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APPENDIX A

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

No. 25-1013

N.T. and P.T., individually and as parents and next
friends of C.T.,

Plaintiffs-Appellees,

v.

GALESBURG COMMUNITY UNIT SCHOOL
DISTRICT NO. 205,

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of Illinois.

No. 4:24-cv-04124-JEH —
Jonathan E. Hawley, *Judge.*

ARGUED SEPTEMBER 11, 2025 —
DECIDED MAY 6, 2026

Before BRENNAN, *Chief Judge*, and KIRSCH
and JACKSON-AKIWUMI, *Circuit Judges.*

BRENNAN, *Chief Judge.* C.T. is an elementary
school student with disabilities. Due to his behavioral
struggles, his parents agreed to place him in a special

education class at his local elementary school in Galesburg, Illinois. Three weeks later, the school district proposed its first Individualized Education Plan. This would have placed him, against his parents' wishes, at a private therapeutic day school in a different school district in Peoria, Illinois. Rather than walk to his local school, C.T. would ride a bus more than 45 minutes each way.

Believing this violated C.T.'s rights under the Individuals with Disabilities Education Act, his parents requested a due process hearing. After several days of testimony, an independent hearing officer concluded that the school district had complied with the Act. C.T.'s parents then sought judicial review. The district court conducted a bench trial and reversed the hearing officer's decision. The court concluded that the school district's attempt to place C.T. at the therapeutic day school would violate his right to an education in the least restrictive environment. Because the district court's decision involved no mistakes of law and was not clearly erroneous, we affirm.

I. The IDEA

Under the Individuals with Disabilities Education Act (IDEA or the Act), a state may receive federal funding to educate children with disabilities as long as it adheres to certain conditions. 20 U.S.C. § 1412(a). Illinois has accepted such federal funds, so it must comply. *Id.* The IDEA and its implementing regulations provide two substantive requirements. States shall provide eligible students with a free appropriate public education (FAPE), 20 U.S.C. §

1412(a)(1), in the least restrictive environment (LRE), 20 U.S.C. § 1412(a)(5).

Under the LRE provision, states can remove a child from the “regular education environment” and place him into “special classes,” “separate schooling,” or other restrictive options, only when “the nature or severity of the disability ... is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” *Id.* States shall also mainstream students with disabilities—that is, provide them an education with non-disabled peers—to the “maximum extent appropriate.” 20 U.S.C. § 1412(a)(5)(A). To these ends, states must make available “a continuum of alternative placements,” ranging from more to less mainstreamed. 34 CFR § 300.115.

To provide a compliant education, schools evaluate whether a child qualifies for special education. 20 U.S.C. § 1414(a)–(c). If a child is eligible, the schools craft an individualized education program, commonly referred to as an IEP. 20 U.S.C. § 1412(a)(4). This is a “written statement ... developed, reviewed, and revised” by a team of stakeholders. 20 U.S.C. § 1414(d)(1)(A)(i). An IEP team includes a child’s parents, teachers, and other qualified educators. 20 U.S.C. § 1414(d)(B). An IEP must be tailored to meet the individual needs of the disabled child by stating the student’s present levels of performance, setting measurable annual goals, and explaining how progress toward meeting those goals will be measured. 20 U.S.C. § 1414(d)(1)(A)(i). It must also list the special education and related services,

along with any additional support and services, that each disabled student will receive. *Id.*

Parents who believe an IEP violates their child's statutory rights are entitled to review. Relief may be sought in state administrative proceedings. 20 U.S.C. § 1415(f)(1)(A). Illinois enacted qualifications and guidance for the independent hearing officers who conduct such proceedings. 105 ILCS 5/14-8.02c. Any party "aggrieved by the findings and decision" of a hearing officer may sue in state or federal court. 20 U.S.C. § 1415(i)(2)(A).

In such cases, the court "(i) shall receive the records of the administrative proceedings; (ii) shall hear additional evidence at the request of a party; and (iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate." 20 U.S.C. § 1415(i)(2)(C). The party challenging the outcome of the administrative hearing bears the burden of proof. *Alex R. ex rel. Beth R. v. Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 611 (7th Cir. 2004)(citation omitted). Though the district court independently evaluates the witnesses and evidence and can expand the record with an evidentiary hearing, the hearing officer's findings and decision are still entitled to "due weight." *See Alex R.*, 375 F.3d at 612 (7th Cir. 2004) (citing *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206 (1982)); *see also Beth B. v. Van Clay*, 282 F.3d 493, 497 (7th Cir. 2002). And though Congress authorized courts to base their decisions on the preponderance of the evidence, this is not "an invitation" for courts "to

substitute their own notions of sound educational policy for those of the school authorities which they review.” *Rowley*, 458 U.S. at 206.

II. Background

When this dispute began, C.T. was a six-year-old student in the first grade.¹ According to his parents and educators, C.T. enjoys science and shows promise in math. He displays good motor and problem-solving skills, and he possesses a strong vocabulary and good sense of humor. Yet due to his attention deficit hyperactivity disorder, mild oppositional defiant disorder, generalized anxiety, and sensory disturbance, C.T. often struggles with aggression, leaves the classroom, refuses work, and interacts negatively with peers and supervising adults. At times, his behavior has escalated to cursing and physical violence, including kicking and throwing classroom items, causing minor injuries to staff.

A. Behavior Interventions

Thus far, C.T.’s education has included several interruptions and interventions. He briefly entered kindergarten at Silas Willard Elementary before transferring to King Elementary. Due to behavioral issues in the regular classroom at King, the principal and other administrators took turns providing dedicated one-on-one support to C.T. throughout the day.

¹ C.T. is currently nine years old and enrolled in third grade.

That fall, after C.T. started first grade, the Galesburg Community School District conducted a Functional Behavior Assessment and instituted a Behavior Intervention Plan for C.T. His behavioral struggles continued, however. Seeking resolution, the school district and C.T.'s parents entered a mediation agreement. That placed him back at Silas Willard in a self-contained classroom for students with emotional and behavioral disorders ("EBD").

The EBD classroom provides embedded social-skills training and therapeutic activities. At the time, it consisted of seven students, a special education teacher, and two paraprofessional aides. Several students at Silas Willard also receive individualized support from dedicated one-on-one aides.

B. Individualized Education Plan

After further evaluation, C.T. was deemed eligible for special education. In December 2023, three weeks after placing him in the EBD classroom, the school district proposed C.T.'s first IEP. The plan set out several functional and behavioral goals. But the IEP team determined that C.T. would not benefit from a one-on-one aide, explaining that such dedicated support would not allow C.T. to learn to ask for help. And rather than C.T. continuing in the EBD classroom, the IEP recommended placing him at High Road School of Peoria.

High Road is a private therapeutic day school that offers a high teacher-to-student ratio and a small classroom environment. It enrolls exclusively disabled

students with no mainstreaming opportunities. The school provides embedded social-emotional learning, a dedicated behavior interventionist, and a weekly on-site board-certified behavior analyst. High Road is also in a different school district and would require C.T. to take a 45-minute bus ride each way without dedicated adult supervision.

C. Administrative Hearing

When the school district denied requests to revise the IEP, C.T.'s parents asked for a due process hearing before an independent hearing officer. 20 U.S.C. § 1415. In their view, and relevant here, High Road was not the least restrictive environment for C.T.'s education.

The hearing officer conducted a three-day hearing in March and April 2024. She heard the school district's witnesses opine that a one-on-one aide was not needed. None of C.T.'s classmates received such assistance, and C.T. received continual individualized attention. Further, the hearing officer heard testimony that C.T. requires a therapeutic day school to meet his behavioral and educational needs. On this point, she found the school district's testimony "overwhelming, credible, persuasive, and uncontroverted by Parents at the hearing."

After reviewing the full administrative record, the hearing officer found the following:

- C.T. had made no progress;
- the EBD program could not meet his

behavioral and academic needs;

- additional supports and services, including a one-on-one aide, were unnecessary; and
- C.T. ultimately required a therapeutic day school.

The hearing officer thus concluded that C.T. could not receive a “satisfactory education” in Silas Willard’s EBD classroom, and that High Road’s therapeutic day school was the least restrictive environment.

D. Judicial Review

C.T.’s parents sought judicial review in federal district court. 20 U.S.C. § 1415(i)(2)(A). The complaint automatically triggered a statutory “stay put” injunction, which has kept C.T. at Silas Willard throughout this dispute. 20 U.S.C. § 1415(j).

In October 2024, the district court held a bench trial to supplement the administrative record with additional evidence. Seven witnesses testified. New testimony, not heard by the hearing officer, focused on developments related to C.T.’s behavioral and educational setting since the administrative hearing. C.T.’s parents testified concerning his friendships and his increasingly positive relationship with his teacher. C.T.’s teacher shared that his behavior had shown some improvement. And although she struggled to gain C.T.’s trust and observed some worsening in his behavior after summer break, she testified his “physical aggression is not fundamentally different

from his peers.” Further, she partly blamed his IEP for any deterioration because it was not tailored to help him succeed in Silas Willard’s EBD classroom during the “stay put” period.

Testimony also provided context and corrected information on the benefits of a one-on-one aide. The district court heard from expert witnesses who had not testified at the administrative hearing. For one, C.T.’s new occupational therapist, after observing him in the EBD classroom, reported that staff were often distracted by other students’ needs and spent more time documenting his behaviors than they did assisting him. Because of this, C.T.’s occupational therapist opined that C.T. was not receiving the individualized help he needed. For another, C.T.’s private counselor testified that a one-on-one aide could effectively implement recommended interventions, helping C.T. to stay on task and regulate his emotions before they escalate to a behavioral incident. In contradiction to evidence before the hearing officer, the district court learned that other students at Silas Willard had been provided one-on-one aides.

In December 2024, the district court reversed the hearing officer’s decision. After a review of the full record—consisting of the administrative hearing record, the hearing officer’s opinion, and evidence adduced at the bench trial—the court found it “more likely than not... that C.T. can receive a satisfactory education in [Silas Willard’s] EBD classroom with additional interventions.” In support of its ruling, the court found that since the administrative hearing, C.T. had made “significant progress,” developed positive

relationships, and would benefit from a one-on-one aide in the EBD classroom. So, to the court, the school district's placement at High Road's therapeutic day school violated the IDEA's LRE provision. The court thus ordered the school district to "create an appropriate" IEP to educate C.T. in Silas Willard's EBD classroom. The school district appeals.

III. Discussion

Our analysis proceeds in three parts. First, we discuss the standard of review that courts of appeals apply when evaluating claims under the IDEA. Second, based on that discussion, the issues of law raised in this case are evaluated. Third, finding no mistakes of law, we move to the district court's ultimate decision that the school district violated the Act's least restrictive environment provision. Mindful of the deference owed to the professional educators who crafted C.T.'s individualized education plan, we conclude that the district court committed no clear error.

A. Standard of Review

In the briefs and at oral argument, there was some confusion about the applicable standard of review. This is understandable. The classic articulation, repeated often but rarely explained, is not a picture of clarity: "Although we review the school [district]'s ultimate decision *de novo* because it is a mixed question of law and fact, we will reverse only if the district court's findings were clearly erroneous, absent a mistake of law." *Beth B.*, 282 F.3d at 496

(citing *Bd. of Educ. of LaGrange Sch. Dist. No. 105 v. Ill. State Bd. of Educ.*, 184 F.3d 912, 915 (7th Cir. 1999)). An apparent tension exists in this formulation between reviewing de novo and reversing only for clear error.

Adding to the confusion, more recent cases simplify the standard of review without quoting the older language. *See, e.g., Alex R.*, 375 F.3d at 612 (“On appeal, our review of questions of law is plenary and our review of the district court’s findings of fact is for clear error.”) (citing *Beth B.*, 282 F.3d at 496); *Bd. of Educ. of Twp. High Sch. Dist. No. 211 v. Ross*, 486 F.3d 267, 270 (7th Cir. 2007) (“[W]e should review the... district court’s findings of fact deferentially. We will reverse only if those findings are clearly erroneous.... We review questions of law, as usual, *de novo*.”). For all that, this updated language leaves unclear whether the ultimate decision—law applied to fact—is a question of law or a finding of fact.

This court’s caselaw harmonizes the apparent tension in two ways. First, only pure questions of law are reviewed de novo. An example is whether a district court applied the wrong standard. *See, e.g., Beth B.*, 282 F.3d at 497 (reviewing “as a matter of law” whether the wrong substantive standard for evaluating the LRE was applied); *Alex R.*, 375 F.3d at 612–13 (reviewing as an issue of law “whether the district court applied the correct legal standard in determining whether Alex received an adequate IEP” (citation modified)). Second, the district court’s underlying factual findings and ultimate decision concerning statutory compliance—law applied to

fact—are reviewed for clear error. *See id.* at 612, 615–16, 618 (treating the district court’s decision on whether an IEP complied with the FAPE and LRE provisions as a finding of fact reviewed for clear error); *Ross*, 486 F.3d at 270, 276–78 (same).

This aligns with how mixed questions of law and fact are generally reviewed. *See, e.g., United States v. Vivirito*, 65 F.4th 341, 343 (7th Cir. 2023) (“A district judge’s handling of a mixed question usually is reviewed deferentially, even when that decision resolves the ultimate issue in a case.”). Yet “[m]ixed questions are not all alike.” *See U.S. Bank N.A. v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 395–96 (2018). Which standard to apply in reviewing a mixed question depends on “whether answering it entails primarily legal or factual work.” *Id.* at 396. When answering a mixed question requires courts to “expound on the law” and develop “auxiliary legal principles of use in other cases,” review should be *de novo*. *Id.* But for other mixed questions that “immerse courts in case-specific factual issues—compelling them to marshal and weigh evidence [and] make credibility judgments,” the district court’s decision is reviewed with “deference.” *Id.*

The mixed question here is case-specific and primarily entails factual work. True, when courts do not receive additional evidence in IDEA cases, the district court and the appellate court review the administrative record, findings, and decision from the same evidentiary vantage point. But when additional evidence is considered by the district court, as here, that court exercises discretion in admitting that

evidence, assesses the credibility and persuasiveness of witnesses in person, weighs the evidence on the full record, and bases its decision on the preponderance of the evidence. *See Monticello Sch. Dist. No. 25 v. George L.*, 102 F.3d 895, 901 (7th Cir. 1996). In this way, the district court resolves factual disputes and is closer to the evidence than the appellate court. For such fact-intensive determinations, de novo review would be inappropriate. *See Vill. at Lakeridge*, 583 U.S. at 395–96. So, especially when the district court hears additional evidence, we show deference to its decision and reverse only for clear error.

We proceed next to pure issues of law, which as just discussed are reviewed de novo.

B. Issues of Law

The school district argues that the district court made three mistakes of law. One concerns deference owed to the administrative decision. A second is about how evidence is weighed. As for the third, the school district characterizes the district court’s ultimate decision as an issue of law: “[T]he District Court erred as a matter of law when applying the IDEA’s LRE mandate to the facts of this case.” But because we review that decision for clear error, we discuss it in a separate section. *See infra* III.C.

1. Due weight

The school district submits that the district court failed to give “due weight” to the hearing officer’s findings and decision. On legal issues, hearing officers

receive no deference. *Alex R.*, 375 F.3d at 611. On issues of fact, the district court independently evaluates the witnesses and evidence, and it must accord “due weight” to the hearing officer’s findings and decision. *See id.* at 612 (citing *Rowley*, 458 U.S. at 206); *see also Beth B.*, 282 F.3d at 497. This “due weight” requirement arrives as a gloss on the statutory text, which the Supreme Court inferred from Congress’s choice to have courts “receive the records of [state] administrative proceedings.” *Alex R.*, 375 F.3d at 612 (citing *Rowley*, 458 U.S. at 206).

The meaning of due weight “varies from case to case.” *Id.* When a district court receives no new evidence and relies solely on the administrative record, “due weight” means “clear error” or “substantial evidence.” *Sch. Dist. of Wis. Dells v. Z.S.*, 295 F.3d 671, 674–75 (7th Cir. 2002) (treating “clear error” and “substantial evidence” as functionally the same, given the judicial mind’s inability to make such fine distinctions, and collecting cases); *Alex R.*, 375 F.3d at 612 (“This level of review is akin to the standards of clear error or substantial evidence.”).

But when the district court receives additional evidence, due weight is evaluated on a “sliding scale.” *Z.S.*, 295 F.3d at 675. The “more that the district court relies on new evidence... the less it should defer to the administrative decision: ‘[j]udicial review is more searching the greater the amount (weighted by significance) of the evidence that the court has but the agency did not have.’” *Alex R.*, 375 F.3d at 612 (quoting *Z.S.*, 295 F.3d at 675). At the “opposite extreme” from cases with no new evidence, “the administrative

decision is relatively less important and the district court effectively acts as the factfinder.” *Id.*

In evaluating legal issues on a sliding scale, case analogies and distinctions become particularly instructive. Take *Alex R.* There, as here, both parties “adduced new evidence.” 375 F.3d at 613. The parents submitted a newspaper article and “extensive affidavits” from various witnesses. *Id.* The school district presented several IEPs and “supporting documents,” along with an affidavit from a building administrator. *Id.* at 613–14. This court thus concluded “(1) that this case is close to the end of the spectrum at which the hearing officer was entitled to much less deference and (2) that the district court did not err by giving the hearing officer’s findings and decision insufficient weight.” *Id.* at 614.

In reaching that result, this court reasoned that the “new evidence” was “a significant part of the total record before the district court” in sheer “amount.” It was also “very important” to the court’s decision. *Id.* Moreover, this court emphasized that the district court had “specifically noted that it reviewed both the administrative record and the evidence put forth for the first time before [it].” *Id.*

This case is like *Alex R.* The district court here received a significant amount of material evidence that the hearing officer had not considered. It conducted a bench trial with seven witnesses and more exhibits. The new testimony included post-hearing developments that, to the district court, “impacted both C.T.’s behavior and educational setting.” New ex-

perts also opined on C.T.'s experience in the EBD classroom and his need for the individualized support of a one-on-one aide. As in *Alex. R.*, the new evidence in this case was "a significant part of the total record before the district court." *Id.*

Further, the new evidence was "very important" to the district court's findings and decision. *Id.* Several pages of its opinion were dedicated to this testimony. In evaluating its significance, the court found "[C.T.'s] parents, along with the private professionals involved in his care, credibly and persuasively advocate[d] for a one-on-one aide." Moreover, in the court's view, the school district's witnesses did not "contest these opinions *per se*," but merely repeated their testimony from the administrative hearing that C.T. had enough attention and would not benefit from a one-on-one aide. The court found this "[in]sufficiently address[ed] the need for this level of individualized support."

Moreover, as in *Alex R.*, the district court said it reviewed both the administrative record and the new evidence before reaching a decision based on the preponderance of the evidence. *See id.* The court articulated the correct standard of review, expressly acknowledging the "due weight" owed to the hearing officer's findings and decision. And in the end, the court's decision that C.T. could receive a satisfactory education in the EBD classroom with additional reasonable measures, including a one-on-one aide, relied heavily on posthearing developments and new expert testimony not reviewed by the hearing officer. So, the reasoning from *Alex R.* controls. The hearing officer's findings and decision in this case are entitled

to less deference, and the district court did not err by giving them the weight it did.

The school district disagrees, likening this case to *Z.S.* There, this court concluded that additional evidence received by the district court was “[im]material” and “seems not to have played a significant role in the district court’s decision.” *Z.S.*, 295 F.3d at 675–76. That case was thus “near the bottom of this sliding scale” and “essentially a no-new-evidence case,” so it was subject to clear error or substantial evidence review. *Id.* Yet the district court’s opinion in *Z.S.* “contain[ed] language” suggesting it did the “forbidden and, despite not having taken material new evidence, made an ‘independent’ determination that the school district had not violated the IDEA.” *Id.* at 676. In *Z.S.* the district court thus applied “the wrong standard of review” as a matter of law. *Id.*

Z.S. is inapposite. Here, the additional evidence was material, significant in amount, and important to the district court’s reasoning and conclusion. For similar reasons, *Ross* is also distinguishable. There, the district court heard “some additional testimony,” *Ross*, 486 F.3d at 273, but it was an insignificant part of the record relative to the vast administrative proceedings. The hearing officer in *Ross* had “heard testimony for 42 days,” making it the “longest special education due process hearing in Illinois history.” *Id.* Moreover, the new evidence was not important to the district court’s decision, which “rel[ied] heavily on the hearing officer’s decision.” *Id.* at 277. Like *Z.S.*, *Ross* was functionally a no-new-evidence case, meaning the

standard of review was for clear error or substantial evidence. *Id.* Not so here. For these reasons, the district court did not err as a matter of law by failing to accord significant weight to the results of the administrative proceedings.

2. *Trial de novo*

The school district next asserts that, by placing too much weight on new evidence from the bench trial, the district court conducted an impermissible trial de novo. For support, the school district cites to language in *Monticello*. There, after acknowledging the district court’s discretion to allow additional evidence under § 1415(i)(2)(C), this court cautioned that judges “must be careful not to allow such evidence to change the character of the hearing from one of review to a trial *de novo*.” *Monticello*, 102 F.3d at 901 (quotation omitted). But this language from *Monticello* and subsequent cases concerns whether the district court abused its discretion by *admitting* too much additional evidence, not by *weighing* it improperly once admitted. *Id.* at 901–02; *see, e.g., Patricia P. v. Bd. of Educ. of Oak Park*, 203 F.3d 462, 469–70 (7th Cir. 2000). In this way, the school district overreads *Monticello*. Yet there is no need to do so; parties can challenge how evidence is weighed by asserting a court’s failure to accord “due weight” or by showing clear error. So, the school district’s trial de novo argument must be rejected.²

² As for challenging discretionary decisions about admitting evidence, at the bench trial the school district objected to only one expert witness’s testimony. In its briefing, the school district recounts this objection without developing an argument for abuse

* * *

Because the district court committed no mistakes of law, we proceed to its ultimate determination—that the school district’s placement of C.T. at High Road’s therapeutic day school violated his right to be educated in the least restrictive environment. That decision can be reversed only if clearly erroneous, though we remain mindful of the deference owed to professional educators.

C. Least Restrictive Environment

Recall that in enacting the LRE provision of the Act, Congress expressed a strong preference for mainstreaming. Students with disabilities cannot be removed from the “regular education environment” and placed into “special classes,” “separate schooling,” or other options, unless “the nature or severity of the disability... is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 U.S.C. § 1412(a)(5)(A). And when a student is placed elsewhere on the “continuum of alternative placements,” 34 CFR § 300.115, states must select the placement that mainstreams the child to the “maximum extent appropriate.” 20 U.S.C. § 1412(a)(5)(A).

The implementing regulations add relevant guidance, too. When “selecting the LRE,” school

of discretion. That challenge is thus waived. *See Bradley v. Village of University Park*, 59 F.4th 887, 897 (7th Cir. 2023).

districts must consider “any potential harmful effect on the child or on the quality of services” needed. 34 CFR § 300.116(d). The placement must be “as close as possible” to the child’s “home.” 34 CFR § 300.116(b)(3). It must be “in the school that he would attend if nondisabled,” unless the child’s IEP requires otherwise. 34 CFR § 300.116(c). And states must provide a disabled child reverse mainstreaming opportunities—that is, nonacademic and extracurricular activities alongside non-disabled peers—to the “maximum extent appropriate to the needs of that child.” 34 CFR § 300.117; *see also* § 300.107.

But the preference for mainstreaming students with disabilities is not absolute. The Supreme Court has yet to interpret the LRE provision, but it has noted that the Act’s use of “appropriate” in 20 U.S.C. § 1412(a)(5)(A) “seems to reflect Congress’ recognition that some settings simply are not suitable environments for the participation of some handicapped children.” *Rowley*, 458 U.S. at 197 n.21.

1. Framework for evaluating the LRE

Without much guidance, nearly every circuit has adopted a multi-factor test.³ This court has

³ The Fourth, Sixth, and Eighth Circuits employ a feasibility test, asking whether the services that make the segregated placement superior could be feasibly provided in the non-segregated setting. If so, the benefits of both settings, the child’s disruptive effect, and the costs of mainstreaming are weighed. *Roncker v. Walter*, 700 F.2d 1058, 1063 (6th Cir. 1983);

consistently avoided doing so. See *Lachman v. Ill. State Bd. of Educ.*, 852 F.2d 290, 294–96 (7th Cir. 1988); *Bd. of Educ. of Murphysboro Cmty. Unit Sch. Dist. No. 186 v. Ill. State Bd. of Educ.*, 41 F.3d 1162, 1168 (7th Cir. 1994); *Monticello*, 102 F.3d at 906; *LaGrange*, 184 F.3d at 916–17. As explained in *Beth B.*, “the Act itself provides enough of a framework for our discussion.” 282 F.3d at 499.

That “framework” has two steps: At step one, the question is whether the child received a satisfactory education in the regular classroom, or could receive one with additional reasonable measures. If the answer is yes, then removal from the regular classroom violates the Act. If the answer is no, the inquiry at step two is whether the new placement

A.W. v. Nw. R-1 Sch. Dist., 813 F.2d 158 (8th Cir. 1987); *DeVries v. Fairfax Cty. Sch. Bd.*, 882 F.2d 876 (4th Cir. 1989). The Fifth Circuit, viewing the feasibility test as too intrusive on educational-policy choices, adopted a two-step test: courts ask (1) whether the education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily for the child; and, if not, (2) whether the school’s new placement mainstreams the child to the maximum extent appropriate. *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1048 (5th Cir. 1989). Each step involves a factor-based, “individualized, fact-specific inquiry” into each child and the school’s response. *Id.*; see also *Greer v. Rome City Sch. Dist.*, 950 F.2d 688 (11th Cir. 1991); *Oberti v. Bd. of Educ. of Borough of Clementon Sch. Dist.*, 995 F.2d 1204 (3d Cir. 1993); *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966 (10th Cir. 2004); *P. ex rel. Mr. and Mrs. P. v. Newington Bd. of Educ.*, 546 F.3d 111 (2d Cir. 2008). The Ninth Circuit chose a pure balancing approach that draws on factors from both tests. *Sacramento City Unified Sch. Dist. v. Rachel H.*, 14 F.3d 1398, 1403–04 (9th Cir. 1994).

mainstreams the child to the maximum extent appropriate. *Id.*; *Ross*, 486 F.3d at 277.

In *Beth B.*, this court said step one “demands a hard look and a careful analysis of the education” the student was receiving in the regular education classroom. 282 F.3d at 498. Without listing specific factors, the court’s “hard look” focused largely on Beth’s virtually nonexistent “academic progress” and minimal “developmental progress.” *Id.* at 499. A “modicum of developmental achievement,” the court held, “does not constitute a satisfactory education.” *Id.* At step two, this court concluded that “so long as [the special education classroom] includes reverse mainstreaming opportunities” it is at an “acceptable point along the ‘continuum of services’ between total integration and complete segregation” and mainstreams Beth to the maximum extent appropriate. *Id.* (citations omitted).

In *Ross*, this court affirmed the district court’s determination that the child was not receiving a satisfactory education in the regular classroom. 486 F.3d at 270, 276–78. There, the district court had found that the child was “not making meaningful progress,” possessed “minimal” ability to interact with peers, spent little time in class, and displayed aggressive and violent behaviors that were “disruptive” to others in the regular classroom. *Id.* at 277–78. On appeal, this court emphasized the deference owed to the district court’s “findings of fact” and “conclusion,” making it “easy” to affirm. *Id.* at 270, 277–78. At step two, the court concluded that the new placement mainstreamed the child appropriately.

under the Act. *Id.* at 277–78 (“[T]he recommended placement school[] present[s] ‘reverse mainstreaming opportunities,’ which allow for integration into the regular education environment and periodic interaction with nondisabled students.”)

The concern about “meaningful progress” has aged well. More recently, the Supreme Court held that an IEP makes available an “appropriate” education—for purposes of the Act’s free appropriate public education requirement (FAPE)—as long as it is “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). The inquiry of *Endrew F.* differs from the inquiry into the LRE, but it is instructive. If the education a child receives in the regular education environment, or could receive with additional reasonable measures, does not result in “progress appropriate in light of the child’s circumstances,” it is not satisfactory, so removal would not violate the Act.⁴ Beyond the concern for

⁴ With FAPE claims, courts review only whether the “prospective judgment by school officials” expressed in an IEP was “reasonably calculated” to enable progress for the individual child. There is no “guarantee” of “any particular [educational] outcome.” *Endrew F.*, 580 U.S. at 398. In that context, only the prospective judgment is reviewed for compliance with the Act. And it is not limited to the regular classroom but applies to any placement.

By contrast, the hard look at whether a child receives a “satisfactory education” for LRE purposes focuses on the regular classroom. It is also retrospective and, in some cases, prospective. It looks back at the education the child has been receiving in the

progress, our circuit has resisted supplying a definition of “satisfactory education” or a list of factors for evaluating it. And although comparisons to *Beth B.* and *Ross* are helpful, each child is different and requires an individualized, fact-specific inquiry when evaluating the LRE.

2. *Satisfactory education*

At every stage, the parties, hearing officer, and district court assumed the LRE analysis in this case begins at step one. That is not exactly correct. Step one asks whether the child can be removed from the *regular* classroom and placed into some form of segregated *special* education. 20 U.S.C. § 1412(a)(5)(A). But by mutual agreement between his parents and the school district, C.T. has already been removed from general education and placed in the segregated EBD classroom. His parents hope to keep him there. But where to place C.T. on the “continuum” of alternative placements is a step two question. So, if High Road mainstreams C.T. to the maximum extent appropriate, the IDEA does not prevent this new placement.

regular classroom under his IEP (retrospective), but if not satisfactory, it also assesses whether it could be made satisfactory with additional reasonable measures (prospective). And unlike the FAPE inquiry, if the LRE analysis at step one shows an education is not and could not be achieved satisfactorily, that does not violate the Act. Just the opposite. It means the removal was not a violation, and the analysis proceeds to step two of the framework in *Beth B.* and *Ross*.

As far as placements go, High Road is as restrictive as a placement can be. Per C.T.'s IEP, that school enrolls exclusively students with disabilities and has no mainstreaming or reverse mainstreaming opportunities. It is not the school C.T. would attend if not disabled, and it is much farther from C.T.'s home. The only potential harm considered in the IEP was the lack of mainstreaming, but the district court heard testimony of various ways the placement could negatively impact C.T.'s development. By contrast, the EBD classroom mainstreams C.T. to a greater extent and is less restrictive. So, the Act requires that C.T. remain in the EBD classroom as long as it would be "appropriate."

In this case, in which one placement on the continuum of alternative placements is in a different school district and is significantly more restrictive than another, steps one and two dovetail. *See, e.g., S.H. v. State-Operated Sch. Dist. of City of Newark*, 336 F.3d 260, 272 (3d Cir. 2003) ("[T]he LRE would ideally be the same school the child would have attended if [he] were not disabled... [but] such placement is only appropriate to the extent that it 'satisfactorily educates' the disabled child."). Inquiring into the appropriateness of the EBD classroom requires a fact-intensive, careful examination of the education C.T. has received or could receive there with additional reasonable measures. So, in this case, we treat this inquiry like the "hard look" at step one.

In the school district's view, an EBD classroom cannot provide C.T. with a "satisfactory education." Yet after conducting a bench trial and reviewing the

full record, the district court determined otherwise, finding it “more likely than not... that C.T. can receive a satisfactory education in [Silas Willard’s] EBD classroom with additional interventions.”

For support, the district court found that, in the time between the administrative hearing and the bench trial, C.T. made “significant progress” and formed “positive relationships” in the EBD classroom. The court observed that by March 2024, C.T. had reached a behavioral goal in his IEP that he was not expected to reach until December 2024. Moreover, C.T.’s math and reading standardized test scores improved dramatically. Tweaks in C.T.’s medication regimen, the court noted, had resulted in positive outcomes, and his private counselor testified to improving emotional regulation. As to positive relationships, C.T.’s mother testified to his friendships in the EBD classroom and shared that C.T. perceives his teacher as supportive and as the only one who has not given up on him yet. C.T.’s new occupational therapist, who made a short observational visit to the EBD classroom, reported that C.T. joked around playfully with his classmates.

The district court also found that C.T. would benefit from a one-on-one aide. C.T.’s new occupational therapist further testified that staff were often distracted by other students’ needs and spent more time documenting C.T.’s behaviors than assisting him. A private counselor testified that a one-on-one aide could effectively implement recommended interventions, which could help C.T. stay on task and regulate his emotions. The court also learned, contrary

to what was told to the hearing officer, that other students at Silas Willard received one-on-one aides. And in evaluating this testimony, the court found “[C.T.’s] parents, along with the private professionals involved in his care, credibly and persuasively advocate[d] for a one-on-one aide.”

Finally, the district court was sensitive to the timing of C.T.’s change in placement. The school district recommended a new placement only three weeks after C.T. joined the EBD classroom, before he had a chance to receive an education under an IEP tailored to enable progress in light of his individual circumstances. The school district warns that considering this factor will have unintended consequences and negative precedential effects. Schools, they argue, will not be able to appropriately place students in more restrictive learning environments unless, and until, they exhaust every possible measure. But each case, like each student, is different. In evaluating whether a student could receive a satisfactory education, a district court can at least consider the absence of meaningful evaluation of a student’s performance under an adequate IEP.

In the school district’s view, the district court ignored evidence and relevant considerations. It points to the “full scope” of C.T.’s behavioral issues and their disruptive effect, reductions in C.T.’s academic workload to avoid frustration, his worsening behavior after summer break, and testimony that C.T.’s teacher struggled to build trust with him. Yet, C.T.’s teacher testified that his “physical aggression is not fundamentally different from his peers.” Reductions in

workload are part and parcel of the EBD classroom accommodation, and it seemed to work because C.T. made improvements. As for deterioration, C.T.'s teacher partly blamed his IEP, which was not designed to help him succeed in the EBD classroom. And the court took that seriously. In short, after our careful review of the record, we find no clear error and thus do not reverse.

3. *Deference to Professional Educators*

The school district also argues the district court failed to defer to professional educators who crafted C.T.'s IEP. On this point, the Supreme Court acknowledged—when interpreting the Act's FAPE provision—that judicial review is not “an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.” *Rowley*, 458 U.S. at 206. This court interpreted that language from *Rowley* to mean that IEPs are reviewed for reasonableness. *Z.S.*, 295 F.3d at 676 (citing *Rowley*, 458 U.S. at 206–07) (“The critical issue... was whether the school administrators were unreasonable.”); *Ross*, 486 F.3d at 278 (“[W]e cannot undertake an independent assessment... we can only decide whether the hearing officer... came to a rational conclusion.”).

The Supreme Court has since clarified the meaning of this language, again in the FAPE context. Deference to decisions made in an IEP, the Court explained, derives from the “application of expertise and the exercise of judgment by school authorities.” *Endrew F.*, 580 U.S. at 404. But given the nature of

the IEP process, “respective opinions” will be “fully air[ed].” *Id.* And by the time a “dispute reaches court,” school authorities will have had a “complete opportunity to bring their expertise and judgment to bear on areas of disagreement.” *Id.* So, reviewing courts may “fairly expect” those authorities to offer a “cogent and responsive explanation for their decisions.” *Id.* Though district courts may not substitute their own views, they need not accept rational explanations that lack cogency and responsiveness to other views.

Given this clarification, the district court did not substitute its own views or fail to defer to professional educators on educational issues. The point of an IEP is to make goals easily measurable. A court is as equipped as professional educators to evaluate fact questions under an IEP, such as progress towards goals, relationship formation, and whether a child gets along with others.

Even when deference was owed, the district court gave it. Assessing the severity of C.T.’s disruptive effect in the EBD classroom, for example, involves some expertise. But on this point, the court heard conflicting testimony from the professional educators. C.T.’s teacher testified that his behavior was no worse than the other students in the EBD classroom. By crediting testimony from one professional educator over another, the district court did not fail to accord deference.

Evaluating additional reasonable measures, like a one-on-one aide, also implicates expertise. Yet, the district court found explanations for why C.T. did not

need a one-on-one aide wanting for cogency and responsiveness. After C.T.'s private experts opined on the benefits of a one-on-one aide, the district court found that the school's witnesses repeated their views from the administrative hearing without "contest[ing] [opposing] opinions *per se*." These explanations also differed from the initial reason given by the IEP team. Finally, the school district did not explain why other children at Silas Willard received one-on-one aides or how their individual needs differed from C.T.'s. This made the decision to deny C.T. such dedicated support look arbitrary.

IV. Conclusion

The district court held that the school district's placement of C.T. at High Road's therapeutic day school violated the IDEA's least restrictive environment requirement. In reaching this conclusion, the district court made no mistakes of law. Nor did it clearly err in its factual findings or in concluding that C.T. can receive a satisfactory education in Silas Willard's EBD classroom with additional reasonable measures, like a one-on-one aide.

AFFIRMED

APPENDIX B

**IN THE
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION**

[DATE STAMP]

E-FILED

Friday, 06 December 2024

01:01:32 PM

Clerk, U.S. District Court, ILCD

N.T. and P.T., Individually and as
Parent and Next Friend of C.T.,
Plaintiff,

v.

GALESBURG COMMUNITY UNIT
SCHOOL DISTRICT NO. 205,
Defendant.

Case No. 4:24-cv-04124-JEH

Order and Opinion

Plaintiffs N.T. and P.T., on behalf of themselves and on behalf of their minor child, C.T., seek judicial review of an administrative ruling in favor of Galesburg Community Unit School District No. 205, following a special-education due process hearing pursuant to the Individuals with Disabilities

Education Act ("IDEA"), 20 U.S.C. §§ 1401-1409. The Court received the administrative record and held a bench trial on October 21, 2024, to receive additional evidence. The parties have filed post-trial briefings, including cross-responses. For the reasons that follow, the Court reverses the administrative ruling below.

I.

A.

The IDEA provides states with funding for special education services in return for their pledge to provide students with disabilities a free and appropriate public education. 20 U.S.C. § 1412(a)(1). A free and appropriate public education includes "specially designed instruction... to meet the unique needs of a child with a disability" along with support services "required to assist a child... to benefit from" that instruction. *Id.* § 1401(9), (26), (29). The IDEA requires states to deliver free and appropriate public education through an Individualized Educational Program ("IEP") tailored to the needs of each eligible student, *id.* § 1414(d), which is drafted by various stakeholders on an IEP team, *see id.* § 1414(d)(1)(B).

When parents are dissatisfied with any aspect of the educational services provided to their child, the IDEA authorizes them to pursue an administrative remedy and then civil remedy, if necessary. 20 U.S.C. §§ 1415(b)(6), (f)(1)(A), (i)(2)(A). During the pendency of administrative and civil proceedings, the statute permits parents to ensure that their child's educational placement is not disrupted by invoking the

statute's "stay put" provision. *Id.* § 14150); 34 C.F.R. § 300.518(a).

B.

C.T. is a seven-year-old child, diagnosed with attention deficit hyperactivity disorder ("ADHD"), anxiety, sensory disturbance, and other challenges. C.T. exhibits strengths in math, vocabulary, and motor skills, but struggles with attention and emotional regulation. His behavioral issues include aggression, eloping from the classroom, work refusal, and challenging interactions with peers and supervising adults, prompting significant intervention from the school and district staff.

In kindergarten, C.T. initially attended Silas Willard Elementary, his local school, before transferring to King Elementary in early 2023 at his family's request. In October 2023, a Functional Behavior Assessment was conducted, identifying physical aggression, disruptive behavior, and elopement as primary challenges. The resulting Behavior Intervention Plan was monitored by C.T.'s teacher and the school's Behavior Interventionist, but daily behavioral incidents continued, sometimes resulting in injuries to staff.

In November 2023, C.T. returned to Silas Willard Elementary, entering a self-contained classroom for students with emotional and behavioral disorders ("EBD") per a mediation agreement. C.T.'s classroom included seven students and three adult staff members (one special education teacher and two

paraprofessional aides). The EBD classroom provided C.T. with embedded social skills training and therapeutic activities comprising about 75% of his day. Despite these supports, C.T. made limited progress. C.T. required substantial adult support, though the District declined to provide a dedicated 1:1 aide, citing the need for C.T. to learn self-regulation skills and request assistance appropriately.

In December 2023, an IEP was developed for C.T., which provided functional behavior and social work goals, as well as indirect occupational therapy services, direct social work services, and a Behavior Intervention Plan. The IEP specified C.T.'s placement in a therapeutic day school-High Road School of Peoria -which offers a small, high-ratio classroom environment with embedded social-emotional learning, a dedicated behavior interventionist, and a weekly onsite board-certified behavior analyst.

The District determined that C.T.'s therapeutic needs exceed what can be provided at Silas Willard Elementary. Specifically, it maintained that the school's EBD classroom was not sufficiently equipped to meet C.T.'s behavioral needs as his significant behaviors restricted both his academic engagement and social interactions. The District believed that High Road's therapeutic model would allow more intensive behavioral interventions than the EBD classroom, addressing C.T.'s need for a structured environment to support replacement behaviors. Additionally, the District determined that a placement at High Road would be feasible for C.T., given the school's dedicated bus with a monitor to assist during the 45-minute

commute.

Following the December 2023 IEP, C.T.'s parents requested a due process hearing, where they challenged the District's IDEA compliance and argued that the District's placement process lacked adequate assessment of potential in-district supports, such as assigning a 1:1 paraprofessional, expert behavior supports from a board-certified behavior analyst, and occupational therapy supports for C.T.'s sensory needs. They also maintained that High Road did not represent the least restrictive environment, highlighting concerns about the lack of integration with non-disabled peers and the long commute.

Following a March-April 2024 hearing, an impartial hearing officer ruled that the District had met its obligations under IDEA, affirming that High Road, or a similar therapeutic setting, was appropriate based on C.T.'s needs and ongoing behavioral challenges. The ruling also determined that, in light of the severity of C.T.'s behaviors, High Road constituted the least restrictive environment where he could receive a free and appropriate public education, while receiving the intensive, structured support necessary for both behavioral and academic progress.

More specifically, and as relevant here, the impartial hearing officer found that: "[C.T.] does not require a dedicated one-to-one aide, " which "does not allow a student with behavioral difficulties to learn to appropriately request assistance and attention from others." (Doc. 7 at 9, ¶ 18.) "[C.T.] does not require direct related services from a Speech Language

Pathologist in order to meet his needs related to his mild social pragmatic language disorder. A school social worker can provide the required services and [C.T.] has an IEP goal and direct social work service minutes related to same." (*Id.* at 10-11, ¶ 23.) And, "[C.T.] does not require direct occupational therapy services. [His] sensory processing and emotional regulation issues require tools that he can use on a day-to-day basis in the classroom. This can be accomplished through occupational therapy consult services in conjunction with direct social work services." (*Id.* at 10-11, ¶ 24.)

C.

On July 15, 2024, C.T.'s parents filed a complaint in this Court, seeking judicial review of the administrative ruling below. The Parents ask the Court to supplement the administrative record and hear additional evidence, overturn the administrative ruling on the finding of IDEA compliance, and order the District to provide C.T. with an appropriate IEP to be implemented at Silas Willard Elementary that includes at least a 1:1 paraprofessional, expert behavior supports from a board-certified behavior analyst, and occupational therapy supports for sensory needs.

As a result of the Parents' application for review, C.T. remained at Silas Willard Elementary pursuant to a "stay put" provision of the IDEA. 20 U.S.C. § 1415(j) (during a dispute "the child shall remain in the then-current educational placement of the child"); *see also Casey K. v. St. Anne C. High S.D.* No. 302, 400

F.3d 508, 511 (7th Cir. 2005) (the stay-put requirement operates as "an automatic statutory injunction" against changing the placement of a child).

On October 21, 2024, the Court held a bench trial to receive additional evidence.¹ Several witnesses testified at the trial, including: the Parents, A.L. (a new occupational therapist for Plaintiffs), T.E. (C.T.'s private counselor), L.G. (C.T.'s classroom teacher), P.T. (a paraprofessional working in C.T.'s classroom), and A.F. (the District's Behavior Interventionalist).

The Court received additional evidence as follows: Since the administrative ruling, several developments have impacted both C.T.'s behavior and educational setting. C.T. has continued receiving speech therapy, occupational therapy, and counseling, although his schooling has been intermittently disrupted by suspensions, the summer break, and a period of remote learning. Adjustments to his medication regimen, including an additional mid-day dose for ADHD, have led to positive outcomes. Additionally, a new paraprofessional, R.G., familiar to C.T. from prior years, replaced an aide in his classroom, and two students recently left the District, reducing classroom disruptions.

¹ The parties consented to have the matter heard and decided by the undersigned, who was then a United States Magistrate Judge. On November 15, 2024, the undersigned became a United States District. Subsequently, the parties' motion to withdraw their consent to a magistrate judge was granted, which eventually led to this being assigned to the undersigned as a United States District Judge.

C.T.'s father described him as a bright, witty, and generous child with an "old soul." He highlighted C.T.'s struggles with focus and emphasized the importance of stability for his comfort and learning. He maintained that C.T.'s familiarity with his environment is crucial for his continued progress. The father also noted that recent changes to C.T.'s medication have been beneficial and strongly advocated for keeping C.T. at Silas Willard Elementary, the school he knows and likes.

C.T.'s mother provided additional insights into the family's perspective. She explained in detail the adjustments to C.T.'s ADHD medication and the resulting improvements in his behavior. She also emphasized the benefits of keeping C.T. at Silas Willard Elementary, citing its close proximity to their home, his established friendships, and his positive relationship with his teacher, L.G., whom C.T. perceives as supportive. She pointed out that the District has provided other students with 1:1 aides and suggested that a similar level of individualized support could help C.T. succeed.

A.L., a private occupational therapist, observed C.T.'s classroom environment and shared insights into the challenges C. T. faces in maintaining focus. During his observation, he noted that, while C.T. worked with an aide for about ten minutes, much of the interaction was interrupted as the aide turned attention to other students. He also identified physical challenges, such as C.T.'s feet not touching the ground while seated, which exacerbates ADHD-related difficulties. The private occupational therapist opined that C.T. has

significant difficulty sustaining attention on tasks and that more consistent and individualized support, such as a 1:1 aide, could address these challenges effectively.

T.E., a private counselor who has worked with C.T. weekly since January 2024, testified to his progress in emotional regulation and noted his unique abilities as a "dual-task" child with higher cognitive skills than many of his peers. She recommended specific interventions, such as additional verbal and visual cues, breathing exercises, and task breakdowns, which could be facilitated by a 1:1 aide with specialized training. She also raised concerns about the potential disruption of changing schools, emphasizing that such a transition could negatively affect C.T.'s progress.

L.G., C.T.'s classroom teacher, testified to some improvement in C.T.'s behavior as of March 2024, but noted that his behavioral intensity worsened after the summer break. She highlighted challenges in forming a trusting relationship with him, attributing this in part to the lack of changes to his IEP or behavioral plan during the fall semester. L.G. acknowledged that C.T.'s physical aggression is not fundamentally different from his peers, but noted that its intensity has increased this year, making it more difficult to manage.

Additional testimony from paraprofessional L.L. and District Behavior Interventionist A.F. highlighted concerns about C.T.'s escalating behaviors and the classroom's approach to managing them. The

paraprofessional observed that C.T.'s behavior has become more extreme and takes longer to de-escalate. While the District Behavior Interventionist acknowledged that providing a 1:1 aide for C.T. is possible, she maintained that it might not be effective given the current level of staff attention C.T. receives.

II.

A.

Under the IDEA, a student with disabilities is entitled to a free and appropriate public education designed by the child's school district to meet his or her particular needs. 20 U.S.C. § 1400(d)(1)(A). The child's IEP is the "primary vehicle" for providing the free appropriate education and, thus, must be personalized to meet the child's educational needs by documenting his or her "levels of academic achievement," specifying "measurable annual goals" to "make progress in the general education curriculum," and listing "special education and related services" the child needs to "advance appropriately toward [those] goals." *Id.* § 1414(d); *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017) (An IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.").

In addition, the IDEA requires that a free and appropriate public education be provided to children with disabilities in the least restrictive environment. See 20 U.S.C. § 1412(a)(1), (5). Specifically, the IDEA provides that: To the maximum extent appropriate,

children with disabilities... are educated with children who are not disabled, and special classes, separate schooling, other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. *Id.* § 1412(a)(5); *see also Beth B. v. Van Clay*, 282 F.3d 493, 498 (7th Cir. 2002) ("children may not be removed from the regular classroom unless their education there... cannot be achieved satisfactorily"). This requirement is known as "mainstreaming." Any placement of a child must be made in conformity with the least-restrictive-environment provisions of the regulations as determined by a "group of persons, including the parents, and other persons knowledgeable about the child, the meaning of evaluation data, and the placement options." 34 C.F.R. § 300.116.

If the parents of a child with disabilities want to challenge whether the child is receiving a free and appropriate public education in the least restrictive environment, they may request a due process hearing. 20 U.S.C. § 1415. Any party aggrieved by the findings and decision made according to the administrative hearing may seek judicial review in the United States district court. *Id.* § 1415(i)(2)(A).

For purposes of judicial review under the IDEA, the district court "(i) shall receive the records of the administrative proceedings; (ii) shall hear additional evidence at the request of a party; and (iii) basing its

decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate." 20 U.S.C. § 1415(i)(2)(C). In carrying out these tasks, federal courts generally recognize their "lack [of] specialized knowledge and experience necessary to resolve persistent and difficult questions of educational policy." *Heather S. v. Wisconsin*, 125 F.3d 1045, 1054 (7th Cir. 1997). Thus, the Court must give "due weight" to the determinations made during the administrative process. *Id.* And, like the impartial hearing officer, the Court is required to "give deference to the opinions of professional educators as regards educational issues," *Brad K. v. Bd. of Educ. of Chicago*, 787 F. Supp. 2d 734, 738 (N.D. Ill. 2011). The party challenging the outcome of the administrative hearing bears the burden of proof. *Alex R. v. Forrestville Valley Cmty. Unit Sch. Dist. # 221*, 375 F.3d 603, 611 (7th Cir. 2004).

B.

Plaintiffs assert that the District violates the IDEA's requirement to provide children with disabilities a free and appropriate public education in failing to implement certain interventions they believe would help C.T. make appropriate progress at Silas Willard Elementary and, instead, placing C.T. at a segregated school in further violation of the IDEA's mainstreaming requirements. Put differently, the core issue before the Court is whether the District's decision to move C.T. from his EBD classroom at Silas Willard Elementary to the therapeutic setting at High Road School-without first properly considering additional supports and services-violated C.T.'s right

to receive a free and appropriate public education in the least restrictive environment under the IDEA.

As to this interplay between the IDEA's requirements (a) that students with disabilities receive a free and appropriate public education and (b) that that education be provided in the least restrictive environment, the Seventh Circuit has observed that they are "two sides of the same IEP coin," in which the latter "shows Congress's strong preference in favor of mainstreaming, but does not require, or even suggest, doing so when the regular classroom setting provides an unsatisfactory education." *Beth B.*, 282 F.3d at 497 (internal citation omitted); *see also* 34 C.F.R. § 300.114(a)(1)(ii) ("Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."). Thus, the ultimate issue is "whether the education in the conventional school was satisfactory and, if not, whether reasonable measures would have made it so." *Bd. of Educ. v. Ross*, 486 F.3d 267, 277 (7th Cir. 2007); *see also Beth B.*, 282 F.3d at 498 (A student "may not be removed from the regular classroom unless their education there, with the use of supplementary aids and services, cannot be achieved satisfactorily.").

In *Beth B.*, the parents of a child with severe disabilities contended that as long as their child derived "some educational benefit" from the general education classroom, the school district was not

justified in removing her from that setting. 282 F.3d at 497-98. The student had spent seven years in general education classrooms, supported by a 1:1 aide and following an individualized curriculum aligned with her peers' lessons. *Id.* at 495-96. As the student prepared to enter seventh grade, the school district proposed transitioning her to a special education program, where she would be mainstreamed for several non-academic classes and participate with peers during lunch, recess, and field trips. *Id.* The Seventh Circuit upheld the placement, based on findings that "[the student's] academic progress was virtually nonexistent and her developmental process was limited, " despite the use of 1:1 aides, communication devices, computerized books, and an individual curriculum. *Id.* at 499, 495. The parents argued that the child benefitted from her time in the regular education setting because she made progress in improving some communication skills. *Id.* at 499. The court rejected the argument, holding that this "modicum of developmental achievement" did not constitute a "satisfactory education," and thus the school district's decision to place her in a special education environment was appropriate. *Id.*

The facts here are not as extreme as those in *Beth B.*, where the student's "academic progress was virtually nonexistent and her developmental progress was limited" after seven years in a general education classroom. *Id.* Unlike *Beth B.*, C.T. has made significant progress at Silas Willard Elementary-even under an IEP that is not specifically designed for this setting. As the evidence shows, for example, after transferring to the EBD classroom at the end of

November 2023, C.T. met his annual goals for behavior progress by early March 2024, i.e., what the District expected him to make in an entire year at High Road School.

More importantly, prior to the decision to remove the student, the school district in *Beth B.* had provided her with a variety of supports and services, including communication devices, computerized books, an individual curriculum, as well as "a one-on-one aide at all times," for almost seven years. *Id.* at 499, 495. The same is not present here, where the District drafted the IEP at issue only three weeks after C.T. began school, has not had the opportunities to revise the IEP, and has never provided C.T. with a 1:1 aide like it has provided other students. The District's reliance on Beth B. to support its decision is thus misplaced. Under the circumstances of this case, Beth B. does not support, let alone warrant, the District's decision to remove C.T. to High Road School.

To the contrary, a careful review of the evidence leads the Court to conclude that it is more likely than not that C.T. can receive a satisfactory education in Silas Willard Elementary's EBD classroom with additional interventions identified by the witnesses, including experts, who have considered and testified as to C.T.'s need for more individualized attention, especially in light of the changes and progress he has made since the administrative ruling. Indeed, the most recent testimonies provided by C.T.'s parents, private therapists, and teachers have offered a comprehensive picture of his evolving educational experience and underscored the importance of ensuring C.T. remains

in a stable and supportive educational environment and receives additional supports and services that could help him succeed at Silas Willard Elementary.

More specifically, Plaintiffs' private occupational therapist opined on C.T.'s need for more individualized attention, particularly the addition of a 1:1 aide who could provide the specific support C.T. requires. His observations that other students in the class were more dysregulated and that the aides documented his behaviors more frequently than providing him with direct support further emphasize the importance of addressing his unique needs with tailored and dedicated support. C.T.'s private counselor also recommended assigning a 1:1 aide to help C.T. recognize cues more quickly, implement breathing exercises, and assist with task breakdowns in the classroom. Her insights into C.T.'s ADHD and behavior further reinforce the need for continued stability and individualized support.

The District's witnesses, on the other hand, do not contest these opinions per se, but maintain only that an additional 1:1 aide would likely not be effective in addressing C.T.'s behavioral challenges. The District's Behavior Interventionist opines, for example, that an additional 1:1 aide would likely not be effective as C.T. already receives "all the staff attention that he would need." (Doc. 34 at 268.) While this testimony suggests that the current level of support may be adequate, it does not account for the individualized needs that C.T. requires, particularly given his ADHD and the behavioral challenges that arise in a less tailored classroom environment.

On balance, the evidence collectively points to the necessity of providing C.T. with more individualized support to address his behavioral and academic challenges. His parents, along with the private professionals involved in his care, credibly and persuasively advocate for a 1:1 aide and continued placement at Silas Willard Elementary, where C.T. has developed positive relationships and shown progress, especially since the administrative hearing. The testimony from the District's representatives does not sufficiently address the need for this level of individualized support, and it seems clear that maintaining C.T.'s current placement with the requested interventions is in his best interest, both academically and emotionally.

As the Parents correctly point out, both the District and the administrative hearing officer did not properly consider whether additional reasonable measures would have made C.T.'s education in Silas Willard Element's EBD classroom satisfactory in accordance with the IDEA's mainstreaming requirements. *See Ross*, 486 F.3d at 277. This is contrary to what the law requires, namely that "special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. § 1412 (5)(B); *see also In re Suzawith*, 132 F. Supp. 2d 718, 729 (E.D. Wis. 2000) ("courts have referred to the 'preference' for mainstreaming as a 'requirement' under the IDEA, to the extent that mainstreaming is

possible").

Accordingly, the Court finds that the District's IEP is unreasonable in failing to properly consider whether additional interventions could help provide C.T. with a free and appropriate public education at Silas Willard Elementary in accordance with the IDEA's mainstreaming requirement. The administrative ruling itself also failed to properly consider this issue.

In short, the Court has carefully reviewed the administrative record in this case, including the transcript of the hearing in March and April 2024, and the additional evidence submitted to the Court at the October 21, 2024 trial. Following this review, the Court concludes that the Parents have shown, by the preponderance of the evidence, that removing C.T. to High Road School is less restrictive than necessary and therefore violated C.T.'s right to receive a free and appropriate public education in the least restrictive environment under the IDEA. Instead, it is likely that C.T. can receive a satisfactory education in his EBD classroom at Silas Willard Elementary with additional interventions, including at least a 1:1 paraprofessional. The Court leaves it to the IEP team to properly consider other additional interventions necessary to ensure a satisfactory education for C.T. at Silas Willard Elementary.

III.

For the foregoing reasons, the Court REVERSES the administrative ruling below, dated April 11, 2024;

Defendant Galesburg Community Unit School District No. 205's December 2023 Individualized Educational Program is VACATED; and the Court ORDERS Defendant Galesburg Community Unit School District No. 205 to create an appropriate Individualized Educational Program for C.T. at Silas Willard.

The Clerk of the Court is direct to enter judgment and close the case.

It is so ordered.

Entered on December 5, 2024.

s/Jonathan E. Hawley
U.S. DISTRICT JUDGE

APPENDIX C

ILLINOIS STATE BOARD OF EDUCATION IMPARTIAL DUE PROCESS HEARING

STUDENT¹,

Student,

v.

Galesburg CUSD 205,

School District.

Case No: 2024-DP-0116

Janet K. Maxwell-Wickett,

Impartial Hearing Officer

FINAL DETERMINATION AND ORDER

JURISDICTION

The undersigned has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C § 1 400 *et seq.* and the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*

BACKGROUND

¹ Personal identification information is provided in Appendix A.

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

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

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

completed on February 1, 2024. (IHO Exhibit # 11, 14.)

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

The Parents opted for a closed hearing. The Due Process Hearing was held on March 4 & 5, and April 2, 2024. Ms. Verity Sandell, Ms. Cera Horste, and Ms. Tracy Hartlieb of Hartlieb Horste & Sandell, LLC represented Parents. Mr. Brandon Wright and Ms. Christine Christensen of Miller, Tracy, Braun, Funk & Miller, Ltd. represented the District. The Parents presented four individual witness and the remaining witnesses were joint witnesses.² Parents presented the following Parent Exhibits (PD) #2-7 which were admitted into evidence. The School District presented the following District Exhibits (SD) # 1-4 which were admitted into evidence. The parties presented the following Joint Exhibits (JD) # 1-2, 4-10, 12, 23-35 which were admitted into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-33. Both parties submitted oral closing statements, a written

² Witnesses presented by both parties are identified in Appendix A.

outline thereof, and provided citations to any case law relied upon. Stipulations of fact were submitted by the parties prior to hearing. (IHO Exhibit #26.)

ISSUES

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

(a) Whether the December 12, 2023, IEP is reasonably calculated to enable the Student to make progress in light of his unique circumstances and receive educational benefit and thus provides him with a free and appropriate public education (FAPE), specifically as follows:

(i) Whether the IEP provides appropriate related services in the area of speech language with goals and direct services to address the Student's social pragmatic language needs;

(ii) Whether the IEP provides appropriate related services in the area of occupational therapy with goals and direct services to address the Student's motor and sensory processing needs;

(iii) Whether the IEP provides 1:1 aide support to the Student throughout the school day to support his attention and behavior

needs;

(iv) Whether the IEP provides 1:1 aide support to the Student for transportation to support his attention and behavior needs;

(v) Whether the Behavior Intervention Plan (BIP) created on December 15, 2023, provides ongoing support from a BCBA to monitor the behavior intervention plan's effectiveness and problem solve;

(vi) Whether the placement provided in the IEP, specifically placement in a private therapeutic day school, is the least restrictive environment in which the Student's IEP can be implemented and his unique educational and related service needs can be met.

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

The District maintains that, at all times at issue,

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

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

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

The District maintains that HRSP is an appropriate therapeutic day school for the Student which can implement his IEP and

provide him with a FAPE in the LRE. Parents request the following relief:

a. Order the District to revise the Student's December 12, 2023, IEP to include the following;

(i) Speech language related services with goals and direct services to address the Student's social-pragmatic language needs;

(ii) Occupational therapy related services with goals and direct services to address the Student's motor and sensory processing needs;

(iii) 1:1 aide support to the Student throughout the school day to support his attention and behavior needs;

(iv) 1:1 aide support to the Student for transportation to support his attention and behavior needs (if transportation is needed as a related service);

(v) Provide for ongoing support from a BCBA to monitor the behavior intervention plan's effectiveness and problem solve;

b. Order the District to revise the Student's December 12, 2023, IEP to reflect placement in a self-contained special education classroom housed within the District's general education school building, specifically, SWES;

c. Order the District to provide compensatory education, using the qualitative method, in the form of speech therapy, occupational therapy, social work, and academic instruction. (IHO Exhibit # 13.) [This request with withdrawn by Parents' counsel on the record at hearing on April 2, 2024.]

FINDINGS OF FACT

This Hearing Officer had the benefit of a transcript for the March 4-5, 2024, hearing dates but did not have the benefit of a transcript with respect to the testimony heard on April 2, 2024, when writing this decision. Therefore, the following is based upon this Hearing Officer's personal notes, recollection, and the March 4-5, 2024, transcripts. This Hearing Officer carefully considered the testimony of all witnesses presented and all documents introduced and admitted into evidence whether or not specifically referred to or cited when making her final determination. After considering all the evidence, as well as the arguments of both District counsel and Parents' counsel, this Hearing Officer's Findings of Fact are as follows:

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

(mild) (ODD), Social Pragmatic Communication Disorder, Sensory Disturbance, and Eosinophilic Esophagitis (EoE). (Testimony of Parent, SLP³, SLP2⁴, OT2⁵, OT⁶, II⁷, LCPC⁸; JD #5; Stipulation of the Parties – IHO Exhibit #26.)

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

⁴ SLP2 is employed by the District as a Speech-Language Pathology Coordinator. She has been employed by the District for approximately 6 years. She previously worked as an outpatient pediatric speech language pathologist and taught for five years prior to earning her Master of Science in Communication Sciences and Disorders. (Testimony of SLP2; JD #29.)

⁵ OT2 is Parents' outside occupational therapy provider. She holds a doctorate in occupational therapy and works at a hospital providing outpatient occupational therapy treatment. (Testimony of OT2; PD #7.)

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

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

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

2. The Student has strengths in math, segmenting words, vocabulary and gross motor skills. (Tr 30: 11-18; Testimony of BCBA⁹; JD #7.)

3. The Student has deficits in attention and staying on task and exhibits aggressive behaviors including hitting, kicking, punching, biting, throwing items, climbing on furniture and jumping down onto staff and peers, loud vocalizations and derogatory comments, work refusal, and eloping from the classroom. (Tr 31 -32, 128-134, 163-164, 166-167, 169-170, 326, 381-385, 408-409, 425-427, 442; Testimony of BCBA, SPED¹⁰, II, PRIN¹¹, PSY¹², BI¹³, PRIN2¹⁴, DSPED¹⁵, OT2, OT,

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

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

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

¹² PSY is a District School Psychologist. She has been employed by the District since 2021. She holds a Master of Science Degree

SLP2; JD #6, 7, 26-27.)

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

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

in Educational Leadership. She holds an Illinois School Psychologist Professional Educator's License and is a Nationally Certified School Psychologist. (Testimony of PSY; JD #31.)

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

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

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

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

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

8. The Student's behavioral difficulties have not improved during the time he has been in the EBD classroom. He displays difficult behaviors every day including elopement, work refusal, loud verbalizations, climbing on furniture, and throwing items in the classroom. (Tr. 85-89, 140-143; Testimony of SPED, DSPED; JD #23-27.)

9. The Student's behaviors are some of the most severe in the EBD classroom. (Tr. 91; Testimony of SPED, DSPED.)

10. The Student completes fifty percent of his assigned class work. However, academic demands have been substantially reduced in order to prevent the Student from becoming frustrated. When he becomes frustrated his difficult behaviors escalate and he becomes physically aggressive to peers and staff. (Tr. 105-107, 134-135; Testimony of SPED; JD #23-24, 27.)

11. The Student spends approximately seventy-five (75) percent of his time in the classroom working on therapeutic activities versus academic or other classroom activities. (Tr. 123-130; Testimony of SPED.)

12. Working on emotional regulation, social skills, and peer interactions are imbedded within the curriculum of the EBD classroom. (Tr. 111-114, 358-360, 366-367; Testimony of SPED, PSY, OT.)

13. A Functional Behavior Assessment (FBA) was conducted in October 2023. Target behaviors were identified as physical aggression, disruptive classroom behavior, and elopement. (Tr 30-32; Testimony of BCBA; JD #7.)

14. A Behavior Intervention Plan (BIP) was developed for the Student based upon the data collected during the FBA to address the Student's target behaviors. (Tr. 48-50; Testimony of BCBA, BI; JD #7-8.)

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

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

17. It was not necessary for the BCBA to monitor the Student's BIP on an ongoing basis. The Student's classroom teacher and the school behavior interventionist were able to monitor the effectiveness of the Student's BIP and problem solve any issues which might arise. (Tr 5 9-64, 450-451, 530-535, 541-542; Testimony of BCBA, SPED, BI, DSPED.)

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

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

20. Due to his behavioral difficulties, the Student has limited access to and interaction with peers. Interaction with peers tends to be negative as opposed to positive including name calling, put down statements, derogatory remarks, throwing things at peers, jumping off furniture on to other students, running around classroom spaces and into other students. (Tr. 414, 484-486; Testimony of SLP2, SPED, PRIN2; JD #23, 27.)

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

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

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

24. The Student does not require direct occupational therapy services. The Student's sensory processing and emotional regulation issues require tools that he can use on a day-to-day basis in the classroom. This can be

accomplished through occupational therapy consult services in conjunction with direct social work services. The Student's social work goal, direct service minutes, and accommodations in his IEP address his needs in this area. (Tr. 334-335, 354-356; Testimony of OT, OT2; JD #8; PD #5.)

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

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

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

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

29. The Student requires a therapeutic day school

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

30. HRSP is a therapeutic day school which provides a smaller environment, smaller class size, higher staff to student ratio, and employs teachers, paraprofessionals, and a full-time behavior interventionist who can intervene and provide support on a daily, real-time basis to support the Student's behavioral difficulties. A BCBA also works at the school one day per week to provide additional support. HRSP is designed for students who are working at grade level academically. HRSP can implement the Student's IEP. (Tr. 455-457, 544-548; Testimony of BI, DSPED.)

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

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

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

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

CONCLUSIONS OF LAW

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

Free Appropriate Public Education (FAPE)

The Individuals with Disabilities Education Act ("IDEA") guarantees children with disabilities the right to a free, appropriate, public education ("FAPE"). 20 U.S.C. § 1412(a)(1). In order to determine whether a school district has provided a FAPE requires the determination of whether the school district complied with the procedural and substantive requirements of IDEA. *Board of Education of the Hendrick Hudson Central School District, Westchester County et. al. v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034 (1982). In matters alleging a procedural violation, the hearing officer may find that a student did not receive a FAPE

only if the procedural inadequacy impeded the student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decisions-making process regarding the provision of a FAPE to the parent's child or caused a deprivation of educational benefit. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. §300.513(a); *Rowley* at 206-207. In the instant case, Parent's due process complaint notice does not allege any procedural violations of the IDEA.

As recently clarified by the United States Supreme Court, under the Individuals with Disabilities Education Improvement Act ("IDEA"), a school satisfies its substantive obligation to provide a free appropriate public education by offering a child "an IEP reasonably calculated to enable a child to make progress in light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, No. 15-827, 137 S.Ct. 988 (U.S. Mar. 22, 2017.) "[A]n IEP is reasonably calculated to confer educational benefit when it is 'likely to produce progress, not regression or trivial educational advancement.'" *Alex R. ex rel. Beth R. v. Forrestville Valley Cmty. Unit Sch. Dist.* No. 221, 375 F.3d 603, 615 (7th Cir. 2004.) [T]he progress contemplated by the IEP must be appropriate in light of the child's circumstances... The instruction offered must be '*specially* designed' to meet a child's '*unique* needs' through an *individualized* education program." *Endrew F.*, 137 S.Ct. 988. The IEP is to provide a statement of the "special education and related services and supplementary aids and services... to be provided to the child." 34 C.F.R. 300.320(a)(4).

The IEP is the "centerpiece" of the IDEA. The IEP

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

The IDEA does not require states to develop IEPs that "maximize the potential of handicapped children." *Board of Educ. v. Rowley*, 458 U.S. at 189, 102 S. Ct. at 3042. What the statute guarantees is an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents." *Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F.2d at 567 (*internal citation omitted*); see *Carlisle Area School v. Scott P.*, 62 F.3d at 533-34 (school districts "need not provide the optimal level of services,

or even a level that would confer additional benefits, since the IEP required by IDEA represents only a 'basic floor of opportunity'" (*quoting Board of Education v. Rowley*, 458 U.S. at 201, 102 S.Ct. at 3048).

A school district is not required to provide a student with the "best conceivable" individualized education program, but only an IEP that is reasonably calculated to enable the student to receive educational benefits. *Alex R. v. Forrestville Valley Community Unit School District #221*, 375 F.3d 603, 616 (7th Cir. 2004), cert. denied, 125 S. Ct. 628 (2004). Local school districts are not required to be guarantors of educational progress but are required to develop IEPs that are reasonably calculated to allow for progress. When determining whether a student has benefited from an educational program the courts look, at least in part, to whether the student is making progress toward the goals included in the student's IEP. *County of San Diego v. California Special Education Hearing Office*, 93 F.3d 1458 (9th Cir. 1996). *See also Brad K. v. Board of Education of City of Chicago, Chicago Public School District #299*, 787 F. Supp.2d 734, 738 (N.D. Ill. 2011), *quoting Jaccari J. v. Board of Education of City of Chicago, District No. 299*, 690 F.Supp.2d 687, 702 (N.D. Ill. 2010) (factors to consider when determining whether an IEP is reasonably calculated to provide educational benefits "include: '(1) the child's potential; (2) whether his IEPs were tailored to his unique needs; (3) whether his IEPs provided access to specialized services; (4) whether they addressed disability-related acts; and (5) whether the child achieved progress during the relevant time

period"). Goals, short-term objectives, and descriptions of present levels of the student's performance should reflect the student's progress, or, if there is a lack of progress, the school district should consider adjusting the program to provide a different configuration or amount of services or a different placement to make it more likely that the IEP will confer educational benefit. *See Kevin T. v. Elmhurst Community School Dist. No. 205*, No. 01 C 0005, 2002 WL 433061 (N.D. Ill. Mar. 20, 2002).

The Seventh Circuit has ruled that under the Rowley standard, an "IEP passes muster provided that it is... 'likely to produce progress, not regression or trivial educational advancement.'" *Alex R., supra*, 375 F.3d at 615, quoting *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245, 248 (5th Cir. 1997). *See also Richard Paul E. v. Plainfield Community Consolidated School District 202*, No. 07 C 6911, 2009 WL 995459 at *17 (N.D. Ill. Apr. 9, 2009) (finding school district did not violate child's rights under IDEA when IEP was reasonably calculated to provide him with educational benefits by addressing his behavioral and learning disabilities). Indeed, the Seventh Circuit has opined that the "critical issue [is] whether the school administrators were unreasonable" when making placement and service determinations. *School District of Wisconsin Dells v. Z.S.*, 295 F.3d 671, 676 (7th Cir. 2002) (finding that one-month delay in figuring out what to do with student after he had to be removed from school was reasonable).

Parents first allege that the District failed to provide the Student with a free and appropriate public

education (FAPE) when the December 12, 2023, IEP did not provide for related services in the area of speech language with goals and direct services to address the Student's social-pragmatic language needs. Parents' contention is without merit. The testimony and documentary evidence introduced at hearing was uncontroverted: the Student does not specifically require direct speech language services or a speech language goal to address those needs. Parents' outside private speech language provider concurred with and supported this conclusion. SLP, Parents' outside private speech language provider, evaluated the Student for purposes of outpatient teletherapy which consisted of mostly play based therapy¹⁶. SLP concluded that the Student's social pragmatic language skills were in the mildly impaired range, a conclusion with which SLP2, the District speech language pathologist, concurred. (FF #21.) Further, both SLP and SLP2, concluded that a school social worker would be able to provide the services required to address the Student's needs in this area. (FF #21.) The Student's December 12, 2023, IEP provides for direct social work service minutes and an IEP goal to address these needs. (FF #21-23.) Therefore, based upon the uncontroverted testimony and documentary evidence introduced at hearing, it is the finding of this Hearing Officer that the Student does not require speech language related services or a speech language goal to address his mild social

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

pragmatic language impairment and Parents' claims to the contrary are without merit.

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

minutes and social work goal address his sensory processing needs, his needs are adequately met through the occupational therapy consult minutes listed in his IEP. Parents' assertion that the Student needs direct occupational therapy services and goals is unsupported by the record.

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

setting. The Student needs adequate time, structure, and attention to be taught and to learn replacement behaviors. (FF #25, 27-29.)

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

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

Parents next allege that the District denied the Student FAPE when it failed to provide for one to one aide support for transportation to and from the therapeutic day school, HRSP, in his December 12, 2023, IEP. The parties agree that to attend his current

EBD classroom, at the District elementary school, the Student does not require transportation as he lives within walking distance. (FF #31.) Parents contend that if the Student were to attend HRSP, the therapeutic day school determined to be appropriate by the IEP team, he would require one to one aide support for the bus ride to and from that school. However, no testimony or documentary evidence was presented at hearing to support this contention. Both SPED and DSPED credibly testified that bus transportation to HRSP includes a bus driver and a bus monitor. The presence of the bus monitor, in addition to the driver, would be sufficient to meet the Student's needs and address any issues which may arise during the bus ride. (FF #31.) This was uncontroverted at hearing.

Parents next contend that the Behavior Intervention Plan (BIP) contained within the Student's December 12, 2023, IEP fails to provide ongoing support from a Board Certified Behavior Analyst (BCBA) to monitor the plan's effectiveness and problem solve and thus denies the Student a FAPE. However, this contention is unsupported by the record at hearing. BCBA, SPED, DSPED, BI all credibly testified that it was not necessary for BCBA to monitor the BIP's effectiveness or to problem solve any issues which arose as the Student's EBD classroom teacher and the school behavior interventionist were both well qualified to perform that role. (FF # 17.) Further, HRSP is designed for student's with behavioral needs similar to those exhibited by the Student and behavioral and social emotional supports are built into the program's curriculum. A BCBA is on site weekly at

HRSP to monitor the BIPs of the students and provide ongoing support related to same. (FF #28-30.) Based upon the uncontroverted testimony presented at hearing, Parents' assertion to the contrary is without merit.

Parents contend that the District denied the Student a FAPE when the December 12, 2023, IEP provided for placement of the Student in a private therapeutic day school. Parents contend that a therapeutic day school setting is not the least restrictive environment in which the Student can receive a FAPE. Under the IDEA, the School District has an obligation to educate the student to the greatest extent appropriate with his nondisabled peers. 20 U.S.C.A. § 1412(a)(5)(A); *Board of Education of Township District No. 211 v. Ross*, 486 F.3d 267, 277 (7th Cir. 2007); *Beth B. v. Van Clay*, 282 F.3d 493 (7th Cir. 2002.) The Illinois School Code and implementing regulations also require that to the maximum extent appropriate a child with a disability must be educated in the least restrictive environment with children who are not disabled. 105 ILCS 5/10-22.41; Ill. Admin. Code 226.240. Removal from the regular education classroom of a child with a disability should only occur when education in the regular education classroom cannot be achieved with the use of supplementary aides and services. 20 U.S.C.A. § 1412 (a)(5)(A); 34 C.F.R. §300.114(a)(2)(ii). The Seventh Circuit has declined to adopt any sort of multi-factor test for assessing whether a child must remain in a regular school. *Ross supra*. See also *Beth B., supra*. "The ultimate question is whether the education in the conventional school was satisfactory, and, if not,

whether reasonable measures would have made it so." *Id.* The District may change a student's placement to a more restrictive setting or maintain that placement if the student would not make adequate progress in the less restrictive placement. *Ross citing Beth B. v. Van Clay*, 282 F.3d 493, 499 (7th Cir. 2002.) Courts have consistently held that progress must be more than minimal. *Polk v. Central Susquehanna Intermediate Unit 16*, IDELR 130 (3rd Cir. 1988); *See Andrew F.* at 206-207. When a student is unable to benefit by being with nondisabled peers, has not made sufficient social emotional progress and requires a smaller classroom with trained personnel allowing for more rapid interventions, Illinois courts have upheld a school district's recommendation and continued placement in a therapeutic setting. *Hiawatha School District No. 426*, 58 IDELR 269 (Fed. 27, 2012). Further, educators "have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents." *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290, 297 (7th Cir. 1988).

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

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

Site for Implementation of the Placement

The Student's December 12, 2023, IEP provides for implementation in a private therapeutic day school,

specifically HRSP. Parents assert that HRSP is inappropriate as it cannot implement the Student's IEP; does not provide appropriate behavioral and sensory supports; provides insufficient academic supports; provides a shortened school day; and is too far from the Student's residence (too long of a commute given the Student's age and behavioral difficulties).

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

While HRSP is not as conveniently located within

walking distance to the Student's home, as is his current elementary school, it is the closest therapeutic day school to Parents' residence. There was no testimony or documentary evidence presented at hearing to support Parents' contention that HRSP was too long of a commute given the Student's behavioral difficulties. The Student is able to manage the commute on a bus with a driver and a bus monitor to address any Student needs. (FF #31.)

While Parents' take issue with HRSP's school hours and the length of the bus ride, the totality of the Student's needs reflect the necessity of this placement. The Student's current lack of progress in the EBD classroom is unacceptable and not what is envisioned by *Endrew F.* When a student is unable to benefit by being with nondisabled peers, has not made sufficient social emotional progress and requires a smaller classroom with trained personnel allowing for more rapid interventions, Illinois courts have upheld a school district's recommendation and continued placement in a therapeutic setting. *Hiawatha School District No. 426*, 58 IDELR 269 (Fed. 27, 2012). Further, educators "have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents." *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290, 297 (7th Cir. 1988).

Several of Parents' outside therapy providers visited HRSP and deemed it "inappropriate" for the Student. However, "the IDEA does not require school district's to defer to the opinions of private evaluations procured by a parent." *Miller v. Charlotte-Mecklenburg*

Schools, 83 IDELR 1 (4th Cir. 2023.) While LCPC testified that the Student has made progress with her since January 2024, she provides clinical therapy to the Student virtually when he is at home. She does not and has not worked with the Student in the educational setting. LCPC provides clinical therapy virtually, for thirty minutes per week and had only been working with the Student for one month, three to four virtual sessions prior to testifying at hearing. She has never provided in person clinical therapy to the Student. While she did observe the Student in his EBD classroom in January 2024, the extent of her observation was one (1) hour. She also conducted a one (1) hour observation at HRSP at Parent's request. LCPC did not assess or opine on the Student's academic abilities as she is not appropriately trained and credentialed to do so. As LCPC is a clinical therapist, with limited current knowledge of the Student, who has never provided services in person or in the educational setting, this Hearing Officer finds her testimony to be of limited value. Her ultimate conclusions are not persuasive based upon those factors.

SLP evaluated the Student for purposes of outpatient teletherapy, mostly play based therapy. She never observed the Student in the school setting and has never interacted with him in person. She sees the Student thirty minutes per week for teletherapy speech language therapy. During their sessions, he displays very variable behavior. She did not make any in-school recommendations. Her evaluation focused on medical necessity, not educational needs. (Testimony of SLP.) Based upon the above, it is the finding of this

Hearing Officer that her testimony is of limited value as it pertains to the Student in the educational setting.

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

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

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

requires a therapeutic day school setting and HRSP is an appropriate site for implementation of that placement and of the Student's December 12, 2023, IEP. At all times at issue, the District has provided the Student with a FAPE. Compensatory Education "Compensatory services are well-established as a remedy under the IDEA." *Jaccari J. v. Board of Educ. of City of Chicag, Dist No. 299*, 690 F.Supp.2d 687, 707 (N.D. Ill. 2010). Compensatory education is an equitable remedy that "should aim to place disabled children in the same position they would have occupied but for the school district's violation of the IDEA." *Reid v. District of Columbia*, 401 F.3d 516, 522 (D.C. Cir. 2005). A hearing officer has the authority to award compensatory education. *ZJ v. Bd. of Educ. of Chi.*, 344 F. Supp. 3d 988, 1002 (N. D. Ill. 2018). Parents withdrew their request for compensatory education on the record at hearing. Further, no testimony or evidence was presented related to compensatory education. (FF #33.) As it is the finding of this Hearing Officer that, at all times at issue, the District provided the Student with a FAPE, any compensatory education award would be inappropriate and unsupported by the record.

CONCLUSION

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

Parents' requested relief is hereby denied in its entirety.

ORDER

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

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

Parents' requested relief is hereby denied.

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

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

NOTICE OF RIGHT TO REQUEST CLARIFICATION

Pursuant to 105 ILSC 514-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portions of the decision for which clarification is sought. A copy of the request

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

NOTICE OF RIGHT TO APPEAL

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

Dated: April 11, 2024

/s/
/s/ Janet K. Maxwell-Wickett
Impartial Hearing Officer
350 S. Northwest Highway, Suite 300
Park Ridge, IL 60068
Phone: (847) 430-3789
Fax: (847) 305-5897
Email: janet@maxwellwickettlaw.com

APPENDIX A

C.T. v. Galesburg CUSD 205
Case No: 2024-DP-0116

Student	C.T.
Attending School	Silas Willard Elementary School (SWES)
District School	Silas Willard Elementary School (SWES)
Student's Parent/Petitioner	P.T.

Parent Witnesses:

Parent	P.T. (Parent)
Speech Therapist	Jacqueline Bonnette (SLP)
Occupational Therapist	Stephanie Jackson (OT2)
Private Therapist	Tasha Easley (LCPC)

Joint Witnesses:

Special Education Teacher	Lee Genandt (SPED)
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Board Certified Behavior Analyst	Christy Moran-Happ (BCBA)
Instructional Interventionist	Renee Sloan (II)
Principal, Silas Willard Elementary School	Geoffrey Schoonover (PRIN)
Occupational Therapist - District	Melissa Pischke (OT)
School Psychologist	Samantha Estrada (PSY)
Speech Language Pathologist	Tara DeWitt (SLP2)
Behavioral Interventionist	Amy Fleming (BI)
Principal, King Elementary School	Valerie Hawkins (PRIN2)
Director of Special Education	Luan Statham (DSPED)

Schools:

Therapeutic Day School	High Road School - Peoria (HRSP)
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