

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

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Student, by and through his Parents<sup>1</sup>

v.

District<sup>2</sup>

Case No. 2025-0042

Leah Trinkala  
Impartial Hearing Officer

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**FINAL DETERMINATION AND ORDER**

**JURISDICTION.**

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

**PROCEDURAL BACKGROUND.**

On September 12, 2024, the Petitioners (Parents) filed a due process complaint (Complaint) against the District on behalf of their nine-year old son (Student) with a disability.<sup>3</sup> The Student is eligible for an IEP under the primary category of Autism Spectrum Disorder (ASD).<sup>4</sup> The Parents filed this Complaint alleging placement in a separate therapeutic day school was not the least restrictive environment for the Student.<sup>5</sup> The Parents were self-represented.<sup>6</sup> The District is represented by Laura Sinars and Michael Barracato of Robbins Schwartz, LLC

On September 17, 2024, the Illinois State Board of Education (ISBE) appointed the undersigned as the Impartial Hearing Officer (IHO).<sup>7</sup> On September 24, 2024, the District filed its Response to the Complaint.<sup>8</sup> At the October 1, 2024 Status Conference, the Father requested sanctions be imposed on the District because the Response was filed one day late and argued the Response was non-responsive to some of the issues contained in the

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

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

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

<sup>4</sup> IHO Ex. 20.

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

<sup>6</sup> The Father is a licensed attorney.

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

<sup>8</sup> IHO Ex. 4.

Complaint.<sup>9</sup> The undersigned found the District had provided prior written notice to the Parents and the Parents were not prejudiced with the Response being filed one day late.<sup>10</sup> The Father also requested the undersigned become involved with the resolution process since the meeting was not scheduled within 15 days as required under the School Code.<sup>11</sup> The undersigned declined becoming involved in the resolution process because the District had scheduled the resolution meeting on October 4, 2024 which was within the 30-day resolution period.<sup>12</sup> A briefing schedule was set to address a stay-put dispute.<sup>13</sup>

On October 4, 2024, the Parents filed a Motion for Stay-Put Relief.<sup>14</sup> On October 10, 2024, the District filed its Position Statement for Determination of Stay Put Placement.<sup>15</sup> The parties participated in a resolution session on October 7, 2024 and were not able to resolve this matter.<sup>16</sup> On October 8, 2024, the parties requested a continuance of the Prehearing Conference and an extension of the 45-day timeline in order to have additional time to prepare for a Prehearing Conference and to address the stay put issue.<sup>17</sup> The continuance was granted and the Prehearing Conference was scheduled for October 22, 2024 and the new decision due date was extended to January 10, 2025.<sup>18</sup> On October 14, 2024, the Parent's Reply in Support of the Motion for Stay-Put Relief was filed.<sup>19</sup> On October 19, 2024, the undersigned issued the Interim Order: Stay Put Determination which found the Student's May 6, 2024 IEP was the operative IEP and the Student's stay put placement was in a separate public school in special education for 100% of the day.<sup>20</sup> The Parents elected to homeschool the Student instead of sending the Student to a separate public school during the pendency of these proceedings.<sup>21</sup>

On October 13, 2024, the Notice of Prehearing Conference was emailed to the parties which included the proposed issues for the hearing.<sup>22</sup> The Prehearing Conference occurred on October 22, 2024.<sup>23</sup> Hearing dates were set for March 25 and 26, 2025.<sup>24</sup> A Prehearing Report and Order was issued on October 29, 2024.<sup>25</sup> On November 11, 2024, the parties submitted proposed changes to the Prehearing Report and Order.<sup>26</sup> A Revised Prehearing Report and

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<sup>9</sup> IHO Ex. 6.

<sup>10</sup> IHO Ex. 6.

<sup>11</sup> IHO Ex. 6.

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

<sup>13</sup> IHO Ex. 6.

<sup>14</sup> IHO Ex. 7.

<sup>15</sup> IHO Ex. 8.

<sup>16</sup> IHO Ex. 9.

<sup>17</sup> IHO Ex. 15.

<sup>18</sup> IHO Ex.9.

<sup>19</sup> IHO Ex. 11.

<sup>20</sup> IHO Ex. 13.

<sup>21</sup> IHO Ex. 15.

<sup>22</sup> IHO Ex. 10.

<sup>23</sup> IHO Ex. 15. The Father requested to file a partial motion for summary judgement and this request was denied. See, IHO EX. 15.

<sup>24</sup> IHO Ex. 15.

<sup>25</sup> IHO Ex. 15.

<sup>26</sup> IHO Ex. 16.

Order was issued on November 16, 2024.<sup>27</sup> The Father requested additional changes to the Revised Prehearing Report and Order on November 20, 2024.<sup>28</sup> On December 8, 2024 a Revised Prehearing Report and Order (12/8/2024) was issued.<sup>29</sup>

The parties exchanged the 5-day business disclosures, via email, on March 18, 2025. The parties were required to exchange hard copies of the disclosures on March 19, 2025.<sup>30</sup> The Parents did not receive the hard copies of the exhibits until March 20, 2025 at 11:12 a.m. even though the District sent the exhibits via UPS Next Day Air on March 18, 2025.<sup>31</sup>

The hearing took place remotely via the Zoom platform and at the District's offices on March 25 and March 26, 2025 and was a closed hearing. Before commencing the hearing, the hearing schedule was addressed because the parties had failed to finalize the schedule as required.<sup>32</sup> The parties each provided a separate hearing schedule.<sup>33</sup> The District objected to the Parents' Psychiatrist testifying because this witness would not be able to offer any relevant testimony concerning the Student's functioning since the Psychiatrist had not participated in any IEP meetings and had not observed the Student in the classroom. The Father argued the Psychiatrist was relevant to revisit the Student's progress since the May 2024 IEP meeting because the Student was now being medicated to address his behaviors and to offer her opinion that a separate day school was a too restrictive environment for the Student. The District's objection was overruled since the testimony was relevant to the placement issue. The Father wished to call the Speech/Language Pathologist to testify concerning what transpired at the March and May, 2024 IEP meetings. This witness was stricken since other witnesses were available to testify about what transpired at the IEP meetings and the speech/language services were not in dispute. The Father objected to the Student Support Interventionists from testifying since their testimony would not be relevant. The District explained these two witnesses were relevant because their testimony would address the student's behaviors and the supports/strategies implemented. These witnesses were not stricken since the Student's behavior is integral to the placement issue. Since two of the witnesses were struck from the Father's hearing schedule, the District's proposed hearing schedule was adopted. The Father objected because he was listed first to testify at the hearing.

In order to accommodate the Father, the IHO had the District try to rearrange the witnesses scheduled for the first day of hearing and the District was able to move the Father as the last witness to be called on the first hearing date. The Father still objected and requested a

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<sup>27</sup> IHO Ex. 17.

<sup>28</sup> IHO Ex. 19.

<sup>29</sup> IHO Ex. 20. The Father submitted additional emails requesting further clarification and changes to the Revised Prehearing Report and Order (December 8, 2024) and the requests for changes was denied. See, IHO Ex. 21 through Ex. 23. The Father also sent emails allegedly the District's Counsel violated the Supreme Court's Rules of Professional Misconduct and requested a status conference. The request was denied due to lack of jurisdiction. See IHO Ex. 23 & 24. The Father also alleged the District made false claims. The Father was advised a status conference will not be held and he will have an opportunity to present his case at the scheduled hearing. See IHO Ex. 23 & 24.

<sup>30</sup> IHO Ex. 20.

<sup>31</sup> IHO Ex. 25.

<sup>32</sup> IHO Ex 20 and IHO Ex. 27.

<sup>33</sup> IHO Ex. 27.

continuance explaining he was not prepared to be called on the first day of the hearing and believed the District would be presenting its case first based upon the prehearing report and order. The continuance was denied because the parties had time to prepare this case since September, 2024 and the Father has the burden of proof in this matter since he filed the Complaint.<sup>34</sup> The parties were required to work collaboratively in finalizing the schedule and failed to work collaboratively to finalize the hearing schedule as ordered in the Revised Prehearing Report and in the emails sent to the parties on March 24, 2025.<sup>35</sup> The Father left the proceedings on March 25, 2024 and the hearing proceeded for the District to prove up its case.<sup>36</sup> On March 25 and 26, 2025, the undersigned, via email, inquired if the Father would be in attendance at the hearing on March 26, 2025. On March 26, 2025, via email, the Father indicated he would not be attending out of protest.<sup>37</sup>

At this hearing, the District called eight witnesses. Admitted into the record were District's Exhibits SD-15, SD-16, SD-18, SD-31 through SD-35 and Joint Exhibits J-2, J-4 through J-10, and J-13 through J-29. On March 27, 2025, via email, the District submitted its written closing statements and supporting case law.<sup>38</sup> The decision of the IHO is due within ten business days of the conclusion of the hearing.<sup>39</sup> As such, the IHO did not have the benefit of a transcript. This decision is based on the IHO's copious personal notes and recollection of the testimony provided at the hearing. In rendering this decision, the IHO considered all the documents admitted into evidence, the testimony of the witnesses, the District's closing argument and suggested case law, as well as the IHO's own independent research. This decision was issued within ten business days as required by Illinois law.<sup>40</sup>

### **ISSUE AND REQUESTED REMEDIES.**

The issues to be determined are as follows:

- a. Whether the Parents were denied meaningful participation at the 3/5/2024 and 5/6/2024 IEP meetings because the District allegedly predetermined the Student's placement for the 2024-2025 school year at a separate public day school in special education for 100% of the time and thus denied the Student a FAPE?<sup>41</sup>

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<sup>34</sup> The Father subsequently filed a written motion for a continuance on March 26, 2025. This motion was stricken on the record because leave was not granted to file the motion and the motion for a continuance was denied on the record on March 26, 2025. The motion was kept as part of the record for appellate purposes only. See IHO Ex. 29

<sup>35</sup> IHO Ex. 27.

<sup>36</sup> The IHO sent an email to the Father on March 25, 2025 with the zoom link for the March 26, 2025 hearing date and sent an email on March 26, 2025 inquiring if the Father would be attending. The Father wrote he would not be in attendance. See IHO Ex. 28 & 29.

<sup>37</sup> IHO Ex. 29.

<sup>38</sup> IHO Ex. 30.

<sup>39</sup> 105 ILCS 5/14-8.02a(g55)(5).

<sup>40</sup> 105 ILCS 5/14-8.02a(g55)(5).

<sup>41</sup> IHO Ex. 20.

Defense: The Parents had full opportunity to participate in the March and May IEP meetings and were fully informed of the issues to be discussed at these meetings and engaged and participated in these meetings. We are here because a consensus was not reached. The District did not prevent the Parents from participating and the District did not predetermine the Student's placement at either of the two meetings.<sup>42</sup>

- b. Whether the IEP team at the 5/6/2024 IEP meeting failed to discuss the amendment of the Student's 3/5/2024 IEP as required under 34 CFR § 300.324(a)(6) and Section 1414(d)(3)(F) which prevented the Parents from participating in the amendment process of the Student's 3/5/2024 IEP for the 2024-2025 school year as required under Section 1415(b)(1) and thus denied the Student a FAPE?<sup>43</sup>

Defense: The District followed the appropriate procedures under the IDEA when the IEP team considered and ultimately recommended the change in placement for the Student, which was in full compliance with the IDEA, the regulations and the School Code.<sup>44</sup>

- c. Whether the District failed to discuss amendments to the Student's 3/5/2024 IEP for the 2024-2025 school year with the Parents before the District unilaterally determined to change the Student's placement to a more restrictive environment for the 2024-2025 school year as required under 34 CFR § 300.116(b)(2) and thus denied the Student a FAPE?<sup>45</sup>

Defense: The District met its obligations under IDEA, specifically under 34 C.F.R. § 300.116(b)(2), in designing the Student's May 6, 2024, IEP with consideration for the placement change for the 2024-2025 school year, thereby providing the Student with a Free Appropriate Public Education (FAPE). This IEP was developed through an assessment of the Student's needs, ensuring alignment with the services available in the new placement to support the Student's educational progress and development. The District followed IDEA's procedural and substantive requirements, as clarified in *Endrew F. v. Douglas County School District*, which requires that an IEP be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." The IEP team, including the Student's parents and educational professionals, evaluated placement options to select the least restrictive environment (LRE) that met the Student's needs. This process reflects adherence to IDEA's mandates and meets the individualized needs of the Student. The District maintains that it has met all procedural and substantive

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<sup>42</sup> IHO Ex. 20.

<sup>43</sup> IHO Ex. 20.

<sup>44</sup> IHO Ex. 20.

<sup>45</sup> IHO Ex. 20.

obligations under IDEA, and the May 6, 2024, IEP fulfills the Student's right to FAPE.<sup>46</sup>

- d. Whether the District's proposed placement decision at the 5/6/2024 IEP meeting to change the Student's placement to a separate public day school in special ed for 100% of the school day for the 2024-2025 school year is the least restrictive environment to address the Student's academic, behavior needs and social/emotional needs and to enable the Student to make the appropriate progress in light of the Student's needs?<sup>47</sup>

Defense: The District considered the continuum of services and the Student's educational needs, social emotional needs and the Student's unique needs when determining the least restrictive environment was a separate day school.<sup>48</sup>

The Parents' remedies are as follows:

- a. Find the 5/6/22024 IEP was procedurally or substantively invalid or both and find the least restrictive environment for the Student is 40% to 79% of the school day inside the general education setting.<sup>49</sup>
- b. Order the Student to remain at Ferson Creek Elementary School or be placed at Carron Elementary School for the remainder of the 2024-2025 school year.<sup>50</sup>
- c. Order the District to implement the March 5, 2024 IEP for the 2024-2025 school year.<sup>51</sup>
- d. Order training for Ms. Pratt, the Ferson Creek IEP members and any other relevant District personnel with respect to the parental participation

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<sup>46</sup> IHO Ex. 20.

<sup>47</sup> The Parent requested two add two news issues on November 20, 2024: (1) Whether the District failed to ensure that a continuum of alternative placements was available to meet the needs of the Student for special education and related services for the 2024-2025 school year because the District does not offer an educational placement of "03 – Inside general education classroom less than 40% of the day" where the Student would be included the general education classroom for a portion of the day, but would be included in special classes for the majority of the day for the 2024-2025 school year, as required under 34 C.F.R §§ 300.115 and 116(a)(2), and thus denied the Student a FAPE? (2) Whether the District failed to ensure that the placement decision at the 5/6/2024 meeting was made by a group of persons, including the parents, and other persons knowledgeable about the placement options because the Ferson Creek Elementary School IEP team members' recommended that the Student would attend a public therapeutic day school for the majority of his day for the 2024-2025 school year while also attending a District general education school for fourth grade AT math for a portion of the Student's day, and that placement recommendation is inconsistent with the placement options that the District offers, which means that the placement decision was not made by a group of persons that were knowledgeable about the placement options as required under 34 C.F.R § 300.116(a)(1), and thus the District denied the Student a FAPE? The requests were denied because these issues are encompassed under the broader Issue d.

<sup>48</sup> IHO Ex. 20.

<sup>49</sup> IHO Ex. 20.

<sup>50</sup> IHO Ex. 20.

<sup>51</sup> IHO Ex. 20.

requirements and the LRE requirement with a special emphasis on the purposes and methods of implementing the congressional objective of mainstreaming children with disabilities to the maximum extent appropriate.<sup>52</sup>

- e. Compensatory education for the period of time that the Student has been denied a FAPE due to violations of the parental participation requirement and the LRE requirement which includes the failure to provide the related services of speech/language, social work and occupational therapy.<sup>53</sup>

The District's remedies are as follows:

- a. Find the May 6, 2024 IEP was designed to give the Student a FAPE and to meet the Student's unique needs in the least restrictive environment.<sup>54</sup>

### **FINDINGS OF FACT.**

After considering and reviewing all the evidence as well as the arguments of the parties, the IHO's Findings of Fact are as follows:<sup>55</sup>

#### **A. FIRST GRADE**

1. The Student transferred from kindergarten at C Elementary School to first grade at F Elementary School for the 2022-2023 school year.<sup>56</sup> The Student is very bright academically, has a great vocabulary and expresses himself well.<sup>57</sup> The Student is talented in the areas of reading and math.<sup>58</sup>
2. At the beginning of first grade, the Student presented with behavior problems.<sup>59</sup> Tier 1 social-emotional supports were implemented which included the use of Morning Meetings, Second Step Lessons and small group interventions.<sup>60</sup> The first-grade teacher was able to manage the Student's behaviors until the behaviors started to escalate.<sup>61</sup> The Student was shouting inappropriate comments during learning sessions and throwing objects.<sup>62</sup> On December 19, 2022, the Student was working on an iReady practice and

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<sup>52</sup> IHO Ex. 20.

<sup>53</sup> IHO Ex. 20.

<sup>54</sup> IHO Ex. 20.

<sup>55</sup> All the evidence admitted into evidence was reviewed in this case, however, the Findings of Fact only include the exhibits which support the Findings of Fact in this case.

<sup>56</sup> Testimony of Principal 1. J-4 p. 0083.

<sup>57</sup> Testimony of School Psychologist and Student Support Interventionist 1.

<sup>58</sup> J-4 0074.

<sup>59</sup> Testimony of Student Support Interventionist 1 and Principal.

<sup>60</sup> J-4 0074. Testimony of Student Support Interventionist 1 and Principal.

<sup>61</sup> Testimony of Principal 1.

<sup>62</sup> Testimony of Student Support Interventionist 1.

got a problem wrong.<sup>63</sup> The Student was directed to take a break and instead grabbed a metal stool and threw the stool across the room towards the class and then threw two lunch carts towards the classroom door.<sup>64</sup>

3. In response to the escalation of the Student's maladaptive behaviors, the first-grade teacher, the Student Support Interventionist 1 and 2 met to discuss additional supports to address the Student's behaviors.<sup>65</sup> Accommodations to support the Student included providing positive feedback, moving the Student's seat in the classroom, offering breaks in the classroom and using the Zones of Regulations.<sup>66</sup> The Zones of Regulation were used after the Student Support Interventionist 1 spoke to the staff at the Student's former school and was informed the Zone of Regulations had been utilized in kindergarten.<sup>67</sup>
4. Due to the continued escalation of the Student's behavior, a meeting was held on January 10, 2023 to discuss the Student's targeted behaviors and to brainstorm supports for the Student.<sup>68</sup> In attendance at this meeting were the Father, the Principal 1, the Student Support Interventionist 1, the Social Worker, the Special Ed Teacher, the School Psychologist and the first-grade teacher.<sup>69</sup> The team discussed the triggers for the Student's behavior and strategies were developed together.<sup>70</sup> The Father acknowledged the Student's behavior had escalated in the home.<sup>71</sup>
5. At the January 10, 2023 meeting, the team agreed to conduct an initial evaluation for special education services and agreed upon the domain areas for the initial evaluation.<sup>72</sup> The Father consented to the evaluation and the evaluation would include assessments to address the Student's communication status, functional performance, social emotional status and motor abilities.<sup>73</sup>
6. As a result of the meeting, an ICEL Matrix and iPST Support Plan were created on January 11, 2023 to support the Student's behavior based upon the team discussion at the meeting.<sup>74</sup> The plan identified the Student's first targeted behavior which occurred when the Student was frustrated and the Student would scream, throw objects, kick

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<sup>63</sup> Testimony of Principal 1.J-14 344.

<sup>64</sup> J-14 344.

<sup>65</sup> Testimony of Student Support Interventionist 1 and 2.

<sup>66</sup> Testimony of Student Support Interventionist 1.

<sup>67</sup> Testimony of Student Support Interventionist 1.

<sup>68</sup> Testimony of Student Support Interventionist 1. J-1 0004.

<sup>69</sup> J-1, 0004.

<sup>70</sup> Testimony of Student Support Interventionist 1.

<sup>71</sup> Testimony of School Psychologist.

<sup>72</sup> Testimony of Student Support Interventionist 1. J-1 0002-0004.

<sup>73</sup> J-1 p. 0001 -0003.

<sup>74</sup> Testimony of Student Support Interventionist 1. J-1 0004 and 0005.

objects, punch, growl, have a tense and shaking body.<sup>75</sup> The Student's 2<sup>nd</sup> targeted behavior was blurting out during instruction in a loud voice without being called on to participate.<sup>76</sup> The supports to address the targeted behaviors included a daily schedule, have the Student attend a Flexible Thinking Group, prepare the Student for changes in his routine and for timed activities, tear out math pages when the Student was absent because the Student became frustrated when he saw he missed a page, have scheduled check-in times, and allow for breaks when needed.<sup>77</sup> Many of the strategies were already being implemented with the Student.<sup>78</sup>

7. After this meeting, the Student's behavioral dysregulation increased and interfered with his learning and the learning of his classmates. In January and February 2023, behavior incident reports were written up due to the Student's disruptive and threatening behaviors which included yelling in the classroom, throwing objects such as his white board, markers, headphones, chairs, hitting his teacher in the arm with his fist, charging at his teacher with a pencil being held in his hand like a knife and running towards the teacher with a chair in his hands.<sup>79</sup>

### **B. Eligibility Meeting.**

8. On March 13, 2023, an eligibility meeting was held to review the results of the initial evaluation and to determine if the Student was eligible to receive special education and services.<sup>80</sup> Present at the meeting were the Father, the Social Worker, Principal 1, the Special Ed Teacher, the School Psychologist, a gen ed teacher, a speech/language pathologist, an occupational therapist and a school nurse.<sup>81</sup>
9. The Student was found eligible for special education and related services under the primary category of Autism.<sup>82</sup> The IEP team was in agreement with this category because the Student's rigid thinking was triggering the Student's behavior.<sup>83</sup> The Student also met this criteria due to his difficulties with emotional regulation which is related to changes in his environment, non-preferred activities and responding to social situations.<sup>84</sup> The Student has difficulties with transitioning from tasks, with sensory motor modulation and sustaining adult and peer relationships.<sup>85</sup>

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<sup>75</sup> J-1, p. 0005

<sup>76</sup> J-1, p. 0005

<sup>77</sup> J-1 p. 0005.

<sup>78</sup> Testimony of Student Support Interventionist 1.

<sup>79</sup> Testimony of Student Support Interventionist 1 and School Psychologist. J-14 p. 348, 350 & 352.

<sup>80</sup> J-4 p. 0022.

<sup>81</sup> J-4 p. 0022.

<sup>82</sup> J-4 p. 0059.

<sup>83</sup> Testimony of School Psychologist.

<sup>84</sup> Testimony of School Psychologist. J-4 p. 0059.

<sup>85</sup> Testimony of School Psychologist. J-4 p. 0059.

10. The IEP team developed an IEP for the Student after the eligibility determination. As part of the March 23, 2023 IEP, a Behavioral Intervention Plan (BIP) was added to support the Student's social emotional and behavioral needs.<sup>86</sup> Accommodations were added to the IEP which included sensory motor visual supports and tools, sensory-motor breaks, direct adult support throughout the day, calming breaks and reward time, daily home school communication, positive reinforcement, individual daily schedule, social stories and contingency map, Zones of Regulation visuals, pre-warnings of schedule changes, ability not to participate in timed activities, frequent breaks, provide options such as more time or different location to finish something, the ability to pace and stand in the classroom, and preferential seating.<sup>87</sup>
11. Five goals were designed to address the Student's needs.<sup>88</sup> Three of the goals addressed the Student's social, emotional and behavior deficits.<sup>89</sup> The behavior intervention plan goal was designed for the Student to work on the employment of calming strategies to manage his emotions and behavior.<sup>90</sup> The Self-Management goal was created for the Student to work on the control of his impulsive behavior by using coping strategies such as taking a break, using belly breathing or talking to an adult.<sup>91</sup> The Flexible Thinking goal was created for the Student to identify other ways to solve hypothetical problems because the Student became overly focused and very rigid on only one way to resolve a problem and would become frustrated.<sup>92</sup>
12. Related services were included in the IEP to support the Student. The Student would receive 120 minutes of speech/language services, 120 monthly minutes of social work services and 60 consult minutes for social work, 120 occupational therapy minutes monthly and 15 occupational therapy consult minutes.<sup>93</sup> The Student's placement was inside the general education classroom for 40% to 70% of the day.<sup>94</sup> The Student would participate in a Flexible Thinking class for 200 minutes per week and would receive 200 weekly minutes for his BIP.<sup>95</sup>

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<sup>86</sup> J-4 p. 077-0080.

<sup>87</sup> J-7 p. 140 & 141.

<sup>88</sup> J-4 p. 0029 – 0038.

<sup>89</sup> J-4, p. 0029 – 0038.

<sup>90</sup> J-4 p. 030,

<sup>91</sup> J-4 p. 0032.

<sup>92</sup> J-4 p. 0034.

<sup>93</sup> J-4 p. 0043

<sup>94</sup> J-4 p. 0044.

<sup>95</sup> J-4 p. 0043.

### C. SECOND GRADE.

13. Before the commencement of the 2023-2024 school year, staff prepared for the upcoming year for working with the Student in second grade.<sup>96</sup> The Gen Ed Teacher, the Student Support Interventionist 2, the Special Ed Teacher met to discuss the Student's accommodations for second grade.<sup>97</sup> The School Psychologist helped with the creation of a token system to be ready for the start of the school year.<sup>98</sup>
14. There were 26 students in the Student's classroom for the 2<sup>nd</sup> grade and the Student had a one-on-one paraprofessional with him in the classroom at all times and to assist the Student when he was not in the classroom.<sup>99</sup> The Student had access to an occupational therapy room to exercise, to use the swing, to work on an assignment, or to make a game out of an assignment with a staff member.<sup>100</sup>
15. A thirty day review meeting was scheduled for September 26, 2023 to discuss the Student's transition into the 2<sup>nd</sup> grade and to review the Student's behavioral performance. The meeting was held due to the Student's behavior at the end of first grade.<sup>101</sup> On May 8, 2023, the Student had punched a classmate in the chest and received an in-school suspension for a partial day.<sup>102</sup>
16. At the review meeting, the IEP team discussed additional accommodations for the Student. The IEP team added a token board system to the Student's BIP since this strategy was working at the beginning of the year.<sup>103</sup> The Student still struggled with accepting what happened in the classroom when he was absent and the Student has been frequently absent at the beginning of the year.<sup>104</sup> The Student had 8 excused absences for August and September.<sup>105</sup> The Parents were given social stories to use with the Student about time going by to assist when the Student returned to school after being absent.<sup>106</sup> The Social Worker requested the absences be avoided if not necessary to miss.<sup>107</sup>

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<sup>96</sup> Testimony of Gen Ed. Teacher.

<sup>97</sup> Testimony of Gen Ed Teacher.

<sup>98</sup> Testimony of School Psychologist.

<sup>99</sup> Testimony of Gen Ed Teacher.

<sup>100</sup> Testimony of Special Ed Teacher.

<sup>101</sup> Testimony of Special Ed Teacher.

<sup>102</sup> J-14 p. 366.

<sup>103</sup> Testimony of Special Ed Teacher and Gen Ed Teacher. J-7 p. 106.

<sup>104</sup> Testimony of Special Ed Teacher. J-7 p. 106.

<sup>105</sup> J-20 p. 512. Testimony of Special Ed Teacher.

<sup>106</sup> Testimony of Student Support Interventionist

<sup>107</sup> J-7 p. 106.

17. On January 25, 2024 the Special Ed Teacher emailed the Parents to schedule the Student's annual review and inquired if the Parents were available for March 5, 2024.<sup>108</sup> No response was received and a second email was sent on February 1, 2024.<sup>109</sup> On February 1, 2024, the Father confirmed the March 5 date.<sup>110</sup>
18. The District provided the Parents with the required paperwork to participate in the scheduled IEP meeting. On February 5, 2024, the Notification of Conference and the Procedural Safeguards were emailed to the Parents which was more than 10 days prior to the scheduled meeting.<sup>111</sup> The Notification of Conference informed the Parents that the District must provide the Parents no later than three days prior to the IEP meeting with the copies of all written material that will be considered at the IEP meeting so the Parents may participate in the meeting as a fully informed team member.<sup>112</sup> The Notification also informed the Parents, they had the right to review and/or copy the Student's school records prior to the IEP meeting.<sup>113</sup> On February 29, 2024, the Student's goal progress reports, the present levels of academic, development and functional performance, the Student's BIP, Autism considerations and draft goals were emailed to the Parents for their review.<sup>114</sup>

#### **D. March 5, 2024 IEP Meeting.**

19. The Student's annual IEP review meeting was held on March 5, 2024 to review the Student's progress and to discuss the Student's placement and services.<sup>115</sup> In attendance were the Father, the Social Worker, the Special Ed Teacher, Principal 1, the School Psychologist, the Assistant Director, an occupational therapist, the classroom teacher, and the speech/language pathologist.<sup>116</sup>
20. The review of the collected data showed the Student's behavioral performance significantly increased from December to February based upon the rate of Behavior Incident reports issued per the days of attendance at school – December 20%, January 19.05% and February 19.53%.<sup>117</sup> From August through November the rates were 8.33% for August, 8% for September, 7.69% for October and 0% for November.<sup>118</sup>

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<sup>108</sup> SD-15 p. 027. Testimony of Special Ed Teacher.

<sup>109</sup> SD-15 p. 027. Testimony of Special Ed Teacher.

<sup>110</sup> SD-15 p. 027. Testimony of Special Ed Teacher.

<sup>111</sup> SD-116 p. 028. Testimony of Special Ed Teacher.

<sup>112</sup> SD-16 p. 029

<sup>113</sup> SD-16 p. 029.

<sup>114</sup> SD-18 p. 066 – 100. Testimony of Special Ed Teacher.

<sup>115</sup> J-8 p. 197.

<sup>116</sup> J-8 p. 197.

<sup>117</sup> J-8 p. 203.

<sup>118</sup> J-8, p. 203

21. The Student's use of threatening language towards himself and others increased during the school year.<sup>119</sup> The percentage of school days attended where the Student required a Risk of Harm to Others, A Risk of Harm to Self or Both was 8.33% in August, 0% in September, 15.38% in October, 0% in November, 6.67% in December, 38.10% in January and 19.53% in February.<sup>120</sup> For the last three weeks, the Student was making on average 2 unsafe statements or threatening language per day and there was an increasing pattern of the number of times the Student indicated that he meant the words.<sup>121</sup>
22. The Student's physical aggression increased during the school year. During the last three weeks, the Student increased his physical aggression towards objects and this was occurring an average of 15 times a day.<sup>122</sup> The Behavior Incident Reports from January 19 through February 28, 2024, showed the Student was reported kicking walls, desks and chairs, tearing up materials on classmates' desks and walls, throwing his Chromebook, materials, pillows, garbage cans, and hitting himself in the head and in the chest.<sup>123</sup>
23. The Student's maladaptive behaviors impacted his ability to access his education and to be available for learning. The Student was taking 45-60 minutes to de-escalate and re-enter the classroom or office.<sup>124</sup> The Student on average was only present in the classroom for 50% of the school day.<sup>125</sup> 50% of the time the Student spent out of the classroom requesting a break, completing alternate work or reward time.<sup>126</sup> The Student's behavior was causing the academic instruction to be delayed and the Student was missing instruction in the general education classroom due to his behavior.<sup>127</sup>
24. The Student's statements of self-harm escalated. The Student was demonstrating suicidal thoughts, statements of depression, engaging in self-harm and negative thoughts of himself.<sup>128</sup> On January 31, 2024, the School Psychologist wrote to the Parents and recommended they seek the services of a mental health provider to further support the Student outside of school and provided a list of community resources.<sup>129</sup> The Student was making approximately 5 self-harm statements a day and was seeking out

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<sup>119</sup> J-8 p. 203.

<sup>120</sup> J-8 p. 203.

<sup>121</sup> J-8 p. 204.

<sup>122</sup> J-8 p. 204.

<sup>123</sup> J-15 p. 378 to 387.

<sup>124</sup> J-15 p. 378 to 387.

<sup>125</sup> J-8 p. 203.

<sup>126</sup> J-8 p. 203.

<sup>127</sup> Testimony of Gen Ed. Teacher.

<sup>128</sup> Testimony of School Psychologist.

<sup>129</sup> Testimony of School Psychologist. J-18 p. 466.

sharp objects to harm himself.<sup>130</sup> The frequency of these self-harm statements is atypical for a child in the second grade.<sup>131</sup>

25. The Student's elopement increased in the most recent trimester.<sup>132</sup> The Student increased in elopement from the classroom and made threats and attempts to leave the building.<sup>133</sup> The Student was eloping from the classroom on average once a day.<sup>134</sup>
26. The Student's dysregulation was affecting the Student's classmates. On February 4, 2024, a classmate twisted his ankle and fell onto the Student's shoulder.<sup>135</sup> The Student fell to the ground and then pushed his classmate with both hands causing the classmate to fall.<sup>136</sup> The Student yelled and threatened to kill all of them while throwing pillows, kicking walls, desks, chairs and throwing a garbage can.<sup>137</sup> After this incident, the classmates were very concerned and became very timid and shy.<sup>138</sup> A social worker talked to the classmates after the incident and the Gen Ed Teacher explained they were there to keep them safe and protect them.<sup>139</sup>
27. The IEP team made changes to the Student's IEP based upon the review of the Student's progress. The staff would continue to support the Student and talk through the behaviors with the Student to keep the Student in the classroom.<sup>140</sup> The School Psychologist would partner with the Special Ed Teacher to discuss strategies and visuals to implement with the Student.<sup>141</sup> The School Psychologist would meet with the Special Ed Teacher after each behavior incident report and every other week to discuss the Student.<sup>142</sup> The Behavior Intervention Goal was modified to increase the Student's positive self-statements to address the Student's increase in negative self-talk.<sup>143</sup> The Flexible thinking goal was revised to have the Student focus on situations that actually happened historically for the Student instead of focusing on hypothetical situations because the Student could not engage in flexible thinking when it involved himself.<sup>144</sup> The IEP team offered to bring in a clinical provider to the school to counsel the Student because the District has relationships with clinical providers to provide counseling at

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<sup>130</sup> Testimony of Special Ed Teacher.

<sup>131</sup> Testimony of School Psychologist.

<sup>132</sup> J-8 p. 204

<sup>133</sup> J-8 p. 204.

<sup>134</sup> J-8 p. 204.

<sup>135</sup> Testimony of Gen Ed Teacher. J-15 p. 382

<sup>136</sup> Testimony of Gen Ed Teacher. J-15 p. 382

<sup>137</sup> Testimony of Gen Ed Teacher. J-15 p. 382

<sup>138</sup> Testimony of Gen Ed Teacher. J-15 p. 382

<sup>139</sup> Testimony of Gen Ed Teacher.

<sup>140</sup> Testimony of Special Ed Teacher.

<sup>141</sup> Testimony of School Psychologist.

<sup>142</sup> J-9 p. 243.

<sup>143</sup> Testimony of School Psychologist. J-8 p. 198.

<sup>144</sup> Testimony of School Psychologist. J-8 p. 198.

school and to conduct neuropsychological evaluations.<sup>145</sup> The Parents did not accept this offer.<sup>146</sup>

28. The IEP team did not determine the Student's placement at this meeting. The IEP team agreed to revisit the placement for the Student for third grade after 30 days to review the Student's progress with additional supports and to discuss if a more intensive placement was needed such as M Day School.<sup>147</sup>

### **E. May 6, 2024 IEP Meeting.**

29. The Special Ed Teacher emailed the Parents on April 2, 2024 to schedule a 30 day review meeting for May 6, 2024.<sup>148</sup> On April 9, 2024, the Parents confirmed their attendance via email.<sup>149</sup> On April 22, 2024, the School Psychologist emailed the Parents to complete a Release of Information form so the District could speak to the Student's outside therapist to collaborate with the therapist on how to best support the Student.<sup>150</sup> On May 1, 2024, a meeting reminder was emailed to the Parents and the School Psychologist informed the Parents they were called to discuss the proposed agenda for the meeting and emailed the proposed agenda.<sup>151</sup> The agenda informed the Parents there would be a review of the Student's performance since March 5 and a discussion of placement for third grade.<sup>152</sup> The Parents never returned the School Psychologist's phone call.<sup>153</sup> The Notification of Conference was completed on May 6, 2024.<sup>154</sup>

30. The thirty day review meeting occurred on May 6, 2024 to review the Student's progress and discuss the Student's placement for third grade.<sup>155</sup> In attendance at this meeting were the Parents, the Social Worker, the School Psychologist, the Assistant Director, Principal 1, a speech/language pathologist, the Special Ed Teacher, an occupational therapist, and a first grade teacher.<sup>156</sup>

31. The data collected by the IEP team since the March 5, 2024 IEP meeting revealed the Student had 70% of the school days where a behavior incident report was written in

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<sup>145</sup> Testimony of Social Worker and Assistant Director. J-8, p. 198.

<sup>146</sup> Testimony of Social Worker.

<sup>147</sup> Testimony of Gen Ed Teacher and School Psychologist.

<sup>148</sup> Testimony of Special Ed Teacher. J-21 p.516.

<sup>149</sup> J-9 p. 243.

<sup>150</sup> Testimony of School Psychologist. J-22 p. 517 - 518.

<sup>151</sup> Testimony of School Psychologist. J-21 p. 519

<sup>152</sup> Testimony of School Psychologist. J-21 p. 519-520.

<sup>153</sup> Testimony of School Psychologist.

<sup>154</sup> J-9 p. 249.

<sup>155</sup> J-9, p. 245.

<sup>156</sup> J-9 p. 245.

March and had a behavioral incident report for 42% of the days in April.<sup>157</sup> The Risk of Harm frequency data was 10% in March and 24% in April where a Risk of Harm assessment was required to self, others or both.<sup>158</sup> The self-harm statements have become more frequent and the Student self-harm statements are frequently including kitchen knives which the Student has access to at the home.<sup>159</sup> The self-harm statements had increased to approximately five times a day.<sup>160</sup> The Student is seeking out sharp objects and states plans about what he wants to do with the objects.<sup>161</sup> The Father also expressed concerns at home with the Student reaching in a drawer for a kitchen knife.<sup>162</sup> The Student is also switching his answers to the risk of harm assessments which make it more difficult to assess the Student's risk of harm.<sup>163</sup> The Student's aggression toward peers had also increased.<sup>164</sup>

32. The IEP team engaged in a discussion for the Student's placement for third grade. The Assistant Director posted a chart on the board for the IEP team to complete during the discussion of the placement options on the continuum.<sup>165</sup> The chart had four columns with the headings of F Elementary School strengths and weaknesses and the strengths and weaknesses for M Day School.<sup>166</sup> Each IEP team member, including the Parents, participated in completing the chart at this meeting and everyone provided their opinion on the placement decision for the Student.<sup>167</sup>
33. The District recommended the removal of the Student from F Elementary School. The District had exhausted the available supports and services to address the Student's social emotional well-being and behavioral needs.<sup>168</sup> The Student is academically gifted; however, the Student did not possess the social emotional skills to work through his challenges.<sup>169</sup> The Student would retreat from his academics if he was not 100 percent successful.<sup>170</sup> For example, the Student had an issue with learning fractions and would not enter the classroom for the fraction lessons.<sup>171</sup> The Student could not access his academics when he was not in the classroom or when he did not have a calm state of

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<sup>157</sup> J-9. p. 245

<sup>158</sup> J-9 p. 245

<sup>159</sup> J-9. p. 245

<sup>160</sup> Testimony of Special Ed Teacher

<sup>161</sup> J-9. p. 245

<sup>162</sup> J-9. p. 245

<sup>163</sup> J-9. p. 245

<sup>164</sup> Testimony of Special Ed Teacher.

<sup>165</sup> Testimony of Assistant Director and Special Ed Teacher.

<sup>166</sup> The IEP team used the term, "Deltas" instead of weaknesses. J-9 p. 298. Testimony of Assistant Director, Special Ed Teacher, Social Worker, Gen Ed Teacher and School Psychologist.

<sup>167</sup> Testimony of Assistant Director, Special Ed Teacher and School Psychologist.

<sup>168</sup> Testimony of School Psychologist and Principal 1.

<sup>169</sup> Testimony of Principal 1.

<sup>170</sup> Testimony of Principal 1.

<sup>171</sup> Testimony of Principal 1.

mind.<sup>172</sup> The Student was refusing to use the coping strategies and had become more reactive.<sup>173</sup> The Student was less willing to work towards receiving tokens and not interested in receiving a reward.<sup>174</sup> Too much of the time was spent dealing with the Student in crisis and managing the Student's behaviors.<sup>175</sup> The Student required a more supportive environment than was available at his school to enable the Student to work through his feelings and start skill building in that environment.<sup>176</sup>

34. Members of the IEP team, excluding the Parents, recommended placement in a public day school for 100% of the day such as M Day School which has small class sizes, consistent structure and social/emotional supports provided.<sup>177</sup> The small class size would reduce the triggers.<sup>178</sup> M Day School has more embedded supports to address the Student's behaviors and the Student would have access to his related services.<sup>179</sup> M Day School would be able to work through the Student's escalations instead of trying to get the Student back into the classroom.<sup>180</sup> The Mother was concerned that moving the Student back and forth between schools is not good for the Student who needs consistency.<sup>181</sup> The Parents inquired about homeschooling and private schools for the Student and indicated they would keep their options for the Student open.<sup>182</sup> The IEP team discussed the possibility of working out a way for the Student to access an advanced math course once the Student could self-regulate his emotions.<sup>183</sup>

35. The Student's placement for the third grade was changed to special education for 100% of the day in a separate public day school.<sup>184</sup> The Student would receive 120 monthly minutes of direct speech/language services; 100 monthly minutes of direct occupational therapy, 15 monthly minutes of consult occupational therapy minutes, 120 monthly minutes of social work direct services; 60 minutes of monthly consult social work minutes and 20 monthly minutes of speech/language consult minutes.<sup>185</sup> The recommended location of services was M Day School.<sup>186</sup>

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<sup>172</sup> Testimony of Gen Ed Teacher.

<sup>173</sup> Testimony of Special Ed Teacher.

<sup>174</sup> Testimony of Gen Ed Teacher.

<sup>175</sup> Testimony of Social Worker.

<sup>176</sup> Testimony of Social Worker.

<sup>177</sup> J-9 p. 247 and 298. Testimony of Assistant Director.

<sup>178</sup> J-9 p. 247 and 298.

<sup>179</sup> J-9 p. 247 and 298. Testimony of Social Worker.

<sup>180</sup> Testimony of Social Worker.

<sup>181</sup> J-9 p. 247. Testimony of Special Ed Teacher.

<sup>182</sup> J-9 p. 247. Testimony of Special Ed Teacher, Gen Ed Teacher, School Psychologist, and Assistant Director.

<sup>183</sup> Testimony of Assistant Director and Special Ed Teacher.

<sup>184</sup> J-9 p. 285.

<sup>185</sup> J-9 p. 285.

<sup>186</sup> Testimony of Assistant Director.

36. The Parent/Guardian Notification of Individualized Education Program Amendment was completed on May 6, 2024 which stated the IEP team recommended a change of placement for the 2024-2025 school year to M Day School which is effective on August 14, 2024.<sup>187</sup> The amendment occurred in person during the May 6, 2024 IEP meeting.<sup>188</sup>

37. On August 14, 2024, via email the Father notified the District the Parents were not in agreement with the change of placement to M Day School.<sup>189</sup>

#### **F. IMPLEMENTATION OF THE MAY 6, 2024 IEP.**

38. The M Day School supports students with Autism who possess social emotional and behavior deficits and supports high functioning students academically.<sup>190</sup> The curriculum is similar to or the same with the curriculum implemented in the District and meets the state standards which includes the programs Wit & Wisdom, Eureka Math 2, Mystery Science.<sup>191</sup> The students are grouped with other students for small group instruction and can receive instruction on grade level or above.<sup>192</sup>

39. M Day School can accept the Student and implement the Student's IEP. M Day School has at least one social worker, speech/language pathologist, and occupational therapist on staff to implement the related services. M Day School can support the Student's social emotional deficits. The classrooms have a maximum of 8 students and there are three teachers and one teaching assistant to support the students in each classroom every day and two social workers and a school psychologist support the classrooms twice a week.<sup>193</sup> M Day has a social emotional learning program embedded in the curriculum which complies with the state instructional standards.<sup>194</sup> M Day School can also implement the Student's BIP. There are a BCBA and behavioral coaches on staff who ensure the BIPs are implemented with fidelity and train the staff to implement the BIPs.<sup>195</sup>

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<sup>187</sup> J-9 p. 253.

<sup>188</sup> J-9 p. 253.

<sup>189</sup> J-29 p. 533.

<sup>190</sup> Testimony of Principal 2.

<sup>191</sup> Testimony of Principal 2. See SD-31 – SD-33.

<sup>192</sup> Testimony of Principal 2.

<sup>193</sup> Testimony of Principal 2.

<sup>194</sup> Testimony of Principal 2. See SD-34 and SD-35.

<sup>195</sup> Testimony of Principal 2.

## CONCLUSIONS OF LAW AND DISCUSSION OF THE ISSUES

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

A school district must provide children with disabilities with a free appropriate public education ("FAPE") and to the "maximum extent appropriate with nondisabled children."<sup>196</sup> Children with disabilities shall only be removed from the regular educational environment "when the nature or the severity of the disability is such that the education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."<sup>197</sup> IDEA creates a strong preference in favor of mainstreaming handicapped children by educating them in the least restrictive environment.<sup>198</sup> Regular classes, however, may not be the least restrictive environment for every child who possesses a disability.<sup>199</sup> Under the IDEA, a hearing decision shall be made on substantive grounds based upon whether the child received a FAPE.<sup>200</sup> To determine if the child's IEP complies with the IDEA, a two prong test must be employed.<sup>201</sup> The first prong of the test is to determine if the district has complied with the procedures set forth in the IDEA. The hearing officer can determine the child was denied a FAPE only if the procedural inadequacies impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision making process or caused a deprivation of educational benefits.<sup>202</sup> The 7<sup>th</sup> Circuit explained that procedural flaws do not automatically require a finding of a denial of FAPE, however, procedural inadequacies that result in a loss of educational opportunity clearly result in the denial of FAPE.<sup>203</sup> The Circuits that have addressed procedural violations have found that procedural defects alone do not constitute a violation of the right to a FAPE unless they result in the loss of an educational opportunity.<sup>204</sup>

**A. Whether the Parents were denied meaningful participation at the 3/5/2024 and 5/6/2024 IEP meetings because the District allegedly predetermined the Student's placement for the 2024-2025 school year at a separate public day school in special education for 100% of the time and thus denied the Student a FAPE?<sup>205</sup>**

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

<sup>197</sup> 20 U.S. C §1412(a)(5).

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

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

<sup>200</sup> 20 U.S.C. § 1415(f)(3)(E)(i).

<sup>201</sup> See *Bd. of Ed. Of the Hendrick Hudson Cent. Sch. Dist. V. Rowley*, 458 US 206-207. *A. G. and JG v. Bd. of Ed. Of Arlington Cen. Sch. Dist.*, 69 IDELR 210 (S. D. NY 2017).

<sup>202</sup> 20 USC § 1415(f)(3)(E)(ii).

<sup>203</sup> *Board of Education of Township High School District No. 211 v. Ross*, 486 F.3d 267 (7<sup>th</sup> Cir. 2007).

<sup>204</sup> See, *Schoenbach v. District of Columbia*, 309 F.Supp.2d 71 (D.D.C. 2004)

<sup>205</sup> IHO Ex. 20.

Under the IDEA, predetermination occurs when school district members of the IEP team unilaterally decide a child's educational placement in advance of an IEP meeting.<sup>206</sup> Under 20 U.S.C. § 1415(b)(1) of the IDEA, school districts are required to provide parents with the opportunity to participate in meetings concerning the identification, evaluation and education placement of the child. Under Federal Regulation 34 CFR § 300.327, school districts must ensure the parents are members of any group that makes decisions concerning the educational placement of their child. Under Federal Regulation 34 CFR § 300.322(a), a school district is required to take steps to ensure that one or both parents are present at an IEP meeting and are afforded an opportunity to participate which includes the scheduling of the meeting at a mutually agreed time and place and notifying the parents early enough to ensure the parents have an opportunity to attend the IEP meeting. Under the Illinois Administrative Code (Code), a school district is required to provide a written notification of a conference no later than 10 days prior to the proposed date of the IEP meeting.<sup>207</sup> The notification must inform the parents of their right to receive the written materials three days prior to the scheduled IEP meeting with the written materials to be considered at the IEP meeting and must inform the parents of their right to review and copy the child's student records prior to the IEP review meeting.<sup>208</sup> For a student who is already eligible for special education and related services, the written materials must include a copy of all IEP components that the IEP team will be discussing at the meeting.<sup>209</sup> The parents' participation at IEP meetings must be meaningful and not just a mere formality.<sup>210</sup> There is nothing in the IDEA; however, which requires a school district to accept a parent's point of view.<sup>211</sup> The Courts have held that even though the placement decision was contrary to the parents' wishes, this does not mean the parents were denied an opportunity to have an active and meaningful role in the decision-making process.<sup>212</sup> School districts are permitted to prepare in advance for scheduled IEP meetings and to provide drafts to proposed IEPs as long as the IEP team is willing to review, discuss or compromise on its proposal.<sup>213</sup> In *Board of Education of Township High School District No. 211 v. Ross*, 486 F.3d 267 (7<sup>th</sup> Cir. 2007), the 7<sup>th</sup> Circuit found the school district did not predetermine the child's placement where the school district had conducted a comprehensive review of the child's situation prior to meeting because the parents were "maximally involved" in the IEP process, its implementation and modifications and the review was memorialized in a 32 page conference report that reflected the discussion

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<sup>206</sup> *Deal v. Hamilton County Board of Education*, 42 IDELR 109 (6<sup>th</sup> Cir. 2004) (cert. denied 110 LRP 46999, 546 U.S. 936 (U.S. 2005)).

<sup>207</sup> Ill. Ad. Code, Title 23, Chap. 1 Section 226.530(a).

<sup>208</sup> Ill Adm. Code Section 226.530.

<sup>209</sup> Ill. Admin. Code, Title 23 Chap. 1 Section 226.530(a).

<sup>210</sup> See, *Deal v. Hamilton County Board of Education*, 42 IDELR 109 (6<sup>th</sup> Cir. 2004).

<sup>211</sup> See, *Deal v. Hamilton County Board of Education*, 42 IDELR 109 (6<sup>th</sup> Cir. 2004).

<sup>212</sup> *Board of Education of Township High School District No. 211 v. Ross*, 486 F.3d 267 (7<sup>th</sup> Cir. 2007). See also, *Hjortness v. Neenah Joint School District*, 507 F.3d 1060 (7<sup>th</sup> Cir. 2007).

<sup>213</sup> *Board of Education of Township High School District No. 211 v. Ross*, 486 F.3d 267 (7<sup>th</sup> Cir. 2007). See also, *Brown v. Bartholomew Consolidated School Corporation*, 442 F.3d 588 (7<sup>th</sup> Cir. 2006).

that occurred at the IEP meeting. In *Hanson ex rel. Hanson v. Smith*, 37 IDELR 153 (D Md 2002), the court noted that the school district came to IEP meetings with an open mind and had discussed several placement options before a final recommendation was made and therefore the school district had not predetermined the child's placement prior to the IEP meeting.

In the instant matter, this issue raises alleged procedural violations. The District has proven that the Parents were afforded meaningful participation at the March and May IEP meetings and thus did not commit any procedural violations. The Parents did not participate in the hearing to provide contrary evidence. As required under the federal regulations, the District took the requisite steps to ensure the Parents were afforded an opportunity to participate in the March 5, 2024 IEP meeting by ensuring one of the Parents would be available for the IEP meeting and by providing sufficient time for the Parents to be available.<sup>214</sup> The Findings of Fact clearly show the District complied with the Code. The District provided the Notification of Conference which complied with the notice requirements by apprising the Parents of the right to copy the student records three days prior to the IEP meeting, and the right to receive within three days of the scheduled meeting the written materials to be considered at the IEP meeting.<sup>215</sup> The Notification of Conference and the written materials for the meeting were provided to the Parents more than the requisites timeframe under the Code.<sup>216</sup> The Father attended the March 5, 2024 IEP meeting and was afforded meaningful participation in the meeting because he was provided with the materials being discussed at this meeting, was part of the discussion regarding the Student's performance and participated in the discussion to revisit the Student's placement in thirty days.<sup>217</sup> No placement decision was made at this meeting.<sup>218</sup> The IEP team deferred this discussion for thirty days to review the Student's progress after the implementation of the additional supports and accommodations.<sup>219</sup>

For the May 6, 2024 IEP meeting, the District emailed the Parents with a proposed meeting date on April 2, 2024 which was thirty days prior to the May IEP meeting and the School Psychologist attempted to collaborate with the Psychiatrist prior to the IEP meeting to discuss ways to better support the Student; however, the Parents failed to ever sign the release.<sup>220</sup> The School Psychologist also called the Parents to discuss the proposed agenda and the Parents never returned the phone call.<sup>221</sup> The Agenda for the meeting was provided more than 3 days before the scheduled meeting.<sup>222</sup> The District only provided the proposed agenda and no additional materials. The Parents failed to offer any testimony to show this

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<sup>214</sup> F.O.F. 17.

<sup>215</sup> F.O.F. 18

<sup>216</sup> F.O.F. 18.

<sup>217</sup> F.O.F. 18-28.

<sup>218</sup> F.O.F. 28.

<sup>219</sup> F.O.F. 28.

<sup>220</sup> F.O.F. 29.

<sup>221</sup> F.O.F. 29

<sup>222</sup> F.O.F. 29

prevented meaningful participation at the May 6, 2024 IEP meeting. Moreover, the Parents were previously notified of their rights to receive written materials and review the Student file for the March 5, 2024 IEP meeting.<sup>223</sup> The Parents participated in the May 6, 2024 meeting when the IEP team reviewed and discussed the Student's progress since the last IEP meeting.<sup>224</sup> The Findings of Fact plainly show the Parents were equal participants in the placement determination and the placement was not predetermined.<sup>225</sup> As in the Hanson case, the IEP team came to the May IEP meeting with an open mind and discussed the strengths and weaknesses of the proposed placement options for third grade before making a final recommendation.<sup>226</sup> The case law is clear that even though the placement decision is contrary to the Parents' wishes, this does not mean the Parents were denied meaningful participation at the May 6, 2024 IEP meeting. Based upon the foregoing, the District did not predetermine the Student's placement and therefore the District did not deny the Parent's meaningful participation.

**B. Whether the IEP team at the 5/6/2024 IEP meeting failed to discuss the amendment of the Student's 3/5/2024 IEP as required under 34 CFR § 300.324(a)(6) and Section 1414(d)(3)(F) which prevented the Parents from participating in the amendment process of the Student's 3/5/2024 IEP for the 2024-2025 school year as required under Section 1415(b)(1) and thus denied the Student a FAPE?<sup>227</sup>**

Under federal regulation 34 C.F.R. § 300.324(a)(6), a child's IEP can be changed by the entire IEP team at an IEP meeting.<sup>228</sup> The parents and the school district can also agree not to hold an IEP meeting and instead develop a written document to amend or modify the child's current IEP.<sup>229</sup> Under 20 U.S.C. § 1414(d)(3)(f) of the IDEA, the changes can be amended by the IEP team or as provided under subparagraph (d) by amending the IEP rather than redrafting the entire IEP. If the amendment is made without holding an IEP meeting, the IEP team must be informed of the modification.<sup>230</sup> Parental consent is required for a written amendment to the child's current IEP.<sup>231</sup> Parental consent to an amendment is not required when the current IEP is amended at an IEP meeting.<sup>232</sup>

Here, the District proved the Parents did participate in the amendment process at the May 6, 2024 IEP meeting. Under the IDEA and the regulations, an IEP can be amended at an

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<sup>223</sup> F.O.F. 18.

<sup>224</sup> F.O.F. 30-31.

<sup>225</sup> F.O.F. 32-36.

<sup>226</sup> F.O.F. 32.

<sup>227</sup> IHO Ex. 20.

<sup>228</sup> See 34 C.F.R. § 300.324(a)(6).

<sup>229</sup> 34 C.F.R. § 300.324(a)(4)(i).

<sup>230</sup> 34 C.F.R. § 300.324(a)(4)(ii).

<sup>231</sup> *K.A. v. Fulton County School District*, 741 F.3d 1195 (11<sup>th</sup> Cir. 2013).

<sup>232</sup> See, *K.A. v. Fulton County School District*, 741 F.3d 1195 (11<sup>th</sup> Cir. 2013).

IEP meeting and the IEP team can develop the IEP at the meeting to amend or modify the student's IEP which occurred in this case. The Findings of Fact unequivocally demonstrate the Parents were informed the placement decision for the third grade would be revisited in thirty days at an IEP meeting and the agenda provided to the Parents clearly stated there would be a discussion of the Student's placement at the May 6, 2024 IEP meeting.<sup>233</sup> The analysis under the prior issue showed the Parents were active participants in the placement discussion for third grade at the May 6, 2024 IEP meeting and whether the Student should be placed in a more restrictive environment. The Parents' consent was not required for the Student's March 5, 2024 IEP to be amended at the May 6, 2024 IEP meeting. The case law is very clear that an amendment made to an IEP at an IEP meeting does not require parental consent. Based upon the foregoing, the District did not commit a procedural violation under the IDEA.

**C. Whether the District failed to discuss amendments to the Student's 3/5/2024 IEP for the 2024-2025 school year with the Parents before the District unilaterally determined to change the Student's placement to a more restrictive environment for the 2024-2025 school year as required under 34 CFR § 300.116(b)(2) and thus denied the Student a FAPE?**<sup>234</sup>

This issue fails on its face. As previously discussed, the amendment to the March 5, 2024 IEP was discussed at the May 6, 2024 IEP meeting and the Student's placement was not unilaterally changed. Based upon the foregoing, the District did not commit a procedural violation under the IDEA.

**D. Whether the District's proposed placement decision at the 5/6/2024 IEP meeting to change the Student's placement to a separate public day school in special ed for 100% of the school day for the 2024-2025 school year is the least restrictive environment to address the Student's academic, behavior needs and social/emotional needs and to enable the Student to make the appropriate progress in light of the Student's needs?**<sup>235</sup>

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<sup>233</sup> F.O.F. 28 & 29.

<sup>234</sup> IHO Ex. 20.

<sup>235</sup> The Parent requested two add two news issues on November 20, 2024: (1) Whether the District failed to ensure that a continuum of alternative placements was available to meet the needs of the Student for special education and related services for the 2024-2025 school year because the District does not offer an educational placement of "03 – Inside general education classroom less than 40% of the day" where the Student would be included the general education classroom for a portion of the day, but would be included in special classes for the majority of the day for the 2024-2025 school year, as required under 34 C.F.R §§ 300.115 and 116(a)(2), and thus denied the Student a FAPE? (2) Whether the District failed to ensure that the placement decision at the 5/6/2024 meeting was made by a group of persons, including the parents, and other persons knowledgeable about the placement options because the Ferson Creek Elementary School IEP team members' recommended that the Student would attend a public therapeutic day school for the majority of his day for the 2024-2025 school year while also attending a District general education school for fourth grade AT math for a portion of the Student's day, and that placement recommendation is inconsistent with the placement options that the District offers, which means that the placement decision was not made by a group of persons that were knowledgeable about the placement options as required

The second prong of the test is whether the individualized educational program developed through the Act's procedures is reasonably calculated to enable the child to receive educational benefits.<sup>236</sup> The Supreme Court in *Endrew F. v. Douglas County School District* further clarified the standard previously provided in the Rowley case, and requires the school district to “offer an IEP reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstances” in order to meet the substantive obligations under the IDEA.<sup>237</sup> Additionally, under the Code the IEP shall include the behavioral intervention plan for the student who has a behavioral issue.<sup>238</sup> The IEP team is required to consider and if necessary to provide a FAPE include appropriate behavioral goals and objectives and services and support in the IEPs of children whose behavior impedes their own learning and the learning of their peers.<sup>239</sup> The IDEA, however, does not provide substantive requirements for behavioral intervention plans.<sup>240</sup> The appropriateness of an IEP “can only be judged by examining what was objectively reasonable at the time [the team created the IEP.]”<sup>241</sup> An IEP may not be determined to be inadequate based upon testimony and evidence that were not before the school district when the IEP was developed.<sup>242</sup> A placement decision is to be based on the IEP and is to be determined annually.<sup>243</sup> The placement decision is to be made “by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data and the placement options.”<sup>244</sup> The federal regulations and the Code require the school district to provide a continuum of alternative places to meet the needs of the child with a disability for special education and related services.<sup>245</sup> Under 34 CFR § 300.551(b)(1), the school district must maintain a continuum of program options which range from regular classrooms with supplementary aids to separate schools and residential facilities. <sup>246</sup> The federal regulations indicate a child should not be removed from a regular classroom “solely because of needed modifications in the general education curriculum.”<sup>247</sup> The Act provides the state and the local educational agencies with

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under 34 C.F.R § 300.116(a)(1), and thus the District denied the Student a FAPE? The requests were denied because these issues are encompassed under the broader Issue d.

<sup>236</sup> *Bd. of Education v. Rowley* 458 US 176, 206-207.

<sup>237</sup> *Endrew F. v. Douglas County School District RE-I*, 375 S. Ct. 988 (2017)

<sup>238</sup> 23 ILL Admin. Code Sec. 226.230(b).

<sup>239</sup> *Questions and Answers on Endrew F. v. Douglas County School District Re-I*, 71 IDELR 68 (U. S. Dept. of Education, Dec. 2017).

<sup>240</sup> *D. W. v. Milwaukee Public Schools*, 61 IDELR 32 (7<sup>th</sup> Cir. 2013).

<sup>241</sup> *B. G. v. City of Chicago Sch. Dist. 299*, 69 IDELR 177 (N. D. Ill, 2017) (quoting *M. B. v. ex rel. Berns v. Hamilton Southeastern Schools*, 668 F. 3d 851, 863 (7<sup>th</sup> Cir., 2011) (internal citations omitted.). See also, *District of Columbia v. Walker*, 54 IDELR 271, 109 F. Supp.3d 58 (D.C. D.C. 2015).

<sup>242</sup> *A. G. and JG v. Bd. of Ed. Of Arlington Cen. Sch. Dist.*, 69 IDELR 210 (S. D. NY). See also, *B.L. v. New Britain Bd. of Ed.*, 394 F. Supp.2d 522 (D. C. Conn. 2005)

<sup>243</sup> 34 C.F. R. § 300.116(b).

<sup>244</sup> 34 C.F.R §300.116(a)

<sup>245</sup> 34 C.F.R. §300.115. 23 Ill. Adm. Code § 226.300.

<sup>246</sup> 34 CFR § 300.551(b)(1).

<sup>247</sup> 34 C.F.R. § 300.116(e).

the cooperation of the parents with the role of formulating the child's education.<sup>248</sup> The school district, however, has the right to provide children with an education the school district considers more appropriate than the proposed education provided by the parents.<sup>249</sup>

The Seventh Circuit has not adopted any multifactor test for determining whether a child must remain in a regular school.<sup>250</sup> To determine if the placement is in the least restrictive environment, the inquiry is whether the child's education in the conventional school was satisfactory and if not whether reasonable measures would have made the child's education satisfactory.<sup>251</sup> The preference for mainstreaming must be balanced against the benefits that can be derived from the services that can be provided in a segregated setting.<sup>252</sup> It is not enough to show a child is obtaining "some benefit, no matter how minimal" to show a school district violated the least restrictive environment requirement.<sup>253</sup> In determining the least restrictive environment, consideration must be given to any potential harmful effects the placement may have on the child.<sup>254</sup> Behavior of the child is a permissible factor in determining the least restrictive environment for the child's education and a school district is not required to place a child in a regular classroom where the child's behavioral problems interferes with the ability of the other students to learn or threatens the safety of the other students.<sup>255</sup>

In the instant case, the Parents failed to provide any evidence that the District committed any procedural violations. The District has proven the Student's placement in the general education setting for 40% to 70% of the day was not satisfactory and there were no reasonable measures which would have made the Student's education satisfactory. The Findings of Fact show the District was proactive in addressing the Student's behavioral deficits as soon as the Student transferred to F Elementary School for first grade. During first grade, interventions were implemented to address the Student's behavioral problems in the classroom at the beginning of the school year, a meeting was held on January 10, 2023 to address the Student's behavior, an initial evaluation was conducted to determine the Student's eligibility for special education and services, the District found the Student eligible for special education and services under the Autism category and developed an IEP to support the Student's behavioral and social emotional deficits.<sup>256</sup>

For second grade, the District continued to be proactive in supporting the Student's needs by making preparations for the Student's transition into second grade and holding a thirty day meeting to discuss the Student's transition and to provide modifications to the Student's

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<sup>248</sup> See, *Lachman v. Maine Township*, 852 F.2d 290 (7<sup>th</sup> Cir. 1988).

<sup>249</sup> *Beth B. v Van Clay*, 282 F.2d 493 (7<sup>th</sup> Cir.2002).

<sup>250</sup> *Bd. of Ed. Of Township High School District No. 211 v. Ross*, 47 IDELR 241 (7<sup>th</sup> Cir. 2007). See also, *Beth B. v. Van Clay*, 282 F.3d 493, 499 (7<sup>th</sup> Cir. 2002).

<sup>251</sup> *Bd. of Ed. Of Township High School District No. 211 v. Ross*, 47 IDELR 241 (7<sup>th</sup> Cir. 2007).

<sup>252</sup> *MR v. Lincolnwood Bd. of Ed., District 74*, 843 F. Supp. 1236, 20 IDELR1323 (N. D. IL, 1994).

<sup>253</sup> *Bd. of Ed. Of Township High School District No. 211 v. Ross*, 47 IDELR 241 (7<sup>th</sup> Cir. 2007).

<sup>254</sup> 34 C.F. R. § 300.116(d).

<sup>255</sup> *In re: Student with a Disability*, 117 LRP 20573 (ISEA, 2017). See also, *Clyde K and Sheila K v. Puyallup School Districts*, 21 IDELR 664 (9<sup>th</sup> Cir., 1994); *MR by RR v. Lincolnwood Bd. of Ed., District 74*, 843 F.Supp. 1236 (N.D. Ill 1994).

<sup>256</sup> F.O.F. 2-5 and 8-12.

BIP.<sup>257</sup> The Student's IEP was again modified on March 5, 2024 to address the Student's maladaptive behaviors and social emotional needs.<sup>258</sup> Despite the accommodations provided to the Student, the Student's maladaptive behaviors and social emotional deficits impacted the Student from accessing his education and being available for learning.<sup>259</sup>

Under the IDEA, the behavior of the Student is a permissible factor to determine the least restrictive environment for the Student. The Student's behaviors were affecting the learning of the other students due to his disruptive behavior and were creating an unsafe environment due to the Student's threatening statements and physical harm to his classmates and the staff.<sup>260</sup> The Student's behaviors were also affecting his emotional well-being and safety because he was engaging in self-harm to himself.<sup>261</sup> During the school year, the Student's threatening language, physical aggression, elopement and statements of self-harm to himself and others were escalating and becoming more frequent.<sup>262</sup> The Findings of Fact show the District had exhausted the available services and supports to address the Student's social emotional well-being and behavioral needs and would no longer be able to implement the Student's IEP in the current setting for third grade.<sup>263</sup> The Student required placement in a more restrictive environment which is a public day school for 100% of the time.<sup>264</sup> A public day school will be better able to provide the supports to address the Student's needs so the Student can make progress in light of his circumstances. The Findings of Fact demonstrate that a public day school such as M Day School has the intensive social/emotional supports and behavioral supports for the Student to learn how to manage his emotions and his maladaptive behaviors and can implement the Student's IEP.<sup>265</sup> Based upon the foregoing, the least restrictive environment is placement in a separate public day school for 100% of the school day in order to enable the Student to receive a FAPE.

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

1. The least restrictive environment for the Student to obtain a FAPE is full-time placement at a public day school for 100% of the day and a public day school such as M Day School will be able to implement the Student's May 6, 2024 IEP.
2. The Parents' claims and requested relief are hereby denied.

#### **NOTICE OF RIGHT TO REQUEST CLARIFICATION**

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<sup>257</sup> F.O.F. 13, 15 & 16.

<sup>258</sup> F.O.F. 16.

<sup>259</sup> F.O.F. 23 & 33.

<sup>260</sup> F.O.F. 21, 22 & 26.

<sup>261</sup> F.O. F. 22, 24 & 25.

<sup>262</sup> F.O.F. 21-25 & 31.

<sup>263</sup> F.O.F. 33.

<sup>264</sup> F.O.F 33 & 34.

<sup>265</sup> F.O.F 38 & 39.

Pursuant to 105 ILCS 5/14-8.02a(h), either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification must specify the portions of the decision for which clarification is sought. A copy of the request must be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

**NOTICE OF RIGHT TO APPEAL**

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

Dated: April 8, 2025

Leah Trinkala  
Impartial Hearing Officer

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

**APPENDIX A**

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

ISBE Case No. 2025-DP-0042

Child/Student	[REDACTED]
Location of the Hearing	Remote Hearing/In-person at the [REDACTED] [REDACTED]
C Elementary School	[REDACTED] Elementary School
F Elementary School	[REDACTED] Elementary School
M Day School	[REDACTED] Elementary School
Parent/Father	[REDACTED]

Mother/Parent	[REDACTED]
Gen Ed Teacher	[REDACTED]
Special Ed Teacher	[REDACTED]
School Psychologist	[REDACTED]
Psychiatrist	[REDACTED]
Student Support Interventionist 1	[REDACTED]
Principal 1	[REDACTED] ([REDACTED])
Assistant Director	[REDACTED] (Assistant Director of Student Services)
Principal 2	[REDACTED] ([REDACTED])
Social Worker	[REDACTED]
Student Support Interventionist 2	[REDACTED]

CERTIFICATE OF SERVICE

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

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

[REDACTED]

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

and

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

On April 8, 2025

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Leah M. Trinkala  
Impartial Hearing Officer

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