DECISION

[Student],	)	IMPARTIAL HEARING OFFICER
by and through parent or guardian, [Parent]	)	DECISION
	)	Hearing No. 2000:136
Petitioner,	)	Held On:
	)	October 8, 2001
vs.	)	
	)	Held At:
Elizabeth C-1 School District,	)	Old Board Room
	)	633 Dale Court,
Respondent.	)	Elizabeth, CO

IMPARTIAL HEARING OFFICER: Clark S. Spalsbury, Jr.
P.O. Box 2008
Estes Park, CO 80517

I. ISSUES AND DECLARATIONS OF THE PARTIES

Throughout this decision the student shall be referred to as the "Child" and Elizabeth C-1 as the "District". The Parent, and the Grandparent who actually appeared on behalf of the Child throughout this proceeding, shall be collectively referred to as the "Parent".

The Individuals With Disabilities Education Act, 20 U.S.C. § 1401 et seq. shall be referred to as "IDEA". The Child's individualized education program shall be abbreviated as the "IEP".

A. Petitioner's Declaration/Issues:

The Parent requests the Child be placed in a regular education classroom at his local school with peers of his age with aids and services as necessary.

The Parent objected to further assessment, or at least academic assessment, of the Child by the District and indicated she wanted independent evaluations.

B. Respondent's Declaration/Issues:

The District identified two major issues at the start of the hearing:

(1) First, the District stated it needed to conduct further assessment of the Child since only minimal assessments had occurred since the Child moved into the District just before the 2000-2001 school year began; and

(2) Second, the District requested a decision directing temporary placement of the Child in [Date Treatment Center] day treatment facility, with transportation at District expense, until such assessment is complete and any plan modifications could be considered by the IEP team.

C. Issues Decided:

(1) May the District may conduct further assessments of the Child in connection with its provision of special educations services to the Child?

(2) What should be the temporary placement of the Child pending further assessments and further placement decisions by

the District IEP team?

II. PRELIMINARY MATTERS

(1) Procedural History: The Parent requested an impartial due process hearing on December 21, 2000. Prehearing conference took place on January 9, 2001, after which various preliminary motions were ruled upon including dismissal of certain claims and an order for the parties to expeditiously arrange and complete a review staffing. The review staffing took place on January 29, 2001.

Following the review staffing, on February 13, 2001 at the request of the parties, this matter was continued so they could work out the details and submit a written stipulation concerning interim services for the Child for the remainder of the school year. By order dated March 13, 2001, the impartial hearing officer approved a written stipulation concerning interim services and continued the matter to September 30, 2001, with a decision deadline of November 14, 2001, if either party requested a hearing. The Parent requested hearing during the start of the 2001-2002 school year, and hearing took place on October 8, 2001.

As discussed more fully below, the Parent elected to leave the hearing during the testimony of the first witness called by the District. The impartial hearing officer advised the District that he would consider dismissal either with or without prejudice following the District's argument, or alternatively, the District could present an abbreviated case to obtain this decision on the merits. The District chose the later, but it should be kept in mind that the District's presentation was significantly abbreviated at the request of the impartial hearing officer under these circumstances. Should further action occur in this matter, the District should be offered the opportunity to fully present and support its position.

(2) Parent Failure to List Witnesses/Exhibits: At the start of hearing, the District argued, and the Parent acknowledged, that the Parent had not provided the District with a list of witnesses to be called or exhibits which might be offered at hearing. The Parent explained she had not carefully read the pre-hearing orders which explained the requirement. The hearing officer noted he could not allow presentation of evidence without these disclosures, but also ruled that the Parent could request a continuance of the hearing after the District presented its case in chief. Any continuance request would be considered at that time if in fact the Parent wished to call witnesses or offer exhibits. This question ultimately

resolved itself by the Parent's decision to leave the hearing during the first day without presenting any witnesses or exhibits.

(3) Burden of Proof and Going Forward: The hearing officer directed the District to present its case-in-chief in support of its proposed placement first and stated the District had the burden of proof as to its proposal. If the Parent proposed an alternative placement, the Parent had the burden of proof as to that alternative. The parties did not dispute this decision as to burden of proof and going forward, but since it has some bearing on the course of the hearing and the impartial hearing officer's direction to the District to go ahead and present of a *prima facie* case after the Parent left the hearing, the impartial hearing officer concludes an explanation of his reasoning is in order.

First, as far as the impartial hearing officer determined at the time of hearing, allocation of the burden of proof in this particular type of administrative setting is not clearly settled by either Colorado and Federal law. Insofar as practice in Federal Court in concerned, several Tenth Circuit cases discuss burden of proof, see Logue v. Unified School District No. 512, Case No. 97-3087 and 97-3112 (10th Cir. [Kan.] 1998); A.E. v. Independent School District No. 25, 936 F.2d 422 (10th Cir. [Okla.] 1991); Johnson v. Independent School District No. 4, 921 F.2d 1022 (10th Cir. [Okla.] 1990); Urban v. Jefferson County School District R-1, 870 F. Supp. 1558 (D. Colo. 1994), but their statements appear to be dicta or at least did not involve actual litigation of the question. But this authority concerns practice in Federal District and Circuit courts, not a hearing. Authority from other Circuits and some administrative cases is inconsistent and often times appears to be dicta or based on agreement rather than an issue actually litigated.

In Oberti v. Board Of Education, 995 F.2d 1204 (3rd Cir. 1993)(¶¶ 3, 52-57), however, the Third Circuit expressly held the burden of proof fell on the school regardless of who filed suit in the district court. The Court stated:

> [57] Underlying the Act is "an abiding concern for the welfare of handicapped children and their parents." Lascari, 560 A.2d at 1188; see 20 U.S.C. § 1400(c).[fn26] Requiring parents to prove at the district court level that the school has failed to comply with the Act would undermine the Act's express purpose "to assure that the rights of children with disabilities and their parents are protected," 20 U.S.C. § 1400(c), and would diminish the effect of the provision that enables parents and guardians to obtain judicial enforcement of the Act's substantive and

> procedural requirements, see 20 U.S.C. § 1415(e). In practical terms, the school has an advantage when a dispute arises under the Act: the school has better access to the relevant information, greater control over the potentially more persuasive witnesses (those who have been directly involved with the child's education), and greater overall educational expertise than the parents. See Lascari, 560 A.2d at 1188 (placing burden of proof on school is "consistent with the proposition that the burdens of persuasion and production should be placed on the party better able to meet those burdens."); Engel, Law, Culture, and Children with Disabilities, 1991 Duke L.J. at 187-94 (arguing that parents are generally at a disadvantage vis-a-vis the school when disputes arise under IDEA because parents generally lack specialized training and because their views are often treated as "inherently suspect" due to the attachment to their child).

See also Fuhrmann v. East Hanover Board Of Education, 993 F.2d 1031 (3rd Cir. 1993)(¶¶ 24 which relied on State law in the IDEA administrative setting).

Whatever may be concluded from the above-cited cases, none addressed the burden of proof in a special education due process hearing brought under Colorado administrative law. Seemingly, the question of burden of proof is not one of substantive law under IDEA, but is instead a procedural matter within the authority of an impartial hearing officer applying Colorado administrative practice law. The relevant portion of Colorado's Administrative Procedure Act, codified at C.R.S. § 24-4-105(7) (2000), places the burden of proof on the "proponent" of an order in a Colorado administrative proceeding and appears applicable to this case.

Here, the District proposes placement in the [Date Treatment Center] while the Parent proposes placement in a regular education classroom. Thus both propose a placement, and both may be viewed as the proponent of an order. This common difficulty with the "proponent" rule is discussed in The Department of Institutions v. Kinchen, 886 P.2d 700 (Colo. 1994)(¶¶ 19-), a case in which the Court ultimately ruled the burden fell on the governmental entity seeking to sustain its imposition of employee discipline during an administrative appeal. Parallel rationale appears in this type of case.

In IDEA cases, the student/parents have substantial procedural rights and protections. The District has a legal duty to provide an appropriate placement and special education services. The District might be viewed as the party with the

information to support its proposed placement. Here, even though the Parent initiated the action, as did the employee in Kinchen, the District's decision will be implemented despite consensus unless the parent appeals. See also Harris v. State Board of Agriculture, 968 P.2d 148 (Colo. Ct. App. 1998)(¶ both parties can be proponents of different aspects of the order being reviewed); Garner v. State Department of Personnel, 835 P.2d 527 (Colo. App. 1992)(burden on prospective employee who disputes the selection of another person); Colorado Dog Fanciers, Inc. v. Denver, 820 P.2d 644 (Colo. 1991)(City, not aggrieved dog owner, has the burden of going forward as the proponent seeking to establish dog is of a prohibited breed even though the owner initiates the review hearing after an agency decision).

The undersigned concludes that Colorado administrative practice, not Federal court procedure, controls, and that under such practice, a district would normally carry the burden of proof as to its proposed placement while the parent would carry the burden of proof if the parent offers an alternative placement. This allocation of the burden seems appropriate under Colorado precedent, even though this particular type of proceeding has not been considered by Colorado appellate courts, and is likewise consistent with the considerations and principles discussed in Oberti.

(4) Reopening of Hearing: The District's attorney advised the undersigned, about a week after the hearing, that he understood the Parent had called the District and indicated a desire to resume the hearing. No such request has been received by the impartial hearing officer.

The impartial hearing officer notes, however, that he would not be inclined to grant such a request. First, the Parent did not list witnesses or exhibits which would have altered the outcome herein and, more important, the impartial hearing officer did not view the Parent's statements and arguments as justification for a different decision than that reached herein. Even if there were sufficient reason to grant such a request, the overall tenor of what occurred throughout this case does not suggest a substantial likelihood that a different decision would be reached if the hearing were reopened.

Second, the Parent voluntarily abandoned the hearing. The District had its attorney prepare for hearing and travel to Elizabeth, it retained a court reporter, its special education director and at least three other witnesses including at least one behavioral "expert" were present, and the hearing officer traveled almost five hours to attend hearing. The District thus incurred substantial expense in appearing for hearing. Nothing in the presentation of the District's case caused or

necessitated the Parent's leaving the hearing. The equities perceived by the undersigned do not favor reopening the hearing, particularly where the Child's needs may be protected through yearly or more frequent reviews to ensure his needs are being met and where further evaluation, and possible reconsideration of placement, are contemplated by the District.

In summary, reopening the hearing does not appear appropriate where error, if any, was harmless, and where further evaluations and actions concerning the Child should ensure appropriate placement and services as his needs may change.

III. FACT FINDINGS, LEGAL CONCLUSIONS, AND DECISION

The impartial hearing officer finds the following facts by a preponderance of the evidence from the testimony, exhibits, and any other evidence admitted in the due process hearing:

A. Appearances, Testimony, Course of Hearing:

(1) Parent Withdrawal From Hearing: The hearing had been scheduled from 1:00 p.m. to 7:00 p.m. for three days, October 8 to 10, 2001. After a brief delay during which the Parent and District's attorney discussed potential settlement, the hearing began with the District's presentation of witness testimony. [Special Education Teacher], the District's first witness, testified concerning the behavior plan for the Child and multiple violent and profane outbursts which occurred after a few weeks of school.

During the course of [Special Education Teacher]'s testimony, the Parent complained that the District was not presenting testimony favorable to the Child. The hearing officer advised the Parent that she would have an opportunity present contrary or explanatory evidence and could question the witness in turn, but that the District was permitted to present its case within the rules of this proceeding. After some discussion, the Parent stated she intended to leave the hearing and then proceeded to depart.

The hearing officer gave the District the option of presenting an abbreviated case-in-chief, or it could move for dismissal and argue whether dismissal should be with or without prejudice. The District elected to present an abbreviated case in chief so that it would receive a final ruling in the matter. The District's presentation and evidence were therefore cut short at the direction of the impartial hearing officer since only a basic, *prima facie*, case was necessary to reach a decision.

(2) Appearances and Witnesses: The due process hearing began at about 1:00 p.m. on Monday, October 8, 2001, and concluded by about 3:45. Hearing took place at the Old Board Room provided by the District, 633 Dale Court, Elizabeth, CO. The hearing was closed. The Child did not attend. The primary language of the parents and the home is English. A court reporter reported the proceedings.

(a) The Respondent District, represented by Darryl L. Farrington of Semple, Miller, & Mooney, P.C., 1120 Lincoln Street, Denver, CO 80203, and by its Special Education Director [Director], called the following witnesses:

(i) [Special Education Teacher]: [Special Education Teacher] is a recent graduate with a degree in elementary and special education. She provided testimony supporting the admission of various exhibits and testified concerning several outbursts which she personally witnessed.

[Special Education Teacher] credibly testified that when the Child first began school at [School], the IEP from his prior district of attendance was initially implemented except that his behavior plan was adopted to be "suitable for our school". The Child's reading level was "early emergent", or a first grade reading level.

On September 21, 2000, the Child's behavior became uncontrolled when he was in a class with an aid. [Special Education Teacher] shortly became involved in attempting to control the behavior which included non-compliance with adult directions and rolling around in a chair. The Child became verbally abusive to staff after being removed from the classroom. Because the principal was not available, the Child was returned to the classroom where his behavior continued to deteriorate. He pushed tables, pulled items off the wall, and the injury prevention team was called. After being placed in a padded "time out" room, the child urinated on the floor, tried to climb walls, and pulled down protective pads. His exclamations included "fucking pig bitch" addressed to the principal. This episode resulted in a day suspension.

On October 3, 2000, the Child again became a behavioral problem. He broke equipment while on top a table. The Parent withdrew the Child from school when an out-of-district placement was offered by the District.

(ii) [School Psychologist]: [School Psychologist] is a licensed clinical and school psychologist with seventeen years experience in the field. [School Psychologist] was offered and qualified as an expert witness with expertise in psychology and

in particular school and child psychology matters.

[School Psychologist] credibly testified about his involvement with the Child before he became a District resident and about the Child's need for a behavioral development program. He testified about various prior incidents, which are consistent in nature and risks with the incidents occurring in the early Fall, 2000, term in the District. The Child has a history of becoming very antagonistic if challenged, violent, and needs to control his aggression in the school setting.

[School Psychologist] explained that the Child needed a self-contained very structured setting with special education and a social emotional intervention. For the program to succeed, it is critical that the family be "on board" and now minimize or disavow the problems repeatedly displayed.

[School Psychologist] strongly recommended the District's proposed temporary placement in the [Date Treatment Center] based on his personal knowledge of the program and the Child's needs. This program is the only program in the south metro area providing the needed "day treatment". It is located about 30-35 miles from the Parent's home, but the District is willing to provide the necessary transportation. [School Psychologist] noted an alternative SIED program at Pioneer in Parker, but knew less about the program and did not recommend it as strongly as he recommended the [Date Treatment Center]. Whatever program is decided upon, [School Psychologist] stated the Child's prognosis for success in a regular classroom was very poor and contra-indicated.

(b) The Petitioner Parent, acting *pro se*, called no witnesses and offered no exhibits.

(3) Exhibits received: The following exhibits of the District were offered and received. No exhibits were refused.

R1: 1-13-00 Arapahoe Mental Health letter/report
R3: Cherry Creek IEP of 4-12-2000
R4: Cherry Creek IEP of 4-24-2000
R5: Notice of 4-24-2000 meeting
R6: 4-24-2000 behavior support plan
R9: DRA student book graph (eval)
R10: quick assessment report
R11: timed worksheet quick assessment
R12: informal assessment of sentence formation
R13: "time telling" quick assessment
R16: 9-25-00 transfer meeting report
R17: IEP page and 9-25-00 behavior support plan
R18: 9-25-00 behavior support plan
R19: staff notes re Child

R20: copies of photos of damage and urination by Child
R30: 1-22-01 notice of meeting on 1-29-01
R31: 1-29-01 goals and objectives sheets
R32: IEP of 1-29-01

B. Findings of Fact:

Jurisdictional facts:

(1) The Student was a resident of the Elizabeth C-1 School District at the time this action began and has remained a resident of the District.

(2) The Child was born [D.O.B], and was eleven years old at the time of hearing.

(3) The Child had been determined by the District and a prior District of residence to be a student with a disability under IDEA.

(4) The Child was and is entitled to receive, and has received, special education services from the District and a prior District of residence.

(5) The District is a recipient of at least some Federal funds pursuant to IDEA.

(6) The District is subject to the requirements of IDEA and Federal and Colorado law and regulations pertaining to provision of special education services thereunder.

(7) Jurisdiction is conferred by 20 U.S.C. § 1450, 34 C.F.R. § 300, et seq., and by C.R.S. § 22-20-101 et seq. (2000).

Preliminary Matters:

(8) The District received a written request for hearing on December 21, 2000.

(9) A prehearing conference was scheduled with the consent of the parties and held on January 9, 2001.

(10) Following the prehearing conference and on January 16, 2001, the impartial hearing officer entered an order as follows:

(a) The proceeding would not be dismissed despite the Parent's removal of the Child from school because material facts appeared to be in dispute and because, regardless of

prior withdrawal, the Parent was presently seeking public education including special education services from the District.

(b) The Parent's claims pertaining to Cherry Creek School District were dismissed since it is not a party to this proceeding and this District is not legally responsible for anything which did or did not occur while the Child resided in, and attended school at, the Cherry Creek district. The Parent was not precluded from presenting evidence about events prior to residence in this District to the extent such evidence is probative of future placement decisions.

(c) The District's motion to dismiss because a review staffing had not yet taken place due to withdrawal of the student from school was denied, since an impartial hearing officer's jurisdiction is limited to review of decisions such as those made at a review staffing, and an immediate review staffing was ordered. Hearing was continued so that the review staffing could take place, and if still necessary, the hearing issues would be defined and the hearing would be rescheduled.

(11) The parties participated in a review staffing on January 29, 2001, and informed the impartial hearing officer that they had agreed on an interim placement for the remainder of the school year.

(12) By order dated February 13, 2001, this matter was continued so the parties could develop a written stipulation for the agreed interim placement and the date for hearing was again continued.

(13) By order dated March 13, 2001, this matter was continued for good cause shown and by consent of both parties to September 30, 2001, and the date for a decision was extended to November 14, 2001.

(14) In early August the Parent requested the hearing be set and the District responded.

(15) Based on the parties stipulation, the impartial hearing officer issued an order dated August 20, 2001, directing an expeditious IEP meeting to determine the Child's placement in the Fall, 2001, term and a review staffing.

(16) By order dated September 19, 2001, hearing was scheduled, within the time constraints expressed by the parties, to take place on October 8, 2001.

Proceedings and Factual Findings:

(17) Hearing began at the approximate time scheduled, after a short private conference between the District's attorney and the Parent to see if anything could be resolved, on Monday, October 8, 2001.

(18) Under the circumstances of the Child's brief attendance during the Fall, 2000, term, and the lack of success of the prior IEP and lack of comprehensive evaluation by the District, the existing conditions and circumstances warrant more comprehensive evaluation of the Child.

(19) By direction of the impartial hearing officer, the District's presentation and evidence were cut short due to the voluntary decision of the Parent to quit the hearing.

(20) At all times during the hearing, the District and its representatives acted appropriately and with courtesy and respect to other participants.

(21) On September 21, 2000, while at school, the Child for unexplained reason's became uncontrolled and verbally abusive to staff, including the statement "fucking pig bitch" addressed to the principal.

(22) On September 21, 2000, while at school, the Child pushed tables, pulled items off the wall, and was placed in a padded "time out" room, after which he urinated on the floor, tried to climb walls, and pulled down protective pads.

(23) On October 3, 2000, while at school, the Child became violent and broke school equipment while on top of a table.

(24) The Child has a history of violent outbursts at school in prior years.

(25) The Child has a history of becoming very antagonistic if challenged, violent, and needs to control his aggression in the school setting.

(26) The Child needs a self-contained very structured setting with special education and a social emotional intervention.

(27) For any educational program to succeed, the Child's family must be "on board" and not minimize or disavow the Child's behavioral problems.

(28) District's proposed temporary placement at the [Date Treatment Center] is appropriate and is in fact likely essential

for the Child to succeed in education.

(29) The Child's prognosis for success in a regular classroom is very poor and contra-indicated.

(30) Parent proposed temporary placement in a regular education classroom, even with appropriate aids and services, would not be appropriate

C. Discussion, Legal Conclusions, and Decision Pertaining to Assessment Question:

(1) Issue: May the District may conduct further assessments of the Child in connection with its provision of special educations services to the Child?

(2) Discussion and Legal Conclusions: A local educational agency receiving Federal funds under IDEA must follow certain procedures in evaluation of a child suspected of having a qualifying disability. In particular, it must

> use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum ...

20 U.S.C. § 1414(b)(2). The evaluation cannot be based on "any single procedure as the sole criterion" for determining disability and requires use of "technically sound instruments". 20 U.S.C. § 1414(b)(2). Furthermore, where, as here, the child has already qualified as a child with a disability for IDEA purposes, reevaluations are mandatory when conditions warrant and at least once every three years. 20 U.S.C. § 1414(a)(2).

The Child entered the District schools in the Fall of 2000 but was withdrawn within two months. The District had attempted to implement the IEP developed in Cherry Creek schools before the Child moved into the District, but did not conduct in depth evaluation at that time. After the Parent requested this due process hearing, neither the District or the Parent immediately requested an order concerning evaluation. Instead, they chose to develop an interim placement, which both questioned to some extent, to provide the Child with immediate education and to determine whether the interim placement provided information helpful in developing a more permanent placement.

The District's request for evaluations arose near the start of the Fall 2001 school term. Although certain specific assessment tools were discussed by the District during the October 8 hearing including, for example, the Woodcock Johnson III, the impartial hearing officer understood that other assessments might also be deemed necessary and viewed the request as not a final and complete list of all evaluations in the six areas which the District might wish to conduct.

The IEP team must, in the first instance, review existing data and determine what additional data, and therefore evaluation, is necessary. 20 U.S.C. § 1414(c)(1). If additional evaluations are necessary, informed parental consent is required unless the Parent fails to respond after the school has taken reasonable steps to obtain consent. This scheme contemplates an initial decision by the IEP team or by school personnel and the Parents, with review of that decision by an impartial hearing officer if the parties cannot agree and either seeks a hearing on the matter.

(3) Decision: The impartial hearing officer makes no ruling as to what may have occurred before the hearing with regard to team meetings to determine what evaluations are necessary, or as to notice of evaluations, because neither party presented enough evidence on those question.

Therefore, the District team, and the Parent if she chooses to participate, should in the first instance outline, with the specificity and detail required by IDEA and its regulations, what evaluations are to take place in any areas of suspected disability including academic progress and standing. Proper written notice should be given to the Parent, but absent further hearings and orders modifying this generalized decision, all appropriate evaluations are permitted provided the Child wishes to receive services provided by the District. The District did not request, and the impartial hearing officer does not order, that the Child be brought in for evaluations if he is not requesting or receiving services from the District or attending public school therein.

Furthermore, since the Woodcock Johnson III was discussed by the parties sufficiently for consideration by the impartial hearing officer, it is ordered the District may use that evaluation as part of its overall testing and assessment of the Child if so desired by the team.

The Parent was advised that she could obtain independent evaluation at her own expense, or could seek District payment for an independent educational evaluation in accordance with

IDEA.

D. Discussion, Legal Conclusions, and Decision Pertaining to Temporary Placement Question:

(1) Issue: What should be the temporary placement of the Child pending further assessments and further placement decisions by the District IEP team?

(2) Discussion and Legal Conclusions: Unrefuted evidence, which to some extent appears to not be denied, established the Child has major behavioral problems which may, and during his attendance in the District did, lead to violent outbursts involving profanity directed at staff, throwing objects resulting in damage to the objects and the school itself, and requiring the intervention of multiple adults to safely control the situation on more than one occasion. These outbursts created a real potential, at the very least, for physical harm to the Child, to other students, and to staff, and resulted in property damage.

The Parent asserted, or at least implied throughout this proceeding, that District personnel were in some way at least partially a cause of the Child's misbehavior, and given the abbreviated nature of the proceeding, the District didn't fully present its position on this question. Nevertheless, the impartial hearing officer concludes more than sufficient evidence established that even if District personnel might have done more to prevent the problem, an assertion which has not been proven, the Parent's repeated "justification" of the Child's misbehavior and explanations of his substantial capabilities, but for uncontrolled behavior, ignores the problem. The Child clearly needs a very structured environment in which he can learn he must comply with reasonable, lawful, demands of staff, and where he has the opportunity to learn to control his behavior sufficiently that he can attend school without endangering himself and others.

Regardless of the cause of the Child's outbursts, the District's proposal to at least temporarily place the Child in [Date Treatment Center] outside the District is appropriate. No evidence suggested a less restrictive placement would protect the Child or others, no was there any evidence to suggest the Child could succeed in the future without such a restrictive placement at least temporarily. The impartial hearing officer does not doubt that the Child is capable of learning academically, but absent better behavioral control, academic learning will do little to serve the Child's needs as he attends school, matures, and enters adult life. The District's proposed temporary placement appears essential to the Child's learning

the basic skills needed to succeed in school and beyond, and however restrictive it must be, it is appropriate and necessary in this case.

(3) Decision: It is therefore ordered that the District's proposed temporary placement in the [Date Treatment Center] is approved as appropriate and necessary for the Child to benefit from education. Placement in a regular education classroom, even with an aid, would be disruptive, would endanger the Child and others, and would not adequately or appropriately serve the Child's current educational and behavioral needs. The District agreed to provide transportation for the Child to attend school in this placement.

This decision does not preclude the Parent or District from seeking other placement if the proposed placement becomes unavailable, if they otherwise mutually agree, or if a significant change in circumstances subsequently justifies a different placement.

IV. CONCLUSION; APPEAL RIGHTS

Either party may appeal this decision by requesting state level review by an administrative law judge. Copies of the State regulation provisions concerning review of a decision from a due process hearing are enclosed with this decision. Either party may bring a civil action in a court of appropriate jurisdiction if unsatisfied with the final order of the administrative law judge on behalf of the Colorado Department of Education.

Dated: October 22, 2020.

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Clark S. Spalsbury, Jr.
Impartial Hearing Officer
P.O. Box 2008
Estes Park, CO 80517