

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

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STUDENT<sup>1</sup>,

Student,

Case No: 2024-DP-0116

v.

Janet K. Maxwell-Wickett,  
Impartial Hearing Officer

████████ CUSD ██████

School District.

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**FINAL DETERMINATION AND ORDER**

**JURISDICTION**

The undersigned has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C §1400 *et seq.* and the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*

**BACKGROUND**

The Student is a 7-year-old, male who is a 1<sup>st</sup> grade student at a District elementary school. He qualifies for special education services under the disability category of Other Health Impairment (OHI) pursuant to an eligibility meeting on December 5, 2023. The Student has been enrolled in the District since kindergarten. The Student has deficits in attention and staying on task and exhibits aggressive behaviors including hitting, kicking, punching, biting, throwing items, loud vocalizations and derogatory comments, work refusal, and eloping from the classroom.

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<sup>1</sup> Personal identification information is provided in Appendix A.

Parents maintain that the District violated the mandates of the IDEA and the Illinois School Code by (1) failing to create an IEP on December 12, 2023, that is reasonably calculated to enable the Student to make progress in light of his unique circumstances; and (2) failing to provide an appropriate site for implementation of the Student's placement, per the December 12, 2023, IEP that can implement the Student's IEP and provide him with a free and appropriate public education (FAPE) in the least restrictive environment (LRE). (IHO Exhibit #1, 11, 14.)

Parents, through legal counsel, filed a due process hearing request on January 5, 2024. (IHO Exhibit #1.) The District filed its response to the due process hearing request on January 15, 2024. (IHO Exhibit #7.) The parties participated in mediation on January 12, 2024, however, they were unable to resolve the outstanding issues in this matter. (IHO Exhibit #11, 14.) The Prehearing Conference was commenced and completed on February 1, 2024. (IHO Exhibit #11, 14.)

The original 45-day timeline expired on March 20, 2024. On February 29, 2024, the parties jointly requested an extension of same in order to convene the due process hearing on dates mutually convenient to both parties, counsel and witnesses. The joint motion for continuance was granted for good cause shown and the 45-day decision due date was reset to April 16, 2024. (IHO Exhibit #25, 30.) Due Process Hearing dates were set by agreement for March 4 & 5, 2024, and April 2, 2024. (IHO Exhibit #11, 14, 25, 30.)

The Parents opted for a closed hearing. The Due Process Hearing was held on March 4 & 5, and April 2, 2024. Ms. Verity Sandell, Ms. Cera Horste, and Ms. Tracy Hartlieb of Hartlieb Horste & Sandell, LLC represented Parents. Mr. Brandon Wright and Ms. Christine Christensen of Miller, Tracy, Braun, Funk & Miller, Ltd. represented the District. The Parents presented four

individual witness and the remaining witnesses were joint witnesses.<sup>2</sup> Parents presented the following Parent Exhibits (PD) #2-7 which were admitted into evidence. The School District presented the following District Exhibits (SD) #1-4 which were admitted into evidence. The parties presented the following Joint Exhibits (JD) # 1-2, 4-10, 12, 23-35 which were admitted into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-33. Both parties submitted oral closing statements, a written outline thereof, and provided citations to any case law relied upon. Stipulations of fact were submitted by the parties prior to hearing. (IHO Exhibit #26.)

### ISSUES

The issues raised by the Parents, including the relief requested, and the response of the District, present the following issues, defenses and requested relief for determination by this Hearing Officer:

- (a) Whether the December 12, 2023, IEP is reasonably calculated to enable the Student to make progress in light of his unique circumstances and receive educational benefit and thus provides him with a free and appropriate public education (FAPE), specifically as follows:
  - (i) Whether the IEP provides appropriate related services in the area of speech language with goals and direct services to address the Student's social-pragmatic language needs;
  - (ii) Whether the IEP provides appropriate related services in the area of occupational therapy with goals and direct services to address the Student's motor and sensory processing needs;
  - (iii) Whether the IEP provides 1:1 aide support to the Student throughout the school day to support his attention and behavior needs;
  - (iv) Whether the IEP provides 1:1 aide support to the Student for transportation to support his attention and behavior needs;
  - (v) Whether the Behavior Intervention Plan (BIP) created on December 15, 2023, provides ongoing support from a BCBA to monitor the behavior intervention plan's effectiveness and problem solve;
  - (vi) Whether the placement provided in the IEP, specifically placement in a private therapeutic day school, is the least restrictive environment in which the Student's IEP can be implemented and his unique educational and related service needs can be met.

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<sup>2</sup> Witnesses presented by both parties are identified in Appendix A.

Parents maintain that the District's December 12, 2023, IEP is not reasonably calculated to enable the Student to make progress in light of his unique circumstances and receive educational benefit, as per paragraphs (i) through (vi) above, and thus denies him a FAPE. Parents further maintain that placement in a self-contained special education classroom housed within a general education school building is the appropriate placement for the Student and in which he can receive a FAPE in the least restrictive environment (LRE).

The District maintains that, at all times at issue, it provided the Student with an IEP reasonably calculated to enable the Student to make progress in light of his unique circumstances and receive educational benefit and thus provided him with a free and appropriate public education (FAPE). The District further maintains that a private therapeutic day school is the setting which the Student requires to meet his unique educational needs and which can provide him with a FAPE in the LRE.

(b) Whether the District's proposed site for implementation of the Student's placement, per the December 12, 2023, IEP is appropriate, can implement the Student's IEP, and provide him with a free and appropriate public education (FAPE) in the least restrictive environment (LRE).

Parents maintain that the District's proposed site for implementation of the placement, a private therapeutic day school, specifically, HRSP, is not appropriate. Parents maintain that this site is not appropriate as it cannot implement the Student's IEP; does not provide appropriate behavioral and sensory supports; provides insufficient academic supports; provides a shortened school day; and is too far from the Student's residence (too long of a commute given the Student's age and behavioral difficulties).

The District maintains that HRSP is an appropriate therapeutic day school for the Student which can implement his IEP and provide him with a FAPE in the LRE.

Parents request the following relief:

- a. Order the District to revise the Student's December 12, 2023, IEP to include the following:
  - (i) Speech language related services with goals and direct services to address the Student's social-pragmatic language needs;
  - (ii) Occupational therapy related services with goals and direct services to address the Student's motor and sensory processing needs;
  - (iii) 1:1 aide support to the Student throughout the school day to support his attention and behavior needs;
  - (iv) 1:1 aide support to the Student for transportation to support his attention and behavior needs (if transportation is needed as a related service);
  - (v) Provide for ongoing support from a BCBA to monitor the behavior intervention plan's effectiveness and problem solve;

- b. Order the District to revise the Student's December 12, 2023, IEP to reflect placement in a self-contained special education classroom housed within the District's general education school building, specifically, SWES;
- c. Order the District to provide compensatory education, using the qualitative method, in the form of speech therapy, occupational therapy, social work, and academic instruction. (IHO Exhibit #13.) [This request with withdrawn by Parents' counsel on the record at hearing on April 2, 2024.]

### **FINDINGS OF FACT**

This Hearing Officer had the benefit of a transcript for the March 4-5, 2024, hearing dates but did not have the benefit of a transcript with respect to the testimony heard on April 2, 2024, when writing this decision. Therefore, the following is based upon this Hearing Officer's personal notes, recollection, and the March 4-5, 2024, transcripts. 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 District counsel and Parents' counsel, this Hearing Officer's Findings of Fact are as follows:

1. The Student is a 7-year old male who is currently a 1<sup>st</sup> grade student at a District elementary school. He has been enrolled in the District since kindergarten. He qualifies for special education services under the disability category of Other Health Impairment (OHI) pursuant to an eligibility meeting held on December 5, 2023. He has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), Combined Presentation, Anxiety, Oppositional Defiant Disorder (mild) (ODD), Social Pragmatic Communication Disorder, Sensory Disturbance, and Eosinophilic

Esophagitis (EoE). (Testimony of Parent, SLP<sup>3</sup>, SLP<sup>2</sup><sup>4</sup>, OT<sup>2</sup><sup>5</sup>, OT<sup>6</sup>, II<sup>7</sup>, LCPC<sup>8</sup>; JD #5; Stipulation of the Parties – IHO Exhibit #26.)

2. The Student has strengths in math, segmenting words, vocabulary and gross motor skills. (Tr 30:11-18; Testimony of BCBA<sup>9</sup>; JD #7.)

3. The Student has deficits in attention and staying on task and exhibits aggressive behaviors including hitting, kicking, punching, biting, throwing items, climbing on furniture and jumping down onto staff and peers, loud vocalizations and derogatory comments, work refusal, and eloping from the classroom. (Tr 31-32, 128-134, 163-164, 166-167, 169-170, 326, 381-385, 408-409, 425-

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<sup>3</sup> SLP is Parents' outside speech language therapy provider. She is licensed in several states including Illinois. She is currently employed providing virtual speech language therapy treatment sessions and evaluations. (Testimony of SLP; JD #28.)

<sup>4</sup> SLP<sup>2</sup> is employed by the District as a Speech-Language Pathology Coordinator. She has been employed by the District for approximately 6 years. She previously worked as an outpatient pediatric speech language pathologist and taught for five years prior to earning her Master of Science in Communication Sciences and Disorders. (Testimony of SLP<sup>2</sup>; JD #29.)

<sup>5</sup> OT<sup>2</sup> is Parents' outside occupational therapy provider. She holds a doctorate in occupational therapy and works at a hospital providing outpatient occupational therapy treatment. (Testimony of OT<sup>2</sup>; PD #7.)

<sup>6</sup> OT is employed by the District as a school Occupational Therapist. She has spent more than twenty-five years providing school based occupational therapy services. She also previously worked in a pediatric clinical setting. (Testimony of OT; SD #3.)

<sup>7</sup> II is employed by the District as an Instructional Interventionist. She was also the Student's kindergarten teacher. She holds a Type 04 educators license in Illinois. (Testimony of II; JD #34.)

<sup>8</sup> LCPC is the Student's private therapist. She is an Illinois Licensed Professional Counselor. She has been working with the Student since January 2024. She provides weekly virtual counseling services. (Testimony of LCPC; JD #30.)

<sup>9</sup> BCBA holds a Master's Degree in Special Education and a Board Certified Behavior Analyst certification. She is employed as a BCBA by Knox Warren Special Education cooperative. The District contracted with the cooperative for her services to conduct a Functional Behavior Assessment (FBA) and to create a Behavior Intervention Plan (BIP) for the Student. (Testimony of BCBA; JD #33.)

427, 442; Testimony of BCBA, SPED<sup>10</sup>, II, PRIN<sup>11</sup>, PSY<sup>12</sup>, BI<sup>13</sup>, PRIN2<sup>14</sup>, DSPED<sup>15</sup>, OT2, OT, SLP2; JD #6, 7, 26-27.)

4. District staff had difficulty assessing the Student's academic abilities during their evaluation due to the Student's behaviors. Further, assessments often required the participation of multiple adult staff members due to the Student's off task and physically aggressive behaviors. (Tr. 381-385, 408-409, 425-427; Testimony of PSY, SLP2, BI; JD #7-8.)

5. The Student is currently attending in the District's self-contained classroom for students with emotional behavioral disorders (EBD). The Student's self-contained EBD classroom is housed within a general education elementary school. (Tr 68; Testimony of SPED, DSPED; JD #8.)

6. There are seven (7) students and three (3) adults in the Student's EBD classroom. The three adults are the special education teacher and two paraprofessional aides. (Tr 69; Testimony of SPED, DSPED.)

7. The Student began attending in the EBD self-contained classroom on November 27, 2023. (Tr. 83; Stipulation of the Parties – IHO Exhibit #26.)

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<sup>10</sup> SPED is the Student's special education teacher in his EBD classroom at SWES. She has twenty-five years of teaching experience and was previously employed as a special education teacher and then as principal of a therapeutic day school for children with behavioral needs. She holds an LBS1 professional educator license with a special education credential in Illinois. (Testimony of SPED; SD #1.)

<sup>11</sup> PRIN is the Principal of SWES. He has over twenty years of experience as both a school superintendent and a school principal. He is CPI trained. (Testimony of PRIN; SD #4.)

<sup>12</sup> PSY is a District School Psychologist. She has been employed by the District since 2021. She holds a Master of Science Degree in Educational Leadership. She holds an Illinois School Psychologist Professional Educator's License and is a Nationally Certified School Psychologist. (Testimony of PSY; JD #31.)

<sup>13</sup> BI is the District Behavior Intervention Specialist and Crisis Prevention Instructor. She has approximately eighteen years of experience as a special education teacher. She has been employed by the District in her current role for approximately five years. (Testimony of BI; JD #32.)

<sup>14</sup> PRIN2 is the Principal of a District elementary school. (Testimony of PRIN2; SD#2.)

<sup>15</sup> DSPED is the District Director of Special Education. She has been employed by the District for approximately thirty years in various capacities including as a special education teacher, Assistant Director of Special Education, and Director of Special Education. (Testimony of DSPED; JD #35.)

8. The Student's behavioral difficulties have not improved during the time he has been in the EBD classroom. He displays difficult behaviors every day including elopement, work refusal, loud verbalizations, climbing on furniture, and throwing items in the classroom. (Tr. 85-89, 140-143; Testimony of SPED, DSPED; JD #23-27.)
9. The Student's behaviors are some of the most severe in the EBD classroom. (Tr. 91; Testimony of SPED, DSPED.)
10. The Student completes fifty percent of his assigned class work. However, academic demands have been substantially reduced in order to prevent the Student from becoming frustrated. When he becomes frustrated his difficult behaviors escalate and he becomes physically aggressive to peers and staff. (Tr. 105-107, 134-135; Testimony of SPED; JD #23-24, 27.)
11. The Student spends approximately seventy-five (75) percent of his time in the classroom working on therapeutic activities versus academic or other classroom activities. (Tr. 123-130; Testimony of SPED.)
12. Working on emotional regulation, social skills, and peer interactions are imbedded within the curriculum of the EBD classroom. (Tr. 111-114, 358-360, 366-367; Testimony of SPED, PSY, OT.)
13. A Functional Behavior Assessment (FBA) was conducted in October 2023. Target behaviors were identified as physical aggression, disruptive classroom behavior, and elopement. (Tr 30-32; Testimony of BCBA; JD #7.)
14. A Behavior Intervention Plan (BIP) was developed for the Student based upon the data collected during the FBA to address the Student's target behaviors. (Tr. 48-50; Testimony of BCBA, BI; JD #7-8.)

15. All of the special education staff, paraprofessionals, social worker, psychologist, and speech language pathologist who work with the Student and the EBD classroom have received Crisis Prevention Institute (CPI) training. BI is one of the District CPI trainers. (Tr. 528-529; Testimony of SPED, DSPED.)

16. On December 12 and 15, 2023, an IEP was developed for the Student. The IEP provides functional behavior and social work goals to address the Student's deficits. The IEP provides placement in a therapeutic day school setting, specifically HRSP. It provides indirect occupational therapy services (consult services), direct social work service minutes, transportation, and a behavior intervention plan. (Testimony of SPED, BCBA, OT, PSY, SLP2, BI, DSPED; JD #7-8.)

17. It was not necessary for the BCBA to monitor the Student's BIP on an ongoing basis. The Student's classroom teacher and the school behavior interventionist were able to monitor the effectiveness of the Student's BIP and problem solve any issues which might arise. (Tr 59-64, 450-451, 530-535, 541-542; Testimony of BCBA, SPED, BI, DSPED.)

18. The Student does not require a dedicated one-to-one aide. A dedicated one-to-one aide does not allow a student with behavioral difficulties to learn to appropriately request assistance and attention from others. In the EBD classroom, the Student continually has one-on-one adult support and he is not making progress in that setting. (Tr. 60, 64-65, 148-150, 191, 432, 454-455, 481-484, 544-545; Testimony of BCBA, SPED, PRIN, SLP2, BI, PRIN2, DSPED; JD # 27.)

19. The Student spends significant amounts of time outside of the classroom. He is outside of the classroom fifty to eighty percent of the time due to his behavioral difficulties. (Tr 37, 109-110, 134-137, 473-474; Testimony of BCBA, SPED, OT2, BI; JD #6-8, 26.)

20. Due to his behavioral difficulties, the Student has limited access to and interaction with peers. Interaction with peers tends to be negative as opposed to positive including name calling,

put down statements, derogatory remarks, throwing things at peers, jumping off furniture on to other students, running around classroom spaces and into other students. (Tr. 414, 484-486; Testimony of SLP2, SPED, PRIN2; JD #23, 27.)

21. The Student has a mild social pragmatic language disorder. He has difficulty with the social use of language. He does not know how to interact with other people in an expected manner; has difficulty following directions; has a difficult time interacting as expected for his age; has a hard time expressing the rules of friendship; and does not have consistent reciprocal communication as expected for his age. The Student requires small group social skill interventions in order to develop positive peer interactions. A speech language pathologist, social worker, school psychologist, or occupational therapist would be able to provide these services. (Tr. 287-290, 303-304; Testimony of SLP, SLP2; JD #4, 9.)

22. During his private outpatient teletherapy speech language therapy, the Student exhibits variable behavior and currently is cooperative for about half of his weekly, thirty minute, virtual sessions. (Tr. 313-314; Testimony of SLP; JD #4.)

23. The Student does not require direct related services from a Speech Language Pathologist in order to meet his needs related to his mild social pragmatic language disorder. A school social worker can provide the required services and the Student has an IEP goal and direct social work service minutes related to same. (Tr. 303-304, 415, 416-422, 428-430; Testimony of SLP, SLP2; JD #4, 7-8.)

24. The Student does not require direct occupational therapy services. The Student's sensory processing and emotional regulation issues require tools that he can use on a day-to-day basis in the classroom. This can be accomplished through occupational therapy consult services in conjunction with direct social work services. The Student's social work goal, direct service

minutes, and accommodations in his IEP address his needs in this area. (Tr. 334-335, 354-356; Testimony of OT, OT2; JD #8; PD #5.)

25. The Student has not made progress during the 2023-2024 school year to date and his current self-contained EBD classroom cannot meet his behavioral and academic needs. (Tr. 88, 138-142, 150-151, 173-174, 182-183, 186-191, 448-449, 451-454, 544-545; Testimony of SPED, PRIN, BCBA, BI, DSPED; JD #23-27; PD #2.)

26. District staff have been injured by the Student's aggressive behaviors approximately six (6) times to date during the 2023-2024 school year. (Tr. 186-190; Testimony of PRIN; JD #25, 27.)

27. The Student requires a center-based classroom designed for students with emotional and behavioral disabilities. It would be a small setting with a high staff to student ratio, a high level of embedded social emotional learning, and small group instruction. (Tr 54-56, 62-63, 145-148; Testimony of BCBA, SPED.)

28. The Student needs adequate time, structure, and attention to be taught and to learn replacement behaviors and the EBD classroom at the District elementary school is not designed for this purpose and is ineffective. (Tr. 60; Testimony of BCBA, SPED.)

29. The Student requires a therapeutic day school setting to meet his behavioral and academic needs. (Tr. 145-148, 203, 375-376, 389-400, 442, 451-454, 499-501; Testimony of SPED, PRIN, BI, PRIN2, BCBA, DSPED, PSY; JD #8.)

30. HRSP is a therapeutic day school which provides a smaller environment, smaller class size, higher staff to student ratio, and employs teachers, paraprofessionals, and a full-time behavior interventionist who can intervene and provide support on a daily, real-time basis to support the Student's behavioral difficulties. A BCBA also works at the school one day per week to provide

additional support. HRSP is designed for students who are working at grade level academically. HRSP can implement the Student's IEP. (Tr. 455-457, 544-548; Testimony of BI, DSPED.)

31. The Student does not require transportation to attend his current District elementary school, SWES, as he lives within walking distance of same. (Stipulation of Parties – IHO Exhibit #26.) The Student does not require one-to-one adult support for a forty-five (45) minute bus ride traveling to and/or from a therapeutic day school specifically, HRSP. The bus the Student would travel on in order to attend HRSP has a driver and a bus monitor to assist with student needs. (Tr. 156-157, 543-544; Testimony of SPED; DSPED.)

32. No testimony or documentary evidence was introduced at hearing to support Parents' contention that HRSP was too long of a commute for the Student. (Testimony of Parent, SPED, DSPED, BI.)

33. The Student has allergies and asthma. (Testimony of Parent.) There are no current orders noted in the Student's IEP related to the need for an Epi-pen or an inhaler and no school health or nursing services are specified in the Student's IEP. (JD #8.)

34. Parents withdrew their request for compensatory education on the record at hearing. No testimony or documentary evidence was presented at hearing related to compensatory education. (Testimony of Parent, SLP, OT2, LCPC.)

### **CONCLUSIONS OF LAW**

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

## **Free Appropriate Public Education (FAPE)**

The Individuals with Disabilities Education Act (“IDEA”) guarantees children with disabilities the right to a free, appropriate, public education (“FAPE”). 20 U.S.C. §1412(a)(1). In order to determine whether a school district has provided a FAPE requires the determination of whether the school district complied with the procedural and substantive requirements of IDEA. *Board of Education of the Hendrick Hudson Central School District, Westchester County et. al. v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034 (1982). In matters alleging a procedural violation, the hearing officer may find that a student did not receive a FAPE only if the procedural inadequacy impeded the student’s right to a FAPE, significantly impeded the parent’s opportunity to participate in the decisions-making process regarding the provision of a FAPE to the parent’s child or caused a deprivation of educational benefit. 20 U.S.C. §1415(f)(3)(E); 34 C.F.R. §300.513(a); *Rowley* at 206-207. In the instant case, Parent’s due process complaint notice does not allege any procedural violations of the IDEA.

As recently clarified by the United States Supreme Court, under the Individuals with Disabilities Education Improvement Act (“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.” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, No. 15-827, 137 S.Ct. 988 (U.S. Mar. 22, 2017.) “[A]n IEP is reasonably calculated to confer educational benefit when it is ‘likely to produce progress, not regression or trivial educational advancement.’” *Alex R. ex rel. Beth R. v. Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 615 (7<sup>th</sup> Cir. 2004.) [T]he progress contemplated by the IEP must be appropriate in light of the child’s circumstances. . . The instruction offered must be ‘specially designed’ to meet a child’s ‘unique needs’ through an *individualized* education

program.” *Endrew F.*, 137 S.Ct. 988. The IEP is to provide a statement of the “special education and related services and supplementary aids and services . . . to be provided to the child.” 34 C.F.R. 300.320(a)(4).

The IEP is the “centerpiece” of the IDEA. The IEP is constructed only after careful consideration of the child’s present levels of performance of achievement, disability, and potential for growth. For a child not integrated in the regular education classroom, a child’s IEP may not need to aim for grade level advancement if that is not a reasonable prospect for the child. *Endrew F. v. Douglas County Sch. Dis. Re-1*, 375 S. Ct. 988, 69 IDELR 174 (US 2017). The child’s program, however, “must be appropriately ambitious in light of the circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom.” *Id.* The goals can differ; however, the goals should provide the child with the chance to “meet challenging objectives.” The IEP must also aim to enable the child to make progress. The Supreme Court explained that an IEP which provides for merely more than de minimis progress from year to year “can hardly be said to have offered an education at all.” *Endrew F. v. Douglas County Sch. Dis. Re-1*, 375 S. Ct. 988, 69 IDELR 174 (US 2017). Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. *Id.*, at 206–207, 102 S.Ct. 3034.

The IDEA does not require states to develop IEPs that “maximize the potential of handicapped children.” *Board of Educ. v. 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. Dist.*, 873 F.2d at 567 (*internal citation omitted*); see *Carlisle Area School v. Scott P.*, 62 F.3d at 533–34 (school districts “need not provide the optimal level of services, or even a level that would confer additional

benefits, since the IEP required by IDEA represents only a ‘basic floor of opportunity’” (*quoting Board of Education v. Rowley, 458 U.S. at 201, 102 S.Ct. at 3048*).

A school district is not required to provide a student with the “best conceivable” individualized education program, but only an IEP that is reasonably calculated to enable the student to receive educational benefits. *Alex R. v. Forrestville Valley Community Unit School District #221*, 375 F.3d 603,616 (7th Cir. 2004), *cert. denied*, 125 S.Ct. 628 (2004). Local school districts are not required to be guarantors of educational progress but are required to develop IEPs that are reasonably calculated to allow for progress. When determining whether a student has benefited from an educational program, the courts look, at least in part, to whether the student is making progress toward the goals included in the student’s IEP. *County of San Diego v. California Special Education Hearing Office*, 93 F.3d 1458(9th Cir. 1996). *See also Brad K. v. Board of Education of City of Chicago, Chicago Public School District #299*, 787 F.Supp.2d 734, 738 (N.D. Ill. 2011), *quoting Jaccari J. v. Board of Education of City of Chicago, District No. 299*, 690 F.Supp.2d 687, 702 (N.D. Ill. 2010) (factors to consider when determining whether an IEP is reasonably calculated to provide educational benefits “include: ‘(1) the child’s potential; (2) whether his IEPs were tailored to his unique needs; (3) whether his IEPs provided access to specialized services; (4) whether they addressed disability-related acts; and (5) whether the child achieved progress during the relevant time period’”). Goals, short-term objectives, and descriptions of present levels of the student’s performance should reflect the student’s progress, or, if there is a lack of progress, the school district should consider adjusting the program to provide a different configuration or amount of services or a different placement to make it more likely that the IEP will confer educational benefit. *See Kevin T. v. Elmhurst Community School Dist. No. 205*, No. 01 C 0005, 2002 WL 433061 (N.D. Ill. Mar. 20, 2002).

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., supra*, 375 F.3d at 615, quoting *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245,248 (5th Cir. 1997). *See also Richard Paul E. v. Plainfield Community Consolidated School District 202*, No. 07 C 6911, 2009 WL 995459 at \*17 (N.D. Ill. Apr. 9, 2009) (finding school district did not violate child’s rights under IDEA when IEP was reasonably calculated to provide him with educational benefits by addressing his behavioral and learning disabilities). Indeed, 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.*, 295 F.3d 671, 676 (7th Cir. 2002) (finding that one-month delay in figuring out what to do with student after he had to be removed from school was reasonable).

Parents first allege that the District failed to provide the Student with a free and appropriate public education (FAPE) when the December 12, 2023, IEP did not provide for related services in the area of speech language with goals and direct services to address the Student’s social-pragmatic language needs. Parents’ contention is without merit. The testimony and documentary evidence introduced at hearing was uncontroverted: the Student does not specifically require direct speech language services or a speech language goal to address those needs. Parents’ outside private speech language provider concurred with and supported this conclusion. SLP, Parents’ outside private speech language provider, evaluated the Student for purposes of outpatient teletherapy which consisted of mostly play based therapy<sup>16</sup>. SLP concluded that the Student’s social pragmatic language skills were in the mildly impaired range, a conclusion with which SLP2, the District

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<sup>16</sup> SLP’s evaluation focused on medical necessity and not educational needs and she did not make any in-school recommendations and did not observe the Student in the school setting. (FF #21-23.)

speech language pathologist, concurred. (FF #21.) Further, both SLP and SLP2, concluded that a school social worker would be able to provide the services required to address the Student's needs in this area. (FF #21.) The Student's December 12, 2023, IEP provides for direct social work service minutes and an IEP goal to address these needs. (FF #21-23.) Therefore, based upon the uncontroverted testimony and documentary evidence introduced at hearing, it is the finding of this Hearing Officer that the Student does not require speech language related services or a speech language goal to address his mild social pragmatic language impairment and Parents' claims to the contrary are without merit.

Parents next allege that the District failed to provide the Student with a free and appropriate public education (FAPE) when the December 12, 2023, IEP did not provide for related services in the area of occupational therapy with goals and direct services to address the Student's motor and sensory processing needs. Parents' contention is without merit. The testimony and documentary evidence introduced at hearing reveal that the Student has no fine or gross motor deficits. His sensory processing and emotional regulation deficits require tools that he can use on a day-to-day basis in the classroom to address those difficulties. The Student's social work goals and accommodations in his IEP address these needs. (FF #24.) Parent's private occupational therapist, OT2, observed the Student in his EBD classroom on January 31, 2024, and noted the positive supports and strategies provided in that classroom to address the Student's needs. Parents expressed a desire for the District to address the Student's interoception needs. Interoception is physiological and is the ability to understand what or how you are feeling. OT, credibly testified that it would be difficult for an IEP team to write a goal related to interoception that could be monitored in the educational setting. The Student's current social work goal addresses his ability to identify emotions and practice strategies to manage and verbally express them. Further, OT2's

report, provided by Parents, reflects that the Student's needs could be met through occupational therapy or social work. As the Student's direct social work service minutes and social work goal address his sensory processing needs, his needs are adequately met through the occupational therapy consult minutes listed in his IEP. Parents' assertion that the Student needs direct occupational therapy services and goals is unsupported by the record.

Parents next contend that the Student requires one to one paraprofessional aide support throughout the school day to support his attention and behavioral needs. However, the testimony presented at hearing was overwhelming and uncontroverted on this point. The Student has and continues to have one to one adult support from the special education teacher, various administrators, behavior interventionists, social workers, or paraprofessional aides throughout his school day. District staff have been and continue to be present to support the Student throughout his school day to support his attention and behavioral needs. Despite this, the Student's maladaptive behaviors continue on a daily basis. (FF #3-7.) While the Student's current EBD self-contained classroom provides an additional level of support for students with emotional regulation and social skill deficits, the Student's maladaptive behaviors have not improved during the time he has attended in that classroom. (FF #8.) A dedicated one to one paraprofessional aide for the Student in the EBD classroom would not resolve these difficulties. A dedicated one to one aide does not allow the Student to learn to appropriately request assistance and attention from others. (FF #18.) The Student requires a higher level of classroom support than can be provided in the EBD classroom. He requires the support of a therapeutic day school setting. The Student needs adequate time, structure, and attention to be taught and to learn replacement behaviors. (FF #25, 27-29.)

While Parents' private occupational therapist, OT2, opined that the Student would benefit from a one to one aide in the classroom, her recommendation was based upon one two and a half hour observation, in which the Student spent less than twenty-five minutes inside the classroom, and her very limited experience as a substitute teacher. OT2's observation that the Student was difficult to keep up with when he was observed with two adults supporting his needs, supports the District's contention that one to one aide support in the Student's current EBD classroom would be ineffective. OT2's limited experience in the classroom setting and contradictory recommendation render her testimony of limited value.

Based upon the uncontroverted testimony and documentary evidence presented at hearing, it is the finding of this Hearing Officer that the Student does not require one to one aide support in his current self-contained EBS classroom. That classroom cannot provide the Student with the support he needs. The Student requires a therapeutic day school setting to address his continued maladaptive behaviors. Parents' claims to the contrary are unsupported by the record.

Parents next allege that the District denied the Student FAPE when it failed to provide for one to one aide support for transportation to and from the therapeutic day school, HRSP, in his December 12, 2023, IEP. The parties agree that to attend his current EBD classroom, at the District elementary school, the Student does not require transportation as he lives within walking distance. (FF #31.) Parents contend that if the Student were to attend HRSP, the therapeutic day school determined to be appropriate by the IEP team, he would require one to one aide support for the bus ride to and from that school. However, no testimony or documentary evidence was presented at hearing to support this contention. Both SPED and DSPED credibly testified that bus transportation to HRSP includes a bus driver and a bus monitor. The presence of the bus monitor,

in addition to the driver, would be sufficient to meet the Student's needs and address any issues which may arise during the bus ride. (FF #31.) This was uncontroverted at hearing.

Parents next contend that the Behavior Intervention Plan (BIP) contained within the Student's December 12, 2023, IEP fails to provide ongoing support from a Board Certified Behavior Analyst (BCBA) to monitor the plan's effectiveness and problem solve and thus denies the Student a FAPE. However, this contention is unsupported by the record at hearing. BCBA, SPED, DSPED, BI all credibly testified that it was not necessary for BCBA to monitor the BIP's effectiveness or to problem solve any issues which arose as the Student's EBD classroom teacher and the school behavior interventionist were both well qualified to perform that role. (FF #17.) Further, HRSP is designed for student's with behavioral needs similar to those exhibited by the Student and behavioral and social emotional supports are built into the program's curriculum. A BCBA is on site weekly at HRSP to monitor the BIPs of the students and provide ongoing support related to same. (FF #28-30.) Based upon the uncontroverted testimony presented at hearing, Parents' assertion to the contrary is without merit.

Parents contend that the District denied the Student a FAPE when the December 12, 2023, IEP provided for placement of the Student in a private therapeutic day school. Parents content that a therapeutic day school setting is not the least restrictive environment in which the Student can receive a FAPE. Under the IDEA, the School District has an obligation to educate the student to the greatest extent appropriate with his nondisabled peers. 20 U.S.C.A. §1412(a)(5)(A); *Board of Education of Township District No. 211 v. Ross*, 486 F.3d 267, 277 (7<sup>th</sup> Cir. 2007); *Beth B. v. Van Clay*, 282 F.3d 493 (7<sup>th</sup> Cir. 2002.) The Illinois School Code and implementing regulations also require that to the maximum extent appropriate a child with a disability must be educated in the least restrictive environment with children who are not disabled. 105 ILCS 5/10-22.41; Ill. Admin.

Code 226.240. Removal from the regular education classroom of a child with a disability should only occur when education in the regular education classroom cannot be achieved with the use of supplementary aides and services. 20 U.S.C.A. §1412 (a)(5)(A); 34 C.F.R. §300.114 (a)(2)(ii). The Seventh Circuit has declined to adopt any sort of multi-factor test for assessing whether a child must remain in a regular school. *Ross supra. See also Beth B., supra.* “The ultimate question is whether the education in the conventional school was satisfactory, and, if not, whether reasonable measures would have made it so.” *Id.* The District may change a student’s placement to a more restrictive setting or maintain that placement if the student would not make adequate progress in the less restrictive placement. *Ross citing Beth B. v. Van Clay*, 282 F.3d 493, 499 (7<sup>th</sup> Cir. 2002.) Courts have consistently held that progress must be more than minimal. *Polk v. Central Susquehanna Intermediate Unit 16*, IDERL 130 (3<sup>rd</sup> Cir. 1988); *See Andrew F.* at 206-207. When a student is unable to benefit by being with nondisabled peers, has not made sufficient social emotional progress and requires a smaller classroom with trained personnel allowing for more rapid interventions, Illinois courts have upheld a school district’s recommendation and continued placement in a therapeutic setting. *Hiawatha School District No. 426*, 58 IDELR 269 (Fed. 27, 2012). Further, educators “have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents.” *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290, 297 (7<sup>th</sup> Cir. 1988).

The testimony and documentary evidence presented in clear and uncontroverted, the Student requires a therapeutic day school placement. (FF #25-29.) The Student has been unsuccessful in both general education and in the self-contained classroom for students with emotional disabilities. He has been unable to make sufficient social emotional progress and continues to display maladaptive behaviors daily despite a small classroom designed for students

with emotional disabilities, a very experienced special education teacher, a small teacher to student ratio, ample additional adult/paraprofessional support, and embedded supports for emotional regulation and social skills. (FF #5-9, 12-15.) His academic demands have been significantly reduced to prevent frustration and the physically aggressive behaviors which accompany his corresponding escalation. (FF #10.) The Student spends approximately seventy-five percent of his time on therapeutic activities and it is very difficult to engage him in academic tasks. (FF #11.) Further, the Student has limited access to and interaction with non-disabled peers and interaction tends to be negative rather than positive. (FF #20.) The District has provided as many interventions as possible to the Student in the EBD classroom, however, he is still unable to be successful and make meaningful progress. (FF #25.) The IEP must aim to enable the Student to make progress. The Supreme Court in *Endrew F.* explained that an IEP which provides for merely more than *de minimus* progress from year to year “can hardly be said to have offered an education at all.” *Endrew F.* at 206-207. The Student’s special education teacher credibly testified at hearing that the Student needs more than can be provided in her classroom to be successful. The testimony of District witnesses (SPED, DSPED, BCBA, II, PRIN, PRIN2, OT, PSY, SLP2, BI) on this point was overwhelming, credible, persuasive, and uncontroverted by Parents at hearing. The Student requires placement in a therapeutic day school in order to receive a FAPE.

### **Site for Implementation of the Placement**

The Student’s December 12, 2023, IEP provides for implementation in a private therapeutic day school, specifically HRSP. Parents assert that HRSP is inappropriate as it cannot implement the Student’s IEP; does not provide appropriate behavioral and sensory supports; provides insufficient academic supports; provides a shortened school day; and is too far from the Student’s residence (too long of a commute given the Student’s age and behavioral difficulties).

Parents' contention that HRSP is unable to implement the Student's IEP is unsupported by the hearing record. BI, who has had students placed at HRSP and toured the school, credibly testified that HRSP is able to implement the Student's IEP as written. DSPED also credibly testified that HRSP could implement the Student's IEP as the school is designed for students with more intensive behaviors, such as those displayed by this Student, has a smaller class size and a smaller setting. Further, the school employs teachers, paraprofessionals, and a full-time behavior interventionist who can intervene and provide support on a daily, real-time basis to support the Student's behavioral difficulties. A BCBA is also present in the school one day per week to provide additional support to students. HRSP is designed for students who are working at grade level academically. (FF #30.) This testimony was uncontroverted by Parents' at hearing. While the operating and student attendance hours of HRSP are somewhat different from those of the Student's current District elementary school, it is the finding of this Hearing Officer that that alone does not render this site inappropriate.

While HRSP is not as conveniently located within walking distance to the Student's home, as is his current elementary school, it is the closest therapeutic day school to Parents' residence. There was no testimony or documentary evidence presented at hearing to support Parents' contention that HRSP was too long of a commute given the Student's behavioral difficulties. The Student is able to manage the commute on a bus with a driver and a bus monitor to address any Student needs. (FF #31.)

While Parents' take issue with HRSP's school hours and the length of the bus ride, the totality of the Student's needs reflect the necessity of this placement. The Student's current lack of progress in the EBD classroom is unacceptable and not what is envisioned by *Andrew F.* When a student is unable to benefit by being with nondisabled peers, has not made sufficient social

emotional progress and requires a smaller classroom with trained personnel allowing for more rapid interventions, Illinois courts have upheld a school district's recommendation and continued placement in a therapeutic setting. *Hiawatha School District No. 426*, 58 IDELR 269 (Fed. 27, 2012). Further, educators "have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents." *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290, 297 (7<sup>th</sup> Cir. 1988).

Several of Parents' outside therapy providers visited HRSP and deemed it "inappropriate" for the Student. However, "the IDEA does not require school district's to defer to the opinions of private evaluations procured by a parent." *Miller v. Charlotte-Mecklenburg Schools*, 83 IDELR 1 (4<sup>th</sup> Cir. 2023.) While LCPC testified that the Student has made progress with her since January 2024, she provides clinical therapy to the Student virtually when he is at home. She does not and has not worked with the Student in the educational setting. LCPC provides clinical therapy virtually, for thirty minutes per week and had only been working with the Student for one month, three to four virtual sessions prior to testifying at hearing. She has never provided in person clinical therapy to the Student. While she did observe the Student in his EBD classroom in January 2024, the extent of her observation was one (1) hour. She also conducted a one (1) hour observation at HRSP at Parent's request. LCPC did not assess or opine on the Student's academic abilities as she is not appropriately trained and credentialed to do so. As LCPC is a clinical therapist, with limited current knowledge of the Student, who has never provided services in person or in the educational setting, this Hearing Officer finds her testimony to be of limited value. Her ultimate conclusions are not persuasive based upon those factors.

SLP evaluated the Student for purposes of outpatient teletherapy, mostly play based therapy. She never observed the Student in the school setting and has never interacted with him

in person. She sees the Student thirty minutes per week for teletherapy speech language therapy. During their sessions, he displays very variable behavior. She did not make any in-school recommendations. Her evaluation focused on medical necessity, not educational needs. (Testimony of SLP.) Based upon the above, it is the finding of this Hearing Officer that her testimony is of limited value as it pertains to the Student in the educational setting.

OP2 provides private occupational therapy to the Student in a one on one setting. While she conducted several observations of the Student in the school setting, she has limited experience in a school setting as a substitute teacher. She is not a licensed teacher or a licensed special education teacher and does not provide occupational therapy services in the educational setting, therefore, she was not qualified to opine on the appropriateness of a therapeutic day school or HRSP.

While not raised as an issue for hearing, Parents, at hearing, took issue with the appropriateness of HRSP based upon an alleged lack of available school health or nursing services for the Student. However, the Student's IEP does not provide nursing services. While the Student has allergies and asthma, there are no current orders noted in the Student's IEP related to the need for an Epi-pen or an inhaler. (FF #33.) If there exists a need for such services, the Illinois School Code and the IDEA's implementing regulations provide that other qualified personnel, such as school administrators, are permitted to administer medication. *See* 71 Fed. Reg. 46574 (2005), 105 ILCS 5/10-22.21b. Therefore, Parents' claim does not render HRSP inappropriate due to a lack of school health or nursing services.

Based upon the uncontroverted testimony and documentary evidence introduced at hearing, it is the finding of this Hearing Officer that this Student requires a therapeutic day school

setting and HRSP is an appropriate site for implementation of that placement and of the Student's December 12, 2023, IEP. At all times at issue, the District has provided the Student with a FAPE.

### **Compensatory Education**

“Compensatory services are well-established as a remedy under the IDEA.” *Jaccari J. v. Board of Educ. of City of Chicag, Dist No. 299*, 690 F.Supp.2d 687, 707 (N.D. Ill. 2010). Compensatory education is an equitable remedy that “should aim to place disabled children in the same position they would have occupied but for the school district’s violation of the IDEA.” *Reid v. District of Columbia*, 401 F.3d 516, 522 (D.C. Cir. 2005). A hearing officer has the authority to award compensatory education. *ZJ v. Bd. of Educ. of Chi.*, 344 F. Supp. 3d 988, 1002 (N.D. Ill. 2018). Parents withdrew their request for compensatory education on the record at hearing. Further, no testimony or evidence was presented related to compensatory education. (FF #33.) As it is the finding of this Hearing Officer that, at all times at issue, the District provided the Student with a FAPE, any compensatory education award would be inappropriate and unsupported by the record.

### **CONCLUSION**

Based upon the Findings of Fact and Conclusions of Law, the District provided the Student with a free and appropriate public education (FAPE) at all times in question. Further, a therapeutic day school, specifically HRSP or another similar therapeutic day school is the least restrictive environment in which the Student can receive a FAPE.

Parents’ requested relief is hereby denied in its entirety.

**ORDER**

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

The District is permitted to move forward with placement of the Student in a therapeutic day school setting, HRSP or another similarly situated private therapeutic day school, as determined by the IEP team per the Student's December 12, 2023, IEP.

Parents' requested relief is hereby denied.

In accordance with 105 ILCS 5/14-8.02a(h), within **45** calendar days of receipt of this Order, the school district must submit proof of compliance to:

Illinois State Board of Education  
Program Compliance Division  
100 North First Street  
Springfield, IL 62777-0001

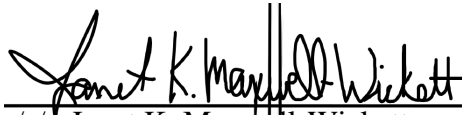
**NOTICE OF RIGHT TO REQUEST CLARIFICATION**

Pursuant to 105 ILSC 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: April 11, 2024



/s/ Janet K. Maxwell-Wickett

Janet K. Maxwell-Wickett,  
Impartial Hearing Officer

[REDACTED]

**APPENDIX A**

[REDACTED] v. [REDACTED] CUSD [REDACTED]  
Case No: 2024-DP-0116

Student	[REDACTED]
Attending School	[REDACTED] Elementary School (SWES)
District School	[REDACTED] Elementary School (SWES)
Student's Parent/Petitioner	[REDACTED]
<b>Parent Witnesses:</b>	
Parent	[REDACTED] (Parent)
Speech Therapist	[REDACTED] (SLP)
Occupational Therapist	[REDACTED] (OT2)
Private Therapist	[REDACTED] (LCPC)
<b>Joint Witnesses:</b>	
Special Education Teacher	[REDACTED] (SPED)
Board Certified Behavior Analyst	[REDACTED] (BCBA)
Instructional Interventionist	[REDACTED] (II)
Principal, [REDACTED] Elementary School	[REDACTED] (PRIN)
Occupational Therapist – District	[REDACTED] (OT)
School Psychologist	[REDACTED] (PSY)
Speech Language Pathologist	[REDACTED] (SLP2)
Behavioral Interventionist	[REDACTED] (BI)
Principal, King Elementary School	[REDACTED] (PRIN2)
Director of Special Education	[REDACTED] (DSPED)
<b>Schools:</b>	
Therapeutic Day School	[REDACTED] School – [REDACTED] (HRSP)