

117 LRP 20580

**In re: Student with a Disability
Illinois State Educational Agency**

2017-0281

April 6, 2017

Related Index Numbers

150.017 Interim Educational Placements

150.040 Violent Students

365.140 Emotional Disturbance

Judge / Administrative Officer

Mary Schwartz, Hearing Officer

Ruling

An IHO granted an Illinois district's request to remove a 6-year-old first grader with an emotional disturbance and other health impairments to an interim alternative educational setting for 45 school days.

Meaning

A district can have a student placed in an IAES for up to 45 days if it can show that she poses a danger to herself or others. The district bears the burden of proving that keeping the student in her current placement is substantially likely to result in injury. In this case, the district pointed to a series of unsafe and aggressive behaviors of a first grader with an emotional disability including her making gun gestures and threatening and fighting both her peers and staff.

Case Summary

An Illinois district did not have to allow a 6-year-old first grader with emotional disturbance and other health impairments to remain in school, because of her aggressive misconduct toward staff and her peers. The first grader made gun gestures toward staff, injured the staff by kicking and biting them, refused to do her work more than 400 times, and made verbal threats to shoot or hurt her peers. The district filed an expedited due process request asserting that maintaining the student's current placement in the district was substantially likely to

result in injury to the student or others. The district sought to remove the first grader to an IAES for 45 days. The law states IAES is proper based on: 1) whether the student's current placement is appropriate, 2) whether the district has made reasonable efforts to minimize the risk of harm in the student's current placement, and 3) whether the IAES will permit full implementation of the student's IEP and include services and modifications designed to prevent the undesired behavior from reoccurring. The IHO granted the district's request. Here, opined the IHO, the first grader's affect, demeanor, and daily functioning were concerning as she growled at people, had bathroom incidents, and was withdrawn. The IHO noted that the first grader's behavior became physical when she made gun gestures toward staff and assaulted both staff and peers. Thus, opined IHO prong one was met. Moreover, the IHO observed, the evidence showed that the district made reasonable efforts to minimize the risk of harm in the student's current placement; the social worker provided services within the classroom and the behavior interventionist met with the crisis team bi-weekly, yet the student posed increasing safety concerns moving from verbal threats to shoot or hurt her peers. Finally, the IHO observed that the IAES would permit full implementation of the first grader's IEP as it integrated social work support into the classroom. The IHO noted the IAES setting further included access to general education peers, a sensory support room with various equipment and materials to address student sensory regulation problems, as well as community classes and a behavior interventionist that assists with student's attention-seeking behaviors. The IHO granted the district's request to move the student to an IAES for 45 days.

Full Text

FINAL DECISION AND ORDER

JURISDICTION

The undersigned hearing officer has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400

et seq., the Illinois School Code, 105 ILCS 5/14-8.02a et seq.

PROCEDURAL BACKGROUND

The district filed an expedited due process request on February 24, 2017, asserting that maintaining the student's current placement in the district is substantially likely to result in injury to the student or others. 105 ILCS 5 / 14-8.02b(c)(ii). The Illinois State Board of Education (ISBE) appointed the undersigned as hearing officer on February 27'. The district is represented by

and 11111011101of IMINIMINfilliThe parent is representing herself and the student and is also working with an advocate,r. Upon appointment, the undersigned issued several preliminary Orders, including a statement of the parties' rights in this proceeding. The parties participated in mediation on March 10 but were unable to resolve the issues raised for hearing. The prehearing conference was held by telephone conference call on March 13-.

The parties stipulated to the educational background, licenses, work experience, and role/responsibilities for staff who testified at the hearing. They also stipulated to the documents in the district evidence binders 1 and 2. The district stipulated to parent's documents with the exceptions noted in the district's March 21. email. The parties provided written closing statements at the conclusion of the hearing on March 24.h.

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The due process hearing was held on March 22 and 24, 2017 at the student's school. The hearing was closed, as requested by the parent. The student testified at the hearing, also at the parent's request.

The district provided a court reporter throughout the hearing. No transcript was issued prior to the date of this decision; therefore, the testimony referenced below is based on the undersigned's memory and hearing notes. In rendering this decision, the undersigned has considered all documents entered during the hearing, testimony by parties' witnesses,

the parties' closing arguments and their suggested case law, as well as independent research. This decision is issued within ten days after the hearing's conclusion, as required by Illinois law. 105 ILCS 5 / 14-8.02a(g55)(5).

ISSUES AND REQUESTED REMEDIES

This expedited hearing raises one issue: whether maintaining the student in her current placement is substantially likely to result in injury to the student or to others. 105 ILCS 5 /14-8.02b(c)(ii). The district must produce substantial evidence to prove this issue. If the district meets it burden of proof on that issue, it must then show that the proposed 45-day interim alternative educational setting (IAES) is proper, based on the following factors: 1) Whether the student's current placement is appropriate; 2) Whether the district has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and, 3) Whether the IAES will permit full implementation of the student's IEP and includes services and modifications designed to prevent the undesired behavior from recurring. 23 Ill. Admin. Code §226.655(a), (b).

The district asks for a finding that it has met the above requirements and requests an Order placing the student in the SIM program with supports and

services a Elementary School for 45 school days. Due to the

upcoming spring break for District my students and staff, the district asks that the IAES placement begin on April 17b, when students and staff return to school. District's Closing Argument, p. 4. The district requested the hearing and has the burden of proof on all issues. Schaffer v. Weast, 126 S. Ct. 528, 539 (2005).

FINDINGS OF FACT

After considering all the testimonial and documentary evidence entered at hearing, as well as both parties' arguments, the undersigned makes the following factual determinations:

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1. The student, who is six years old, is in first grade at WallipElementary School. SD 11. Her academic skills, as measured by standardized assessments, are average to above-average: at the 75th %ile on district standardized testing; reading readiness score at the 83rd %ile; and, math readiness score at the 69th %ile. PD 11, 13; See also, PD 1-16 She is eligible for special education and related services as a student with a hearing impairment, other health impairment (attention deficit/hyperactivity disorder and mixed developmental disorder), and an emotional disturbance. SD 104.

2. The student has a bilateral, moderate to mild hearing loss and wears hearing aids in both ears. PD 29. She has two sets of hearing aids, one provided by the family, and the other provided by the school. Testimony, Hearing Itinerant. The hearing itinerant regularly checks the student's hearing aids to ensure that they are working. Id. The student also uses a FM Roger listening system in the classroom. PD 29; See also, PD 26-35. The student communicates orally and also uses sign language and eye gazes to maintain communication. Testimony, Hearing Itinerant.

3. The student is in a general education classroom and receives related services. SD 54. The IEP implemented at the start of school year 2016-17 requires: direct and indirect hearing itinerant services; direct

speech / language services; consult occupational therapy services; and direct and indirect social work services. Id. Her IEP also requires a classroom aide, and special transportation. Id.

2. The IEP has numerous accommodations: hearing aids, an assisted listening device ("Roger pen"), sensory supports (weighted vest and lap pad, bean bag chair), phonemic cues as needed, teacher to face student (lip reading), behavioral supports, closed caption for videos as available, rephrasing of directions and questions, repeating directions as needed, visual /tactile cues, and preferential seating (toward the front, away from background noise and

near positive peer model). SD 48.

3. The IEP includes a behavior intervention plan (BIP), which targets aggression, property destruction, and noncompliance. SD 51-53. The function of these targeted behaviors is to seek attention, escape non-preferred activities / demands / social situations, gain access to sensory stimulation, and gain access to preferred items and activities. Id. The BIP includes positive supports and a point chart with built in reinforcers. Id.

4. The IEP also includes a crisis plan, which describes the procedures that

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must be followed when the student's behavior escalates such that she must leave the classroom or that the other students must be removed. SD 53. In such situations, a physical restraint may be used as a "last resort." Id. If the physical restraint lasts longer than 15 consecutive minutes or if repeated episodes occur in a three-hour period, alternative strategies may be used. Id. If the student is a safety risk and threat to herself or others and other interventions have not worked, alternative strategies may be used, including an assessment by SASS, assistance from emergency responders or transportation by ambulance to the hospital. Id. The parent has adamantly disagreed with this provision since its inclusion in the plan.

7. The student's August and September behavioral charts show that

although she needed short redirections throughout the day, she had few overt or continued behavioral problems, with several exceptions. SD 161, 169, 175, 178, 201, 220-223. However, since October 2016, her behavior, affect, demeanor, and daily functioning have gradually changed. She "struggles" with coping in class, transition times, and non-preferred activities. Testimony, General education teacher. Her peers are "afraid" of her, and she gets "territorial" as to who can play with whom. Id. It is hard for her "to maintain happiness all day."

Id. Her unsafe and aggressive behaviors include picking at her skin until it bleeds, crawling on the floor, growling and yelling, climbing on cabinets and window sills, and

spinning around on the teacher's chair. Id. Furniture has been removed from the classroom for everyone's protection. Id. Additionally, the other students in the class have been removed to another location three or four times in the last month because of the student's unsafe behaviors. Id. Other times, the crisis team has removed the student from the classroom. Id. The student is more defiant and aggressive and is not engaged in her schoolwork. Testimony, Classroom paraprofessional. Recently she hit other children on the playground and held their hands so they could not play. Id.

8. Supervisory and related services staff report similar significant changes in the student's affect, ability to work and remain regulated, and in her relationships with peers and school staff since October 2016. SD 98. She began sucking her thumb in school and at times shows a "huge" variation in affect within a day, going from being "overly happy" to growling at people and being withdrawn and closed off all in one day. Testimony, Behavior Interventionist. She also began having bathroom accidents and at times does not seem "connected" to others. Id. These behavioral

changes impact her peer relationships because other children do not understand her, particularly when she was aggressive. Id.

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9. The school social worker reported significant changes in the student. Although the student had made progress on her social work goals prior to October, her affect changed in October and became flat. Testimony, Social Worker. She told the social worker that she "does not feel normal and feels she will never be normal" because of her hearing aids. SD 682. She no longer wanted to go to her individual social work sessions, so the social worker provided services in the classroom. Testimony, Social Worker.

This accommodation had an added benefit of allowing the teacher and paraprofessional to observe how the social worker addressed the student's problems. Id.

10. On October 3, 2016, the student made "gun gestures and noises toward staff" after stating that she wanted to go home. SD 569, 766. Staff conducted a Risk of Harm assessment and called the mother to inform her of the incident and assessment. SD 568. Over the following days, the student became more aggressive toward staff and unresponsive to their directives. On October 12, 2016, she laid on the classroom carpet sucking her thumb and shortly thereafter walked out of the classroom, saying she did not feel well and wanted to go home. SD 576-580; 768-772. She refused to go back into the classroom and laid down on the hallway floor. Id. Staff escorted her to the office, and she hit and kicked them on the way and tried to escape. Id. When the SRT leader blocked the door, the student tried to bite her arms and legs. Id. The student did not respond to prompts for safety, so staff put her in a child control pose and transported her to the social work office to calm down. Id. In the office, she resumed kicking and trying to bite staff and was again placed in a child control hold. Id. The student was given an ice pack because her body was "very warm and heated." Id. The ice pack helped her calm down, and she was able to process the incident with staff. Id.

11. The student's behavioral problems increased in frequency and intensity throughout November. On November 1., she pushed a button used to call the school office. SD 533. When the classroom paraprofessional covered the button, the student kicked and hit her. Id. A couple weeks later, on November 16th, the paraprofessional went to the student to tell her it was time to go home. SD 534. At that time, the student was lying in a bookcase and had covered her body with a beanbag chair. Id. The student hit, bit, and scratched the paraprofessional's arms and hands. Id. Several days later, on November 21-, the student was sitting at a table with the paraprofessional after a difficult morning and

suddenly got up, moved toward the paraprofessional and head-butted her. SD 535, 536; SD 561-563;

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Testimony, Paraprofessional. Later in the afternoon, the student punched, kicked, hit, and tried to bite the paraprofessional, and wrote on the paraprofessional's shirt with a black marker. Id. See also, SD 561-563. The next day, the student had difficulty ending a break, despite being told numerous times that the break was over. SD 582. She pushed past staff at the door and went into the hallway, where she hit, kicked, pushed, and grabbed at staff who were there. Id. After about 10 minutes, she ran down the hallway to the front door, yelling for her mother. Id. The SRT leader blocked the student from the door, and the student repeatedly tried to bite the SRT leader's arm and leg. Id. The SRT Leader placed the student in a child control pose and with assistance from another staff, transported the student to the social work office. Id. The student's aggressive behaviors continued, including attempts to bite staff. Id. The student was given an ice pack because her body was very warm, and she then was able to calm down and process the incident with the SRT leader. SD 582.

12. On November 28.h, the student refused to do her work or unpack her backpack for an extended amount of time and then began breaking and writing on classroom items. SD 589. The behavior interventionist was called to the classroom and tried to redirect the student; however, the student became aggressive and hit and kicked her. Id. The student was transported to the calm down room, where she continued hitting and kicking staff. Id. Staff held the student several times, but each time they released her, she immediately became aggressive - hitting, biting, head butting, pinching, kicking, and spitting on staff. SD 589, 590. At one point, the student "urinated on herself, crawled in the urine and then smiled" at the behavior interventionist. SD 590. The incident lasted from 10:27 a.m. to 3:55 p.m. SD 591, 592. During that time, the student kicked and hit staff over 400

times (including attempts), head-butted staff 14 times, bit staff 50 times, spit in staff faces 17 times, and pinched staff 12 times. SD 588-593. Staff held the student in a CPI child hold 16 times, with holds lasting between 40 seconds and six minutes. SD 593. Staff communicated with the student using verbal redirection, American Sign Language (ASL), and visual reminders to ensure communication. SD 589. At one point, the student removed her hearing aides and tried to pull them apart. Id.

13. The following day, November 29h, the student told a peer "if you tell on me I will hurt your" and told another "if you don't play with me tomorrow I will hurt you." SD 606. She then refused to leave the room when asked to do so. SD 596; 754. She ran to the classroom library, and

1 The terms "aide" and "paraprofessional" are used interchangeably in this Decision.

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after refusing staff requests to leave the room, staff guided her out of the classroom. Id. She kicked the staff who removed her from the classroom. Id. Staff transported her to the break room because she refused to walk there when she was in the hallway. Id. In the break room, she dropped to the floor and continued screaming. Id. During the incident, she hit staff twice and made one attempt to bite staff. Id. She also spit on the floor and soiled her pants. Id.

14. The student's aggressive and oppositional behaviors continued in December, resulting in several disciplinary referrals. On December 6.h, she had a difficult time ending her computer time and ignored the paraprofessional's instructions to stop or staff would turn off the computer. SD 537. The paraprofessional told her again to close the program, and when the student refused to comply, the paraprofessional reached over to turn off the computer. Id. The student grabbed the paraprofessional's hand and bit her opposite arm. Id.; SD 564. Several days later, on December 13", the student asked to go to the office to pick up something for her sister. SD 538. When teacher asked her to

complete her work first, the student walked to the door and said "you think you can stop me?" and left the room without permission. Id. Later in the day, the student did not want to leave the classroom and began pushing, hitting, and biting staff. SD 608. She "wanted to go home not to girl scouts or daycare." SD 610. She had been unengaged for most of the day and threatening staff with pencils. Id. Between 3:04 when the incident started and 3:26 when it ended, the student made 14 direct head butts, three direct bites and punches, and several bite attempts to staff. SD 608; 808. Staff held the student in a child hold twice, and she started to cry and calmed down. Id. The nurse reported that the student had no injuries after the incident. SD 609. The mother took the student to the doctor later that day, and the doctor's report indicates that the student had two bruises on her right lateral scapula. PD 165-167. The parent filed a police report and a report with the Department of Children and Family Services. PD 168. Both reports were unfounded. Testimony, social worker.

15. The next day, the student refused to go with the hearing itinerant for services and pretended to punch the hearing itinerant. SD 613-616. After a break, the student refused to leave the bean bag chair and then hit and kicked staff who removed her. SD 614. Staff transported her out of the classroom, and she head-butted staff 10 times and made six bite attempts and one direct bite. Id. The nurse observed the student at the end of the incident and reported no injuries. Id. Later, the mother brought the student to the nurse's office and showed the nurse some bruises that the

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student said she had gotten when the door on the behavior room hit her. PD 21, 22. The student had told her mother that she was alone when the door hit her. Id. On December 22-, the student refused staff help when she was having trouble with her book bag at the end the day. SD 539. When the paraprofessional tried to help her, the student grabbed her hand and pulled her fingers. Id. The school social

worker increased the number of service minutes she provided to the student beginning in December so that she could be available at crisis times. Testimony, social worker; SD 141, 142.

16. In January 2017, the student's daily behavior sheets report disruptive and unsafe behaviors throughout the day. These behaviors include walking on chairs, growling at other students, refusing to do schoolwork, repeatedly kicking chairs, pushing furniture into staff, and physical aggression toward staff and self-injury (e.g. picking at skin). SD 403-457. On January 11., she kicked chairs and pushed a table into staff and head-butted, punched, bit, and kicked staff throughout the day. SD 410-417. On January 27', she kicked another student in the stomach while they were talking with each other. SD 540.

17. During the first couple weeks of February, the student needed re-directions throughout the day. SD 460. On February 15h, she ignored two warnings that her computer time was over and that it was time to go home. SD 490. After a couple more warnings, the paraprofessional turned off the computer and tried to comfort the student, who then pushed the paraprofessional away. Id. The student turned the computer back on and refused to follow staff directives. Id. Additional staff came in to assist, and when a staff person removed the computer, the student head-butted her. Id. The student bit one person three times. Id. The student was briefly held and then settled down and was able to walk with staff to the bus to go home. SD 491. The next day at recess, she told some classmates that she would shoot them if they came to her house. SD 494. She needed redirections throughout the day, and at the end of the day, she tried to bit the paraprofessional. SD 497.

18. On February 2F, the crisis team was called to the student's classroom because she was throwing crayons at her classmates, who shouted when they got hit. SD 626. Testimony, Student Serv. Adm. Some of the team removed the other students from the room. Id. The student hit a staff person in the face and kicked her multiple times in the chin. Id. Staff tried to

transport the student, but she dropped to the ground and wandered around the room throwing things. Id. When a staff person went near her,

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the student growled, kicked, punched, and tried to bite the person. Id. She hit one staff person four times with a clipboard. Id. Staff tried to transport her a couple more times but were unable to do so. Id. During the 90 minute incident, the student bit staff 23 times and attempted to bite 57 times, hit /struck staff faces 57 times, punched 13 times, scratched 3 times, and threw property 22 times. SD 628, 630. The nurse checked the student after the incident and found no injuries. SD 628. Staff were "extremely concerned" about the student's mental health and inability to use staff to calm down and for support. Id. Staff also reported that the student was "unable to process events in a rational manner" and was unresponsive to techniques used to help her express her feelings appropriately. Id. The following day during recess, the student grabbed a peer's hand and squeezed it until it turned red. SD 541.

19. At the end of recess on March 1-, the student refused to go back to class. SD 634, 635. Staff escorted her back to class, and she settled in and was able to work until the other students returned. SD 634. She then put crayons in her ears, yelled at her classmates, and refused to return scissors to the teacher. Id. When crisis staff arrived, the student was pacing and breaking crayons and teacher's items. Id. Staff removed the other students from the classroom. Id. The student was unable to respond appropriately to staff directives and queries and tried to bite staff when they attempted to take supplies from her. Id. She pinched and pushed staff and then became more aggressive: kicking, hitting with an open hand, punching, and biting and attempting to bite. Id. She picked at her nose until it bled and told staff "you did this to me." Id. She pushed her way out of the classroom and became aggressive when staff blocked her from entering a room in which other students were working. Id. She ran to the front office, hit and

punched staff. Id. Staff held her briefly and, when they released her, she again became aggressive and was transported to the SRT leader's office. Id. She returned to class approximately 90 minutes after the incident began. Id. However, crisis staff were called back in shortly thereafter because the student was refusing to go out to classes. Id. She laid on the floor and began screeching and biting her arm. Id. The

behavior interventionist held her in a child hold for a few minutes, and after being released, the student slapped the staff person four times and was held again. Id. The nurse checked the student three times and found no injuries on her. SD 638. In debriefing the incident, staff hypothesized that the student was worried that she would be in trouble for having told at peer at lunch that she was not allowed to eat. SD 639. The student has difficulty verbalizing what is upsetting her and becomes aggressive when she is unable to do so. Id.

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20. The following week, on March 7h, the student repeatedly patted a peer on the back, ignoring the teacher's instructions to stop. SD 957B. At lunch, she kicked another student and ignored the lunchroom supervisor's instructions to go to the office. Id. When she returned to the classroom after lunch, she needed redirections all afternoon but did not show any physical behaviors. Id. The following day, she directed several behaviors toward her classmates: growled at a student, spit in another's face, put her middle finger up to a classmate, and kicked a peer who came near her. SD 957E, F. She then directed her aggression toward staff: punching, head-butting, pinching, and hitting with a book. SD 957H.

21. On March 9., the student had several difficult interactions with peers: she argued with a student in line at arrival, yelled in another student's face, told a student she was going to pull the student's pants down, and said to another "better watch it or I will hit you again." SD 957L. After lunch, she was non-compliant with the teacher's instructions and took her hearing aids out and plugged her ears so she could

not hear the teacher. SD 957M. She refused to comply with the teacher's instructions for most of the afternoon. SD 957N-Q. At the end of the day, she stood on a table, hit a staff person and punched the person in the face and glasses. SD 957S; SD 971, 973. In the car line, she smacked a 5th grade student in the face, breaking his glasses. SD543, 9571. The student was given a two-day suspension - March 10' and 13' - for these incidents. SD 543, 969, 971.

22. On March 15h, the student refused to get off the computer at the end of library time and yelled at and hit the general education teacher. SD 643. The incident quickly escalated as she punched at the teacher's crotch and kicked her in the stomach. Id. The student was transported to the calm down room, where she picked at scabs on her toes and lip and kicked, hit, bit and head-butted staff. SD 644. The incident lasted just over an hour. SD 643, 644. The nurse examined the student and reported that she had no injuries. SD 645. Staff had scratch and bite marks. Id.; SD 647-652.

23. On March 20., the student refused to put some work away and then climbed on a cabinet. SD 548. Initially, she refused to comply with staff directions to get down but then jumped down and began to hit, bite, kick, and pinch staff. Id. She also told staff to "stop or I will beat you up." Id. She ran out of the room and through the hallway to the front office, where she continued her aggressive behaviors toward staff, including biting, hitting, and scratching staff. Id., SD 550, 552-555. The student also took off her shirt. SD 548. The school was put in a soft lockdown. The nurse observed the student after the incident was over and reported that she

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was "uninjured, noted some irregular marks on her back that were noted on 3 /17/17. Student had full range of motion of extremities. No grimacing was noted." SD 550.

24. The district's behavior interventionist has been working with the student and staff since December 2015. Testimony, Behavior Interventionist

(Beh. Int.). She has 10 years of experience as a behavior interventionist, has conducted local and national trainings, and also was a teacher for the hearing impaired. Id. When she began working with the student, she was in the student's classroom full-time to work with the student and train the staff. Id. She meets with the staff on a bi-weekly basis to review notes and make changes to the student's behavior plan, as indicated by data on the behavior changes. Id., SD 125-129. Staff send her their behavior charts each day so that problems can be noted and addressed quickly. Testimony, Beh. Int. When the student's school team contacts the behavior interventionist because of the student's aggression, she goes to the school to support the team. Id. She instructs staff to be "cautious" in approaching the student and to look at her non-verbal behavior. Id. If the student is sucking her thumb, staff need to take time in approaching her. Id. If the student is excited, staff can approach her directly. Id. The student is very strong, especially when her behavior is escalated, so holds should be done only as a "last resort." Id. Lately the student has been emotionally labile and has shown concerning behaviors such as purposeful urination and defecation in school, when other children are present, and a significant increase in aggression. Id. Based on the data collected by staff, there is no data to support the mother's concern that the paraprofessional is causing the student's behaviors. Id.

25. Crisis staff are trained to provide choices to the student and to hold her as a last resort. Testimony, Beh. Int. The student has a "smiley chart" that tracks her behaviors and rewards for appropriate behaviors. Id. See, SD §14. The reinforcement system is continually reviewed because rewards do not maintain the same value over time. Testimony, Beh. Int. The parent's input is considered in the rewards; however, it is important to "create a buffer" between aggressive behavior and a reward, such as a pet, to ensure that rewards do not reinforce inappropriate behaviors. Id. The team works to determine the antecedent of a behavior, e.g., transitioning from a preferred activity, and to give the student warnings about expected

behavior. Id.

26. The school social worker who works with the student reported significant changes in the student over the course of this school year. Between

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August and October, the student participated in social work services and was making progress. Testimony, Social Worker. However, starting in October, the student's affect changed from happy to flat, her aggression increased, she did not talk as much, and she no longer had the "tools she used to have" during the school day. Id. In December, the social worker started providing services in the classroom because the student refused to attend sessions in the social work office. Id. Between January and March, the student frequently left the classroom when the social worker arrived for in-classroom work. Id.

27. The social worker is part of the crisis team. The amount of time she spends with the student is approximately double what the IEP requires because of time she spends on crises. Id. In the past few weeks, the student has been exhibiting new behaviors: pushing at the crotch area, pulling down shirts, and removing her own shirt two times. Id.

28. The student's general education teacher also reported an increase in unsafe behaviors over this school year. The student struggles with coping in class, especially when she must do non-preferred activities and during transition times. Testimony, Teacher. The other students are afraid of the student, and she gets "territorial" regarding who can play with whom. Id. Within the past month, the teacher has had to remove the other students from the classroom three or four times due to the student's behavior. Id.

29. The student services administrator ("SSA") is part of the student's IEP team and crisis team and is CPI certified. Testimony, SSA. She has observed the student in class at least six times and attends the bi-weekly planning meetings. Id. She was part of the February 21- incident and was bitten by the student

three times. Id. She was part of the March 20th crisis team that responded to the student's escalating behavior in the classroom. The student ran from the classroom toward the school's front door and then into the school office. Testimony, SSA. She made 30 direct hits to the staff. Id. The student removed her shirt, and the SSA noted marks on the student's back, which the nurse thought were caused by eczema. Id. The SSA had the building put on a soft lockdown out of concern for the student's privacy and because of her "intense and severe" behaviors. Id. She also called SASS to conduct a mental health evaluation of the student; however, when the mother arrived, the mother wanted to have the evaluation done at home. Testimony, SSA.

30. The IAES placement proposed by the district is the all. program at anillallat Elementary School. The UM program is a self-contained

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special education program for students whose needs exceed what is offered in a general education environment. Testimony, ow Director. The program integrates social work support into the classroom by having two full-time social workers in each WINN/classroom. Id. There are four

gam classrooms at and the one proposed for this student

is the kindergarten/ first grade classroom. Id. The classroom has one teacher and two paraprofessionals. Id.11111111students have access to their general education peers from the start of the program, through participation in specials (music, art, etc.), gym, lunch and recess. Id. WIPP Chas a sensory support room with various equipment and materials to address students' sensory needs. Id. An occupational therapist provides services within the 411.1111101classroom to address the students' sensory regulation problems. Testimony, Beh. Int. Each 1111110 classroom also has a community class for 30 minutes each day to provide direct social skills instruction within the classroom environment. Id. 110.1111 also has an isolated time out room, which would be helpful in

addressing the student's attention-seeking behaviors. Id. The behavior interventionist is at liaim on a daily basis, working in the classrooms. Id. If an IAES placement is ordered, the behavior interventionist would develop a transition plan for the student and would train staff who would work with the student. Id. The student's current hearing itinerant has asked to work with the student if she is placed at 1111111111111111. Testimony, Hearing Itinerant.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the parties' closing statements, and this hearing officer's legal search, the undersigned makes the following Conclusions of Law:

1. The student's affect, demeanor, and daily functioning have changed considerably since October 2016 and now adversely impact her throughout the school day. 76. Initially, staff noticed changes in the student's self-regulatory behaviors such as sucking her thumb during school, going from "overly happy" to growling at people, having bathroom accidents, and being withdrawn. Id., U.

2. In October 2016, the student's behaviors became physical and directed toward others. On October 3-, a Risk of Harm assessment was done because the student had made "gun gestures" toward staff. 19. A little over a week later, the student hit, kicked and tried to bite staff who intervened after she walked out of the classroom. Id.

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3. Substantial evidence shows that the student's behaviors escalated in intensity and frequency throughout November. Her aggressive behaviors were primarily directed toward the classroom paraprofessional, who works closely with the student throughout the school day. The paraprofessional was injured numerous times by the student in November. The student hit, bit and scratched the paraprofessional on November 16.. 110. Several days later, the student head-butted the paraprofessional and later in the day punched, kicked, hit and tried to bite her. Id.

4. The student's aggressive behaviors were not confined to the paraprofessional. There is substantial evidence showing that the student hit, bit, and kicked staff who assisted in interventions and transports to move the student to a safe and quiet location. Id. On November 28., the student hit and kicked staff, or attempted to do so, over 400 times in an incident that began when the student refused to do school work and then lasted nearly the entire school day after she had to be removed from the classroom for aggressive behavior. 111. She also head-butted, pinched and bit the staff involved in the incident and urinated on herself. Id. The following day, she verbally threatened to hurt two other students. Id.

5. The uncontroverted evidence shows the student's aggressive actions toward staff increased in December 2016, thereby increasing the likelihood of injury to staff. The student's behaviors often occurred during routine daily activities, such as when staff instructed her to end a preferred activity, e.g., computer time, or insisted that she complete her work before doing something else. 113. The paraprofessional was injured on December 6th when the student bit her arm as she reached over to turn off the student's computer. Id. On December 13', the student bit, punched, and head-butted staff numerous times at the end of the day. Id. The following day, the student hit and kicked staff who removed her from a beanbag chair. 114.

6. There is substantial evidence showing that the student's physical aggression toward staff continued and increased between January and March 2017, resulting in staff being head-butted and repeatedly bitten, hit, and punched by the student. 11 15- 17.

7. Additionally, the evidence shows increasing safety concerns for other students due to the student's escalated aggressive behaviors. The student has moved from verbal threats to shoot or hurt peers to actions, which include spitting at peers, kicking a student in the stomach, grabbing a

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peer's hand and squeezing it until it turned red,

and breaking a student's glasses. 1115-20.

8. The evidence also shows that the student has injured herself at school, by picking at picking at her skin and at a scab, picking her nose until it bleeds, and biting her arm. 1115, 18, 21.

9. Based on the above factual determinations, the undersigned finds that the district has shown that maintaining the student in her current placement is substantially likely to result in injury to the student or to others.

10. The evidence also shows that the district made reasonable efforts to minimize the risk of harm in the student's current placement. The social worker provided services within the classroom when the student initially refused to go the services in the social worker's office. 18. She also significantly increased the student's social work minutes as the student's behavioral problems increased. 126. The behavior interventionist met with the crisis team bi-weekly, and staff provided her with daily data sheets on the student's behaviors. 123. This allowed the team to update the student's BIP as needed to address the student's increasing behavioral needs. The classroom paraprofessional spent the majority of her time with the student, although the IEP does not require a 1:1 aide.

11. The district's proposed IAES placement in the egue program with the

community class at School is able to implement the student's

IEP and provide the instruction and services designed to prevent the undesired behaviors from recurring.

ORDER

IT IS ORDERED THAT:

Within five school days of receipt of this Final Decision and Order, the district shall convene an IEP meeting with appropriate Pioneer and Wood View staff and the parent to develop an IEP for the student's 45-day IAES placement at

4111110m.

1. The IEP shall include:

a. Placement in the K-1- grade NM program;

b. Community Class;

c. Related services, including hearing itinerant services, social work, and occupational therapy; and,

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d. Bus transportation.

2. The IEP shall also include a transition plan to help the student successfully

transition from her current placement at School to the placement

at 411/11111110.

3. The student's transition to, and placement atifiliffilit shall begin after the district's spring break, on or about April 17, 2017.

Within 45 calendar days of receipt of this Order, the MOM. gINMIMIMJEMII School District allekshall submit proof of compliance to:

Illinois State Board of Education Program Compliance Division 100 North First Street

Springfield, Illinois 62777-0001

REQUEST FOR CLARIFICATION

Either party may request clarification of this decision by submitting a written request for such clarification to the undersigned-hearing officer within five (5) days of receipt of this decision. The request for clarification shall specify the portions of the decision for which clarification is sought, and a copy of the request shall be mailed to the other party(ies) and the Illinois State Board of Education. After a decision is issued, the hearing officer may not make substantive changes to the decision. The right to request such 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.

RIGHT TO APPEAL

This decision is binding on the parties unless a civil action is timely commenced. Any party to this

hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to 105 ILCS 5 /14-8.02a(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

Statutes Cited

20 USC 1400

Cases Cited

126 S. Ct. 528