

KENTUCKY DEPARTMENT OF EDUCATION  
DIVISION OF IDEA MONITORING & RESULTS  
AGENCY CASE NO. 1920-014

████████████████████

PETITIONER

v.

ORDER

██████████

COUNTY SCHOOLS

RESPONDENT

The parties having disagreed on the Petitioner’s current “stay put” placement; and both parties having filed simultaneous Briefs and Responses herein; the Hearing Officer having reviewed the Briefs, the IEP, pertinent case law, statutes and regulations; and being otherwise sufficiently advised, makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Petitioner’s current IEP was developed by an ARC on January 15, 2019. It made a finding that the Petitioner qualified for special education services under the area of “other health impairment”. Page 2 of the IEP specifically provided “██████████ is unable to develop friendships, having meaningful conversations with others and self-advocate for himself. ██████████ also has difficulty when asked to interact in a social setting with his peers and school staff. These deficits will impede on ██████████ ability to perform specific tasks/behaviors as a responsible member of the community at a level of similar aged peers. Due to this, ██████████ will have the accommodation of reinforcement and behavior modification strategies, which will be serviced in the highly structured behavior support program that ██████████ participates in.” This was a reference to the PASS program.

2. The IEP found that “he often talks about guns and violence to his peers and staff members making them feel uncomfortable. ██████████ has had previous incidents this year where he has been accused of violence and made threats toward other students.” Page 3.

3. On page 5 of the IEP, the services to be provided to Petitioner were described as “█ will participate in a highly structured, positive behavioral support program that emphasizes support for student success in the general education setting for student’s with behavioral concerns in the school setting. The overall goal is for the student to participate in the general curriculum with peers. The program provides explicit instruction and appropriate behavior expectations, provides support, guidance and feedback in the general education setting and direct instruction, both formally and informally, of social skills. Collaborative planning and dialogue will occur between the regular and special education teachers. The program consists of four (4) phases: Referral, Orientation, Maintenance and Inclusion and aftercare. Orientation which prepares the student for success in the general education setting, occurs in a special class designed to support behavior. **The length of this phase varies depending on the individual student’s readiness. Academic instruction may also take place during this time depending on length of phase. Maintenance and inclusion occur in the general and/or resource education setting for longer periods with frequent monitoring. Reorientation may occur as needed. (emphasis added)** Aftercare occurs in the general education and/or resource setting with the student self-monitoring behavior and having period check-ins with behavior coach. Students who participate in the positive behavioral program are provided direct instruction regarding their behaviors and receive feedback, tokens, and rewards for appropriate targeted behaviors. The overall goal of the program is to improve student behavior in the general education setting and to decrease the need for out-of-school and in-school suspension/removal. █ will begin in the orientation phase and will be transitioned into maintenance/inclusion once she (sic) shows readiness.”

4. Under the least restrictive environment findings on page 7 of the IEP, the ARC stated “Due to [REDACTED] behavior and social goals, he will best be served in a resource environment for Math and English and will receive special education support in collaborative setting for Science and Social Studies. [REDACTED] will also participate in a highly structured behavior program in the resource setting to reiterate on-task behavior and appropriate interaction with others.”

5. The special education services section provided that he would have 20 minutes one time per week in the resource setting on social skills. It also provided for 1 hour weekly of resource instruction in English and Math and co-teaching of 100 minutes per week in Science and Social Studies.

6. In the Placement Options and Decision section of the IEP, the ARC found “part-time general education and part-time special education environment (Participation in regular education, which may include co-teaching, and special education environment; anytime the student is removed from regular education, regardless of the amount of time).

7. The Summary Notes to the IEP also provide additional enlightenment as to what was anticipated for services and placements during this IEP. On page 5 of same it states “Currently, [REDACTED] participation in the PASS program includes a BIP. Due to continuing concerns for the safety of himself and others at (school), a safety plan was put into place and addressed allegation of threats, assault and hitting a locker at (school). He is escorted into the building every morning; his person and his belongings are searched and he is escorted by (school) or district staff each time he is in the hallways.

8. From the beginning of the 2018 school year on August 13, 2018 until the ARC was developed on January 15, 2019, the Petitioner had five behavioral incidents, including a

threat and intimidation, technology violation, and physical aggression. He had not met his goals in regard to social behavior skills and was functioning at 51% on said goal.

9. The summary notes reflect various other situations including “after becoming disinterested in the topic, █████ continued to bring up video games and even discuss some guns that are used in the video games.” “He told her about four hotels next to each other (unknown location) that is shaped like a swastika.” Page 6 of Summary Notes.

10. During evaluations, the Petitioner “at times brought up inappropriate, seemingly unrelated conversation topics such as first active shooter games and nuclear wars.” Page 10 Summary Notes. The Summary Notes on page 11 continued to reflect that “he is always respectful but because of first person shooter games, his computer usage has had to be limited... █████ stated the games he plays are violent and some inappropriate comments have been made...(█████ made a comment that the student “will regret this.”

11. Page 12 of the Summary Notes continues to reflect that █████ has seen violent behavior. █████ case manager, stated in the minutes that █████ is a very smart young man. █████ struggles making inappropriate comments to his peers as well as other staff members. Most of the time his comments revolve around guns or violence.”

12. A BIP was developed including interventions for positive action such as acknowledging positive behavior, avoiding power struggles, speaking with the student in hall way and teaching replacement behavior and language.

13. The school attached the Petitioner’s behavioral incident notes and some of the more serious incidents are as follows:

August 19, 2019-█████ had issues with other students in the art class. Was being inappropriate with other female students and made comments to an African-American student saying he could be racist.

September 4, 2019- [REDACTED] told another student that he was going to bring a samurai sword to chop his hands off, stab him with a pencil and kill his dog.

September 13, 2019- [REDACTED] refused to work in class. [REDACTED] went on to say that he hated everyone and that we could all burn in hell... [REDACTED] said fuck everyone, fuck the school, and he did not care what happened. [REDACTED] went on to say that when he gets his license he is going to drink as much alcohol as he can and drive to hurt people.

September 18, 2019- [REDACTED] was talking about how he likes to write about dark things such as blood and death.

September 30, 2019- [REDACTED] emailed World History teacher, during class and stated: "I hate all students. They are all evil pricks trying to pick and bully the weak one I am tired of it. I want to stand up against them but I know I can't."

October 17, 2019— [REDACTED] made comments on the bus on October 16, 2019 about how he wanted to cut people's arms off, rip their intestines out and beat them with it. Said he was ready for the demons to come to the school and wipe everyone out. Also said how it isn't right that he can't bring a backpack to school, but people better watch out for what other's may have in theirs... [REDACTED] was heard saying "Once I find him, I will cut his balls off" among other things.

October 29, 2019- [REDACTED] was telling another student about the comments he made on the bus regarding cutting others' arms off and ripping their insides out, along with cutting someone's balls off.

14. As a result of those behaviors and lack of progress on his goals, the Petitioner was placed in a resource setting through the PASS program at the school at the time this Due Process was filed on December 4, 2019.

#### PERTINENT LAW

1. 20 USC §1415(i) states that "during the pendency of any proceedings conducted pursuant to this section...the child shall remain in the then current educational placement of the child."

2. *NW vs Boone County Board of Education*, 763 F. 3d 611 (6<sup>th</sup> Circuit, 2011) discussed stay-put requirements and the factors that were to be considered. The Court placed specific reliance on the fact that 20 USC §1415 did not define what current educational

placement meant. However, the case acknowledged that 34 CFR §300.116 did establish such a definition.

3. Department of Education Regulation 34 CFR §300.116 defines “placement” as follows: “the child’s placement (1) is determined at least annually; (2) based on the child’s IEP; and (3) is as close as possible to the child’s home.” Said regulation further states “the placement decision... is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.”

4. *Clyde K. vs Poyallup Sch. Dist., 21 IDEALR 664 (9<sup>th</sup> Circuit, 1994)* recognized that special education students should not be placed in a regular classroom if their behavior threatens the safety of other students or poses a danger to themselves.

#### CONCLUSIONS OF LAW

1. The IEP clearly provides that the PASS program is a fluid program which requires passing through various stages and to which the student can be referred back to prior stages when they are not reaching all of their goals. It further recognizes that the PASS program will be more time intensive initially and if there are periods of regression. The specific finding of 20 minutes of special education services for social interactions in a resource setting does not necessarily cover the PASS program as it can be administered in multiple settings depending upon where the child is in his progress. Further, the child’s behavior reflects a genuine risk of harm to other students and possibly himself. However, the IEP also makes clear that the child is to receive educational services related to subject matter even in the PASS program. Accordingly, it is hereby ORDERED as follows:

2. The child’s placement for stay-put purposes was for the times and locations as set forth in the IEP and in the PASS resource room as required depending on this progress.

Accordingly, said placement shall remain. The school is admonished that this a fluid situation and should his behavior change, it would be expected that he would move to the next stage of the program and accordingly into more regular classroom time.

2. The IEP likewise envisions that during the time the child is in the PASS resource room, he will continue to be educated in his subject matter. To that effect, it is ordered that certified teachers in the subject matter shall be made available to him for assistance if the parent believes same is necessary during the pendency of this action for the child to grasp the material. This does not mean the certified subject matter teacher shall be required to be in the PASS room for an entire class period, but long enough to provide direct instruction as is believed necessary by the teacher for the child to receive instruction. Therefore, if the parent requests this accommodation, the school shall provide same for the time periods the educational providers deem to be appropriate to allow the child to continue to receive educational and academic benefit while in the PASS room.

Dated this 23rd day of December, 2019.

/s/ Kim Hunt Price  
HEARING OFFICER

#### CERTIFICATE OF SERVICE

I hereby certify that the foregoing Order was served by electronic mail to Hon. Vickie Arrowood at [arrowoodlaw@bellsouth.net](mailto:arrowoodlaw@bellsouth.net) and Hon. W. Cravens Priest at [cpriest@elpolaw.com](mailto:cpriest@elpolaw.com) and the original to Hon. Todd G. Allen, Office of Legal Services, 300 Sower Blvd. 5<sup>th</sup> Floor, Frankfort, Kentucky 40601, this 23<sup>rd</sup> day of December, 2019.

/s/ Kim Hunt Price  
KIM HUNT PRICE