The Parent's revoked releases previously signed and restated her request for an evaluation and a new IEP team meeting. The District's explained that the District secured three TDS that would accept the Student, but the Parent withheld consent and that the Student could not enroll in a special education program at ██████ Elementary as the Student's IEP did not call for those services. The District explained that the Parent could revoke consent for special education services and enroll the Student as a regular education student.⁹²
38. Also on August 14, 2024, the District informed the Parent that the Student's last agreed upon IEP reflected a placement of TDS. The District also reminded the Parent that to date, there had been contact and/or visits to eight TDS that were either rejected by the Parent or the TDS determined that placement would not be appropriate. The District also informed the Parent that the District had an additional 11 TDS for consideration, but the Parent no longer agreed to release any records. The District sought to have the Parent provide the required signed releases to enable the District to move forward to find an appropriate placement for the Student. The Parent responded with "I suppose we will see you in court."⁹³
39. On August 15, 2023, the District reiterated to the Parent that the Student's last agreed upon IEP indicated placement at a TDS.⁹⁴
40. Also on August 15, 2023, the Parent wrote the following: "Just so we are clear, if I

⁸⁹ See District Exhibit (58) at p. 00767.

⁹⁰ See District Exhibit (57) at p. 00765.

⁹¹ See District Exhibit (35) at p. 00680.

⁹² See District Exhibit (55) at p. 00759.

⁹³ See District Exhibit (56) at p. 00761.

⁹⁴ See District Exhibit (55) at p. 00757.

bring (the Student) to [REDACTED] on Wednesday 8/23, will you turn him away? Since it took you 3 emails yesterday to state that (the Student) does not have a special education schedule at [REDACTED] a simple yes or no would be appreciated.” The District responded with the District’s preference to work as a partnership to resolve the placement for the Student.⁹⁵ The District also agreed to schedule an IEP team meeting and proceed with an evaluation.⁹⁶

41. On August 17, 2023, the Parent informed the District of the Parent’s decision to sign the necessary paperwork to move forward and the District responded that the TDS known as [REDACTED] had a placement available for the Student.⁹⁷
42. On August 18, 2023, the Parent emailed the District seeking responses on compensatory education for days missed over the summer and the shortened schedule the previous year, a better option for homebound tutoring, how the Student might receive the related services stipulated in the IEP, and a hesitation to sign any more TDS releases of information until the TDS confirmed availability for the Student. The District’s response did not address the Parent’s questions.⁹⁸
43. On August 18, 2023, the Parent emailed the District reiterating her previous questions that had gone unanswered. The District responded with potential dates for an IEP team meeting, informed the Parent of the District’s efforts to develop a plan for interim programming, and reminded the Parent that the District had secured a placement for the Student in May at [REDACTED] Academy which the Parent declined. The District also updated the Parent regarding the 18 TDS that the District contacted for the sole purpose of determining availability for the Student.⁹⁹
44. On September 12, 2023, the District requested a release of information for the TDS known as [REDACTED] and the Parent provided the release.¹⁰⁰
45. Also on September 12, 2023, the District conducted an IEP team meeting requested by the Parent to review Parental concerns and open domain areas for the requested reevaluation.¹⁰¹
46. On September 13, 2023, the Parent informed the district of the Parent and Student’s visit to [REDACTED] and that the visit went well, and the Student looked forward to starting school soon.¹⁰²

⁹⁵ Ibid at p. 00758

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ See District Exhibit (54) at pp. 00755-00756.

⁹⁹ See District Exhibit (53) at pp. 00751-00753.

¹⁰⁰ See District Exhibit (51) at pp. 00746.

¹⁰¹ See District Exhibit (1) at p. 00001.

¹⁰² See District Exhibit (50) at p. 00744.

47. On September 15, 2023, the Parent emailed the District with a dozen proposed changes/edits to the recently completed IEP team meeting. The District responded in detail on how the District managed those changes/edits.¹⁰³
48. On September 19, 2023, the Parent and the Student visited [REDACTED]. After the visit, the Director of the Academy emailed the District and indicated the following statement regarding the Student: “Wow...he’s a lot.” The Director then requested the Student’s IEPs and the last re-evaluation and a request to discuss the Student with the District the next day.¹⁰⁴
49. On September 22, 2023, the District’s contracted tutoring company informed the Parent the status of the Student’s pending tutoring services.¹⁰⁵
50. On September 25, 2024, the District informed the Parent that [REDACTED] a TDS, accepted the Student for enrollment pending the school’s move to a new facility anticipated in three weeks’ time. The TDS planned for the Student to enroll for one-half day for two weeks (including lunch) and then full days thereafter. The Parent responded, “I am fine with moving forward with [REDACTED]”¹⁰⁶
51. On October 4, 2023, the Student demonstrated an elevated level of dysregulation when arriving at the school office for interim OT services. The Student’s behavior included incidents of loud profanity, hitting, kicking, biting, and pinching staff trying to redirect him. The Student’s Parent was present during the incident. At one point, when a random parent entered the office, the student reached out and grabbed the parent’s hair and pulled firmly. The occupational therapist had to forcefully remove the Student’s hand to get him to release the parent’s hair.¹⁰⁷
52. On October 20, 2023, and because of a mediation agreement, the parties agreed to conduct an independent educational evaluation (IEE) at public expense.¹⁰⁸
53. On October 21, 2023, the District reached out to the TDS known as South Campus and learned the facility did not have any openings for the Student’s grade level.¹⁰⁹
54. On October 23, 2023, the District learned that the TDS known as SEAL did not have space for the Student.¹¹⁰
55. On October 31, 2023, the Student enrolled and began receiving services from [REDACTED].
[REDACTED] Due to the Student’s exceptional dysregulation on the first day of

¹⁰³ See District Exhibit (49) at pp. 00741-00743

¹⁰⁴ See District Exhibit (48) at p. 00737.

¹⁰⁵ Ibid at p. 00740.

¹⁰⁶ See District Exhibit (47) at p. 00733.

¹⁰⁷ See District Exhibit (78) at pp. 00855-00856.

¹⁰⁸ See Parent Exhibit (24) at p. 481.

¹⁰⁹ See District Exhibit (35) at p. 00685.

¹¹⁰ Ibid at pp. 00682-00683.

participation, the TDS determined that the TDS could not meet the needs of the Student. The TDS notified the District and the Parent of this decision via a phone call and email.¹¹¹

56. On November 20, 2023, the Student and Parent attended [REDACTED] Elementary School to attempt to complete MAP testing (Measure of Academic Progress) requested by the Parent. The Student's previously preferred teacher met with the Student and the Parent to provide the Student with a known teacher that the Student previously had established a rapport and worked with in the past. The Student demonstrated highly dysregulated behavior during the testing.¹¹²
57. On December 5, 2023, the District learned that the TDS known as [REDACTED] did not have a placement for the Student.¹¹³ Also, the District notified the Parent that the District intended to reimburse the Parent for any private in-home tutoring paid for by the Parent in an amount not to exceed \$10,000 upon receipt of appropriate documentation.¹¹⁴
58. On December 11, 2023, the District and Parent learned that the private agency known as [REDACTED] and who provided applied behavior analysis (ABA) therapy in the home could not begin those services until the pending litigation with the District reached a resolution.¹¹⁵
59. On December 19, 2023, the District received information from the TDS known as [REDACTED] that the TDS would not be able to enroll the Student due to the apparent lack of cooperation from the Student's father.¹¹⁶
60. On December 20, 2023, the District had a fully executed contract with an independent evaluator to complete the IEE agreed to on October 20, 2023.¹¹⁷
61. On December 21, 2023, the District provided the Parent a detailed description of the status of the effort to place the Student in a TDS. Topics covered in the email included: TDS placement progress, Interim Services for the Student while at home, and the pending reevaluation of the Student.¹¹⁸

¹¹¹ See District Exhibit (39) at pp. 00701-00705. The IHO notes that the Director of [REDACTED] testified that the Student's level of dysregulation was more severe than anything she had seen in her 34-year career.

¹¹² See District Exhibit (37) at p. 00695.

¹¹³ See District Exhibit (35) at p. 00665.

¹¹⁴ See District Exhibit (34) at p. 00663.

¹¹⁵ See District Exhibit (33) at pp. 00660-00661.

¹¹⁶ See District Exhibit (36) at p. 00689.

¹¹⁷ See District Exhibit (32) at pp. 00653-00659. The IHO notes that the independent evaluator indicated agreement that the Student required full day attendance for a minimum of 5 days and preferable 10 days prior to any testing commencing.

¹¹⁸ See Parent Exhibit (21) at pp. 457-458. (The HO notes that this document reflected the Parent's apparent refusal of in-home ABA therapy services provided by the agency known as [REDACTED] due to the Parent's

Conclusions of Law

Based upon the Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:¹¹⁹

- 1) There are nine issues for consideration. The first issue alleges that the District "duped" the Parent into agreeing with the TDS placement during the March and June of 2023 IEP team meetings. The Individuals with Disabilities Education Act (IDEA) defines parental consent as the following: "...fully informed of all information relevant to the activity for which consent is sought...understands and agrees in writing to the carrying out of the activity for which ... consent is sought...understands that the granting of consent is voluntary ...and may be revoked at any time."¹²⁰ The evidence reflects thirteen occasions,¹²¹ prior to the date when the Parent filed her DPCN, where the District discussed the TDS placement with the Parent, the Parent expressed consent for the TDS at an IEP team meeting or in writing via electronic mail communications, or the Parent voluntarily visited potential TDS. The evidence demonstrates that the District kept the Parent "fully informed of all information relevant to the carrying out of the activity for which consent is sought," that the Parent understood and agreed "in writing to the carrying out of the activity for which ...consent is sought," and that her consent was voluntary (the evidence demonstrated the Parent revoked the consent on one occasion). Thus, the evidence supports the Parent provided consent to effectuate the Student's placement in a TDS.¹²² As a result, the preponderance of the evidence supports the District regarding the Parent's first issue.
- 2) Issue two alleged that the District actively concealed the District's multiple obligations to evaluate the Student prior to changing the Student's placement to a TDS. The IDEA requires that a reevaluation of a child with a disability may not occur more than once each year unless the parent and district agree otherwise, but must occur at least once every three years, unless

apparent belief that the DPCN issues were nearing a resolution. Further, the District expressed the belief that the outcome of the pending DPCN should not impede or delay the offered in-home ABA therapy services.)

¹¹⁹ The HO notes that the parties presented closing argument at the hearing and the HO directed the parties to submit written closing statements reflecting their oral closing argument and provide the HO with supporting statutory or case law by 5 pm on February 3, 2024. The District complied with this directive. The Parent submitted a written closing statement that was two hours past the deadline and the content of the statement was different from the content given during oral closing arguments. The District objected to the admission of this information on the grounds of missing the filing deadline and submission of a closing statement different from the presented closing oral argument. As a matter of fairness, the HO sustained the District's objection and the Parent's submitted closing statement is in the record (see HO Exhibit 101). However, the HO did not consider the contents of the Parent's written closing statement in formulating this decision.

¹²⁰ See 34 C.F.R. §300.9 (a-c).

¹²¹ See Findings of Fact numbered: 4, 8, 16, 17, 18, 19, 21, 28, 30, 31, 34, 38 and 39.

¹²² Ibid.

the parent and the agency agree that reevaluation is unnecessary. Additionally, the IDEA requires that the evaluation be completed within 60 days unless the State the child resides in requires otherwise.¹²³ Illinois statutes require the completion of the evaluation within 60 school days.¹²⁴ Further, the Illinois statutes require that districts determine whether an evaluation is warranted within 14 school days of the request and provide written notice to the parent if the district determines that an evaluation is not warranted.¹²⁵ Early in 2023, the Parent requested that the District complete a comprehensive reevaluation of the Student. The District agreed to complete the reevaluation but indicated that the Student had been out of the school environment for 1.5 years and the District believed the Student should receive time to be acclimated to the new environment in order to secure reliable results.¹²⁶ The Parent's independent evaluator concurred with the need to allow time for acclimation of the Student for up to 10 full school days.¹²⁷ The Student did not achieve full-day attendance. The District did not complete a comprehensive evaluation. The evidence indicated that the independent neuropsychologist completed an IEE of the Student in early February of 2023 and shared the results with the Parent and the District.¹²⁸ The Parent and District met in mediation on October 20, 2023 and part of the agreement reached in mediation included the completion of an IEE at public expense,¹²⁹ The District contracted with an independent evaluator on December 20, 2023.¹³⁰ The District relied on the Parent's IEE in the spring of 2023¹³¹ and then agreed to conduct another IEE at public expense during a mediation session in the fall of 2023¹³² and contracted with an independent evaluator in December of 2023.¹³³ The District failed to complete the original evaluation requested by the Parent within the required 60 school days in the spring of 2023 and this is indeed a procedural error by the District. A hearing officer may find that a child did not receive a FAPE due to a procedural error only if the procedural inadequacies identified impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision-making process regarding the provisions of a FAPE; or caused a deprivation of educational benefits.¹³⁴ The 7th Circuit ruled that procedural violations do not necessarily arise to a denial of FAPE unless

¹²³ See 34 C.F.R. §300.303 (1)(2)I.

¹²⁴ See Illinois 23 Administrative Code §226.110(d).

¹²⁵ See Ill 23 Admin Code S226.110 (3) and 34 C.F.R. §300.503(b).

¹²⁶ See Findings of Fact 9.

¹²⁷ See Footnote for Findings of Fact 60.

¹²⁸ See Findings of Fact 10.

¹²⁹ See Findings of Fact 52.

¹³⁰ See Findings of Fact 60.

¹³¹ See Findings of Fact 10.

¹³² See Findings of Fact 52.

¹³³ See Findings of Fact 60.

¹³⁴ See 34 CFR 300.513 (a)(2).

the procedural error caused substantial harm to the Student.¹³⁵ Further, the 7th Circuit indicated that procedural errors are not an automatic denial of a FAPE for students.¹³⁶ The evidence did not support that this procedural error denied the Student a FAPE since the District and Parent still completed IEPs for the Student in March, June and September of 2023, and during each IEP team meeting the Parent participated and agreed with the recommendations. Thus, the preponderance of the evidence failed to support the allegation that the District “concealed” the District’s obligations to evaluate the Student or that the District’s procedural error amounted to a denial of FAPE. The preponderance of the evidence supported the District.

- 3) Issue three alleged that the District actively concealed from the Parent ongoing staffing issues that resulted in the District failing to provide the Student with a one-to-paraprofessional as required by the Student’s IEP. The ██████████ School District IEP developed for the Student in May of 2021, the District’s March, June, and September IEPs all called for the District to provide the Student with a one-to one paraprofessional. There was a hiring shortage for paraprofessionals. The only solution was to employ substitutes in place of a full time paraprofessional.¹³⁷ The level of change created by employing substitute paraprofessionals would exacerbate the Student’s level of dysregulation.¹³⁸ The evidence supports that the District’s BEST classroom provided a ratio of almost 1 adult to every 2 students with 8 students in the classroom and a certified teacher with two experienced paraprofessionals assigned full time to the BEST classroom.¹³⁹ Further, the Student’s classroom teacher focused on being by the Student’s side at all times during the Student’s time in the BEST classroom and the evidence confirmed that the certified staff working with the Student (social worker and occupational therapist) provided the same one to one attention when working in the Student’s classroom.¹⁴⁰ Provision of a one to one aide is a related service under the IDEA. The term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education.¹⁴¹ The list of related services spelled out in 34 CFR §300.34 is illustrative and not exhaustive. Related services may include other developmental, corrective, or supportive services if they are required to assist a child with a disability to benefit from

¹³⁵ See *Bd. Of Educ. Of Twp. High Sch. Dist. NO. 211 v. Ross*, 486 F.3d 267, 278 (7th Cir. 2007).

¹³⁶ See *Heather S. v. State of Wis.*, 125 F. 3d. 1045, 1060 (7th Cir. 1997).

¹³⁷ See Findings of Fact 16.

¹³⁸ See Findings of Fact 16 and testimony of BEST Classroom Teacher, Associate Superintendent of Special Services, BEST program administrator et. al.

¹³⁹ See Finding of Fact 6 and testimony of BEST Classroom Teacher and BEST social worker.

¹⁴⁰ *Ibid.*

¹⁴¹ See 34 C.F.R. §300.34(a)

special education.¹⁴² Related services provided to a student must be part of an IEP that is reasonably calculated to enable a student with a disability to make progress appropriate in light of the child's circumstances. Related services should meet the child's unique needs as part of the IEP's specially designed instruction for the student.¹⁴³ The evidence and testimony supports that the District's use of certified staff¹⁴⁴ serving as the Student's one to one paraprofessional provided the Student with the necessary support that can only be construed as "reasonably calculated"¹⁴⁵ to enable the Student to make progress appropriate in light of the Student's unique needs. The Student's documented levels and instances of highly dysregulated, and sometimes dangerous behaviors,¹⁴⁶ and the potential for dysregulation if the District utilized numerous substitute paraprofessionals for the Student support the use of certified staff in lieu of an untrained paraprofessional. Thus, the preponderance of the evidence supports a finding for the District on issue three.

- 4) Issue four alleged that the District knew or should have known that a TDS was not available when making the recommendation to place the Student in a TDS. The IDEA requires that "a group of persons, including the parents, and other persons knowledgeable about the child, the evaluation data, and the placement options" make placement decisions.¹⁴⁷ In contrast to the detail provided about the composition of the IEP team, the IDEA does not provide any significant direction about who, other than parents, should participate in placement decisions.¹⁴⁸ Districts must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.¹⁴⁹ While parents have a right to participate in decisions about the type of program their IDEA-eligible children will attend, they cannot select the specific school. A district complies with the IDEA so long as it selects a school that can implement the student's IEP.¹⁵⁰ Placement decisions can be made only after the development of an IEP and in accordance with its terms.¹⁵¹ Only after

¹⁴² See 71 Fed. Reg. 46,569 (2006).

¹⁴³ See *Andrew F. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017) (citing 20 USC 1401 (14) and 20 USC 1401 (29)).

¹⁴⁴ See Findings of Fact #6 and footnote 29.

¹⁴⁵ *Andrew F. op.cit.*

¹⁴⁶ See Findings of Fact #4, 6, 12, 20, 25, 27, 35, 48, 51, 55.,

¹⁴⁷ See 34 CFR §300.116 (a)(1).

¹⁴⁸ See *Hollenbeck v. Board of Educ. of Rochelle Twp.*, 441 IDELR 281 (N.D. Ill. 1988). *In re: Student with a Disability*, 110 LRP 7258 (SEA VA 10/05/09) (finding that a placement decision must be made by an IEP team).

¹⁴⁹ See 20 USC 1414 (e). See, e.g., *Z.B. v. District of Columbia*, 76 IDELR 175 (D.C. Cir. 2020) (The District of Columbia's efforts to include the mother of a 13-year-old boy with autism in discussions about the student's proposed move to a different nonpublic school helped it to overcome allegations that it excluded the parent from the IEP process).

¹⁵⁰ See *J.T. v. District of Columbia*, 80 IDELR 62 (D.C. Cir. 2022)

¹⁵¹ See 65 Fed. Reg. 36,591 (2000).

the IEP has been developed does a district have a basis for determining where the student's needs can be served. If that process is reversed, there is a danger of denying the student a FAPE by developing an IEP to meet a predetermined setting.¹⁵² The Missouri Circuit Court noted that “predetermination is not synonymous with preparation.”¹⁵³ The Parent did not allege the District made the decision of TDS placement without the Parent, in fact, as determined earlier, the Parent’s participation in the decision-making was ongoing and integral to the process.¹⁵⁴ As required by the IDEA, the District IEP team first developed all of the required components of the Student’s IEP at the March 9, 2023 IEP team meeting, and then, in concert with and the agreement of the Parent, recommended a placement in a TDS.¹⁵⁵ If the District knew or should have known that placements in a TDS did not exist prior to the IEP team meeting, the District likely would have been guilty of predetermination. The Parent has not alleged anything related to predetermination. After the March, 2023 IEP team meeting, the District located a TDS ([REDACTED]) that could implement the Student’s IEP.¹⁵⁶ The District afforded the Parent the opportunity to agree to this particular school, but was not required by the courts or the rules and regulations to do so.¹⁵⁷ When the Parent declined the placement at [REDACTED] without trying the program for the Student, the Parent placed the District in the position of attempting to locate a placement for the Student that not only met the requirements of the IDEA, but also met the approval of the Parent. Thus, the responsibility for the delays incurred with securing a TDS placement was due solely to the Parent’s inability to commit to a TDS that also agreed to enroll the Student.¹⁵⁸ Once the IEP team, in concert with the Parent, determines placement as a TDS, the case law and rules and regulations enable the District to select the program for the Student (without input from the Parent).¹⁵⁹ In this instant case, and prior to the Parent’s filing of the DPCN, the District sought placement at ten TDS for the Student.¹⁶⁰ While parent preference is an appropriate consideration, and the IDEA encourages parent participation in placement determinations, parent preference is not required to be the sole or determining factor when

¹⁵² See *Spielberg v. Henrico County Pub. Sch.*, 441 IDELR 178 (4th Cir. 1988), cert. denied, 110 LRP 47003 , 489 U.S. 1016 (1989). See also *Cooper v. District of Columbia*, 64 IDELR 271 (D.D.C. 2014);

¹⁵³ See *Fort Osage R-I School District v. Nichole and Brandon SISM by and on behalf of their daughter*, B.S., U.S. District Court Western District of Missouri, 09-536-CV-W-FJG (September 2010)

¹⁵⁴ See Conclusions of Law at paragraph 1.

¹⁵⁵ See Findings of Fact 16.

¹⁵⁶ See Findings of Fact 28, 29, 30, 31, 37, 38, 39, 40, 43.

¹⁵⁷ See *Z.B.* op. cit.

¹⁵⁸ See Findings of Fact #26 and 29.

¹⁵⁹ See *Z.B.* op.cit.

¹⁶⁰ See Findings of Fact 18.

implementing a placement decision made by the IEP team in concert with the Parent.¹⁶¹ Thus, the preponderance of the evidence for this issue supports the District.

- 5) Issue five alleged that the District should have completed an FBA and BIP prior to making any recommendations related to a change in placement. In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that the placement decision: 1) is made by a group of people, including the parents and other people knowledgeable about the child, the meaning of the evaluation data, and the placement options; and 2) is made in conformity with the LRE provisions of this subpart, including 34 CFR §300.114 through 34 CFR §300.118. The child's placement: 1) is determined at least annually; 2) is based on the child's IEP; and 3) is as close as possible to the child's home; unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he would attend if nondisabled; in selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that the child needs; and a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.¹⁶² The only mention in the IDEA regulations relative to completing evaluations like an FBA that results in a BIP is the regulation that each IEP team include person(s) knowledgeable of the “meaning of the evaluation data.” Nothing in the regulations specifies any requirement that districts provide a specific type of evaluation data like that contained in an FBA. The evidence does support, however, that the District considered the FBA data completed in the Student’s prior IEP from the previous district and the team concluded that the behaviors targeted in that prior FBA continued to be the behaviors exhibited by the Student.¹⁶³ Thus the preponderance of the evidence supports the District on this issue five.
- 6) Issue six identified by the Parent alleged that the District either lied or misrepresented to the Parent that the Student would benefit from a placement at Little Friends while knowing there was not a placement available and informed the Parent that the Parent was not locked into anything. Neither the IDEA or Illinois rules and regulations specifically address allegations of lying or misrepresentation. The evidence and testimony submitted and reviewed during

¹⁶¹ See Letter to Burton, 17 IDELR 1182 (OSERS 1991). See, e.g., *I.S. v. Fulton County Sch. Dist.*, 123 LRP 33063 (N.D. Ga. 09/29/23) (The district afforded the parent meaningful opportunity to participate when it considered the parents' preference that the student attend a residential placement at public expense); *School Dist. of Philadelphia*, 123 LRP 17923 (SEA PA) (05/13/23) (finding that the parent's convenience of wanting to place the child closer to her employment was not a FAPE consideration); *Vista Unified Sch. Dist.*, 114 LRP 53560 (SEA CA 11/25/14); and *Chicopee Pub. Schs.*, 60 IDELR 207 (SEA MA 2013)

¹⁶² See 34 C.F.R. §300.116.

¹⁶³ See Findings of Fact 16.

the hearing failed to substantiate any lying or misrepresentation by the District. The District on multiple occasions provided the Parent with input, responded to numerous inquiries from the Parent and put forth a considerable effort to communicate what the District knew when the District first became aware of the information. As noted in the District's closing argument, the District "deeply resent the allegations."¹⁶⁴ Nothing in the record, testimony or documentation submitted by the Parent during the process leading up to the hearing and during the hearing supported or even suggested the District engaged in any lying, misrepresentation or other type of fraudulent behavior. The preponderance of the evidence supports the District on issue six.

- 7) Issues seven and eight are interrelated and the HO decided to address both issues in this section. The seventh issue alleged that the District fabricated the Student's math and reading goals in the Student's IEP for the Student's school placement change, and the eighth issues alleged that the District falsified the Student's behavior data to support the Student's placement change. The IDEA and Illinois rules and regulations do not specifically address the issues of fabrication and falsification. Thus, determining the issues herein is a fact specific task. The evidence supports that the Student's math and reading goals were developed in concert with the Parent who, as a certified special education teacher, was also providing the Student with home-schooling for the remainder of the day when the Student was not in attendance.¹⁶⁵ The evidence does support that the District inflated the behavior data of the Student that was recorded from teacher observations of the Student.¹⁶⁶ The data used by the District included the inflated protocol data kept per the program requirements,¹⁶⁷ the ABC data¹⁶⁸, the inflated smiley face data sent home each night with the Student,¹⁶⁹ the graphing of the inflated protocol data,¹⁷⁰ and the anecdotal data that recorded the Student's various instances of serious dysregulation and the need for RTO.¹⁷¹ The HO rules that the teacher's inflation of the Student's protocol data and daily notes home rendered this particular data presented in the District's charts and graphs unreliable. While consideration of the data might result in a decision that was flawed, there was simply no evidence that supported fraud on the part of the District. The IHO also rules that the anecdotal data and ABC data utilized by the District that discussed and identified the instances and severity of the Student's levels of dysregulation was a reliable source of data for determining placement. Indeed, the Parent

¹⁶⁴ See IHO Exhibit (102) at p. 497.

¹⁶⁵ See Findings of Fact 14.

¹⁶⁶ See Finding of Fact 22.

¹⁶⁷ See Parent Exhibit (17),

¹⁶⁸ See District Exhibit (24).

¹⁶⁹ See Parent Exhibit (18).

¹⁷⁰ See District Exhibits (20-21).

¹⁷¹ See Findings of Fact 12, 20, and 27.

agreed on the placement because of the Student’s level of dysregulation. Further, the Parent failed to submit any evidence that the flawed data represented the sole basis for the IEP team’s decision to place the Student at a TDS. Further, the allegation submitted by the Parent alleged fraudulent and not flawed data. As noted in paragraph 1 of the Conclusions of Law, the Parent fully participated in all three IEP team meetings and consented to the Student’s placement in a TDS. While there is evidence of the District submitting flawed data, nothing about how the flawed data suggests dishonesty on the part of the District or out and out fraud. Additionally, the utilization of the ABC data and the anecdotal data of the Student’s various instances of serious dysregulation sufficiently supported the IEP team’s decision (that included Parental participation and input) to recommend a TDS placement at the March, June, and September IEP team meetings. Thus, the preponderance of the evidence supports the District on issue seven.

- 8) The final issue alleged that the District’s contumacious disregard of its obligations to the Student denied the Student a Free Appropriate Public Education (FAPE). Anytime courts or hearing officers consider matters related to the provision of a FAPE in the Least Restrictive Environment (LRE), they must first consider the *Rowley* case provides the seminal case in special education law. In the *Rowley* decision, the Supreme Court held that, in determining whether a school district has provided a student a FAPE, the courts and hearing officers must inquire first, whether the district has complied with the IDEA’s procedural requirements and second, whether the IEP developed through the Act’s procedures resulted in an IEP that was reasonably calculated to enable the child to receive educational benefit.¹⁷² More recently, in *Endrew F.*, the Court held in a unanimous opinion authored by Chief Justice John Roberts that, “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”¹⁷³ The Court further outlined in *Endrew F.* that the new standard articulated in *Endrew F.* is meant to be a more generally applicable standard, with the understanding that each case is necessarily fact specific, as students with disabilities each have unique needs and circumstances, and there can be no bright-line rule governing the appropriateness of all FAPE cases.¹⁷⁴ Provision of a FAPE must occur in the (LRE). When considering the LRE, the IDEA regulations generally require that children with disabilities receive an education in concert with the child’s non-disabled peers.¹⁷⁵ The same IDEA regulations provide that children with disabilities may be removed from the regular education environment when, and

¹⁷² See *Rowley v. Board of Education of Hendrick Hudson School District*, 458 U.S. 176 (1982).

¹⁷³ See *Endrew F. v. Douglas County School District RE-1*, No. 15-827 (U.S. March 22, 2017)

¹⁷⁴ *Ibid.*

¹⁷⁵ See 20 U.S.C. §1412(a)(5)(A).

only when, the nature and severity of the child’s disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.¹⁷⁶ The 7th Circuit specifically declined to adopt a more precise standard noting that the federal regulations provide sufficient guidance for school districts.¹⁷⁷ The 7th Circuit, in its ruling noted: “The LRE requirement shows Congress’s strong preference in favor of mainstreaming ... but does not require, or even suggest, doing so when the regular classroom setting provides an unsatisfactory education.¹⁷⁸ The evidence made it abundantly clear that the Student’s LRE is a TDS due to the amount of anecdotal data reflecting the Student’s frequent and serious levels of dysregulation.¹⁷⁹ Thus, the Student’s removal from receiving an education without the opportunity to be educated alongside the Student’s non-disabled peers is the Student’s LRE. Next, when considering matters of the provision of a FAPE, one must also determine whether the District followed the rules. In other words, did the District abide by the rules and regulations required by the IDEA and Illinois rules and regulations. As noted earlier, in one instance the District did fail to follow all procedures of the IDEA and Illinois rules and regulations when the District failed to complete an evaluation of the Student within the 60-school daytime period. In all other respects of following the rules of the IDEA and Illinois rules and regulations, the District complied. The next phase of determining a FAPE requires consideration of whether the District’s rule violation was so substantive that it caused a deprivation of benefit for the Student. As concluded earlier, the District utilized the Parent’s IEE submitted to the District in early 2023,¹⁸⁰ adopted the Student’s prior IEP from the previous district and implemented that IEP’s FBA and BIP and then developed its own IEP on March 9, 2023. The March 9, 2023, IEP concluded the Student would benefit from a TDS placement and the Parent agreed. From that point forward, the District’s efforts focused on implementing the Student’s IEP for the remainder of the 2022-23 school year and finding an appropriate TDS placement for the Student. Also as noted earlier, and consistent with rulings from our own 7th Circuit, procedural errors do not automatically arise to the level of a denial of FAPE. In this instance, the evidence supported that the District, in concert with the Parent, made the IEP placement recommendation of a TDS and no evidence submitted demonstrated anything to the contrary. Thus, hearing officer concludes that the Student’s three IEPs developed by the District provided the Student with a FAPE in the LRE and the hearing officer previously concluded that the District’s single procedural error did not arise to the

¹⁷⁶ *Ibid.*

¹⁷⁷ *See Beth B. v. Van Clay*, 282 F. 3d 493, 499 (7th Cir. 2002); *see also Board of Education of Township High School District No. 211 v Ross*, 486 F. 3d 267 (7th Cir. 2007).

¹⁷⁸ *Ibid.*

¹⁷⁹ *See Findings of Fact* 4, 6, 12, 20, 25, 27, 35, 48, 51, and 55.

¹⁸⁰ *See Findings of Fact* #10.

level of a denial of a FAPE. Thus, the preponderance of the evidence supported the District on Issue 9.

ORDER

Based upon the Findings of Fact and Conclusions of Law, the IHO rules for the District. The IHO denies the Parent's request relief.

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 emailed to the party.

IT IS SO ORDERED:

Dated: February 16, 2024

/s/ *D. Michael Risen*

Impartial Hearing Officer

██
██
██

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Final Determination and Order was sent via electronic mail as an attached PDF file, electronic mail only, and directed to:

Ms. Michelle Todd, Esq.
Ms. Jessica Nguyen, Esq.
HLERK

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

And

Mr. Joseph Krause, Esq.
Kelly & Krause

[REDACTED]
[REDACTED]
[REDACTED]

And

Mr. Andrew Eulass, Esq., Due Process Coordinator
@: aeulass@isbe.net

On February 16, 2024

/s/ D. Michael Risen

D. MICHAEL RISEN, PH.D.
IMPARTIAL HEARING OFFICER

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

APPENDIX A – PERSONALLY IDENTIFIABLE INFORMATION

██████████ v. ██████████ #██████████

Case No. 2024-DP-0049

Students Name	██████████
Date of Birth	September 17, 2014
Attending School	Home Schooled
Recommended School	Therapeutic Day School
Parent's Name	██████████
Parent's Name	██████████
Associate Superintendent for Special Services	██████████
BEST Classroom Teacher	██████████
Independent Evaluator	██████████
BEST Social Worker	██████████
Parent's expert witness	██████████
BEST program administrator	██████████
BEST occupational therapist	██████████
Reading tutor	██████████
██████████ Director	██████████
South School Therapist	██████████
Director ██████████	██████████
Parents outside OT	██████████
BEST behavioral coach	██████████
BEST school psychologist	██████████
Principal ██████████ Academy	██████████
Independent neuropsychologist	██████████ (did not testify)