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AUG 14 2013

ILLINOIS STATE BOARD OF EDUCATION SPECIAL EDUCATION
IMPARTIAL DUE PROCESS HEARING SERVICES

[REDACTED],¹

Student,

Case No: 2013-0418

v.

Beatriz A. Diaz-Pollack,
Impartial Hearing Officer

[REDACTED]

School District.

FINAL DETERMINATION AND ORDER

JURISDICTION

The undersigned has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* and the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*

BACKGROUND

Petitioners are the parents (“Petitioners” or “Parents” or “Father” and “Mother”) of a seventeen-year-old student (“Student”) with a disability. On April 23, 2013, Petitioners, through their attorney, [REDACTED] filed a due process complaint (“Complaint”) against Respondent (“Respondent” or “School District”). The Illinois State Board of Education (“ISBE”) appointed the undersigned as hearing officer on April 26, 2013. The undersigned issued a Preliminary Order and statement of the parties’

¹ Personal identification information is provided in Appendix A.

² Parties will be referred to herein according to the tab number under which they were listed in their

rights on May 1, 2013. The School District, through its attorney, [REDACTED] submitted its response on May 3, 2013. The parties waived the Resolution Meeting.

The undersigned conducted a telephonic prehearing conference on June 4, 2013. Both parties provided preliminary witness and document lists. During the prehearing, the undersigned requested additional specificity regarding some allegations in the Complaint and Parent's attorney provided further specificity on June 13, 2013. Hearing dates were scheduled for June 26th and 27th. On June 19, 2013, Parents requested a continuance of the hearing, and accordingly the 45-day decision timeline, due to unavailability of witnesses. The School District objected to the continuance. The undersigned granted the request for continuance and subsequently the hearing was scheduled for July 17 and 18, 2013 with closing arguments to be presented on July 24, 2013 and the 45-day timeline was extended to August 5, 2013.

The hearing commenced on July 17, 2013 and continued for a second day of testimony on July 18, 2013. The hearing was closed to the public. The School District provided a court reporter for the proceeding. At the outset of the hearing, Petitioners withdrew proposed exhibits² numbered P Tabs 3 and 39, and this Hearing Officer entered into evidence Petitioners' proposed exhibits numbered as P Tabs 1-2, 4-38, and 40-50 and Respondent's proposed exhibits numbered as SD Tabs 1-29. Neither party objected to the admission of the other party's exhibits.

Petitioners both testified and called five witnesses: [REDACTED], the Student's treating psychiatrist (testified by phone); [REDACTED], the Student's therapist at [REDACTED]; [REDACTED] (testified by phone); [REDACTED] a behavior management consultant

² Parties will be referred to herein according to the tab number under which they were listed in their respective hearing binder; e.g., Parents' hearing binder tab 1 will be referred to as P Tab 1.

who worked with the family; [REDACTED] Associate Director of Clinical Services at [REDACTED] (testified by phone); and [REDACTED] Director of Special Education at [REDACTED] (testified by phone). The district called seven witnesses: [REDACTED] Director of Special Education at [REDACTED], [REDACTED] Off-Campus Coordinator at [REDACTED], [REDACTED] Assistant Principal of [REDACTED], [REDACTED] teacher at [REDACTED], [REDACTED] teacher at [REDACTED], [REDACTED] Transition Counselor at [REDACTED] and [REDACTED] at [REDACTED]

After presentation of both parties' testimony, the hearing was continued for oral closing arguments to take place on July 24, 2013. Thereafter, Respondent's counsel requested a continuance of the closing arguments. Petitioners did not object and a continuance was entered to July 30, 2013 with an extension of the 45-day timeline to August 9, 2013. Subsequently, parties requested that closing arguments be submitted in writing by July 31, 2013. The undersigned granted that request and closing arguments were submitted on July 31, 2013, thus concluding the hearing.

No transcript was issued prior to the date of this decision; therefore, the testimony referenced below is based on the undersigned's memory and hearing notes. In rendering this decision, the undersigned has considered all documents entered during the hearing, testimony by parties' witnesses, the parties' closing arguments and their suggested case law, as well as independent research. This decision is issued within ten days after hearing's conclusion, as required by Illinois law. 105 ILCS 5/14-8.02a(g55)(5).

ISSUES AND REQUESTED REMEDIES

The issues to be determined are as follows:

1. Whether the School District denied the Student a free, appropriate, public education ("FAPE") during the 2012-2013 school year by failing to place the Student in a residential special education facility; and
2. Whether the School District denied the Student a FAPE as a result of the following:
 - a. Student's Individualized Education Plan ("IEP") goals are not objective and measurable.
 - b. Student's transition goals and transition plan fail to meet the requirements of IDEA's objective, outcome oriented requirement.
 - c. Student has failed to make progress in academic areas necessary for her to meet the transition goals.
 - d. Student has failed to acquire basic life skills necessary for her to function in the world.

The Parents request that the undersigned order the School District to:

1. Reimburse Parents for expenses incurred as a result of Student's unilateral placement at [REDACTED] beginning May 2013 for the remainder of the 2012-2013 school year and extended school year; and
2. Place Student at [REDACTED] and fully fund that placement, for the 2013-2014 school year.

BURDEN OF PROOF

In a special education administrative hearing, the party seeking relief has the burden of proof. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 44 IDELR 150 (2005).

The Parents are seeking relief in this case and therefore have the burden of proof on all issues.

FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. The Student is a seventeen-year old female who was adopted as an infant, along with a twin sister, by Petitioners³.
2. At approximately the age of four, the Student was first diagnosed with Reactive Attachment Disorder, a diagnosis which has been changed or replaced a number of times in the course of the various therapies and medical interventions which have continued on and off throughout her life until the present⁴.
3. Since approximately 2008, the Student has been under the treatment of [REDACTED] with the primary working diagnoses of Attention Deficit Hyperactivity Disorder, Anxiety Disorder, Type Two Bipolar Disorder, and Trichotillomania or hair pulling disorder. Although it is not her official diagnosis, [REDACTED] also believes the Student suffers from attachment issues consistent with what might be seen in other cases of adoption or early childhood attachment traumas. The primary treatment under [REDACTED]'s care has been related to medication administration and counseling regarding environmental concerns, including family dynamics⁵.
4. Consistent with bipolarity, the Student exhibits a need for instant gratification and would be prone to engage in activities that give her a sense of being special, important and satisfied, and counter-balance her negative self-image. This can include hypersexuality. The strong need for instant gratification, together with the Student's below average intellectual ability combine to make various attempted therapies unsuccessful⁶.
5. In order to address her deficits, the Student needs a structured environment with a lot of therapeutic interventions that would allow her to gain skills around mood regulation and the development of mindful attachments with other people and give her time to mature. This skill development is currently hampered by the degree of the Student's impulsivity⁷.
6. The Student entered the School District as a ninth grade student and attended Evanston Township High School ("ETHS") with an IEP identifying her as a Student with a Specific Learning Disability and Speech/Language Impairment. During her ninth grade year, the Student's IEP Team found her eligible under the disability categories of Emotional Disorder ("ED") and Speech/Language Impairment⁸. The Student attended classes in ETHS' Instructional Program ("IP"), which consists primarily of

³ P Tab 34

⁴ Testimony of Father and Mother; P Tab 34

⁵ Testimony of Dr. [REDACTED]

⁶ *Id.*

⁷ *Id.*

⁸ SD Tab 22

self-contained special education courses that are conducted within the various educational departments of the high school, for her substantive subjects, and began to receive social work services⁹. The Student continued to attend IP classes in her tenth grade year and the IEP Team noted improvement in academic and social/emotional areas¹⁰.

7. During the time Student was a ninth and tenth grade student, Parents became increasingly concerned regarding her out of school behavior, including, but not limited to, leaving the house without permission, engaging in electronic communications with individuals they deemed to be strangers that included the exchange of explicit messages and/or photographs, cutting her arms with glass or other materials she could find, piercing her face with needles, piercing kits, or jewelry she would buy from the internet with family credit cards utilized without permission, and on at least one occasion being found in a compromising position with a male in a vehicle after leaving a party she had permission to attend¹¹. Parents believed that inappropriate behaviors, including inappropriate sexual contact with boys, were also taking place at [REDACTED]¹². Parents derived most of this information from reading Student's electronic mail messages and other social media accounts, such as Facebook, and reading Student's journals¹³.
8. The School District does not recollect any incidents of Student being involved in inappropriate sexual behaviors taking place at the high school, nor of being informed of such behaviors. The Director of Special Education would have been informed of any such behaviors by students or would have received a report from school security of any such behaviors that were videotaped by the School District's security system¹⁴.
9. During the summer after her tenth grade year, Parents enrolled the Student at [REDACTED] ("[REDACTED]"), an outdoor residential therapy program¹⁵. [REDACTED] is a nomadic program with a strong therapeutic component including art therapy and Brainspotting, a therapeutic method focusing on the amygdala, the area of the brain where traumas are believed to be stored, as opposed to traditional talk therapy which focuses on the frontal lobe of the brain¹⁶.
10. At [REDACTED], the Student demonstrated significant cognitive impairments and struggled with basic life skills, such as packing her

⁹ Testimony of Father, Mother and [REDACTED], SD Tab 22

¹⁰ SD Tab 21

¹¹ Testimony of Father and Mother; P Tab 34

¹² Testimony of Father and Mother

¹³ *Id.*

¹⁴ Testimony of [REDACTED]

¹⁵ Testimony of Father and Mother, and [REDACTED], P Tab 37.

¹⁶ Testimony of [REDACTED]

backpack and remembering to bring assignments or even her journal to group, and struggled with emotional immaturity¹⁷. Student's therapist at ██████ reported that the work completed during the program suggested student had numerous sides to her personality. A side that came out with Student's mother and sister was very toddler-like and attention craving¹⁸.

11. ██████ staff believed the Student had a need for ongoing supervision to avoid risky behaviors and the perspective that those risky behaviors could block student's ability to learn since she might run away or skip class for boys¹⁹. In addition, ██████ staff believed the Student needed continued, intensive therapy²⁰.
12. ██████ staff recommended that student be placed in a residential facility²¹.
13. While the Student remained at ██████ Parents requested an IEP meeting to discuss residential placement for the upcoming school year²².
14. The IEP Team, including participation from ██████, Student's therapist at New Vision, discussed Parents' request and a decision was reached to place the Student in a therapeutic day school placement²³.
15. Parents reviewed the therapeutic day school placement options suggested by School District and, after visits to each, selected ██████²⁴.
16. ██████ is a private therapeutic day school program run by the North Suburban Special Education District, NSSSED. There are approximately 75-80 students in the ninth through twelfth grades at NSA with an average class size of 11 students. The range of academics provided includes any course that a student's home high school requires for graduation. In addition the school has a Transition Program to prepare students for post high school life, and provides a wide range of activities, supports, services, and therapy²⁵.
17. ██████'s Transition Program seeks to provide students all services necessary to assist them in meeting their post high school goals. Services provided include transition counseling, job skills training and coaching, post-

¹⁷ *Id.*

¹⁸ Testimony of ██████, P Tab 40

¹⁹ Testimony of ██████

²⁰ *Id.*

²¹ *Id.*

²² Testimony of Father and ██████

²³ *Id.*; P Tab 25; SD Tab 20

²⁴ Testimony of ██████, P Tab 34

²⁵ Testimony of ██████

secondary education training and coaching, visits to post secondary schools of various types (i.e., colleges, junior colleges, trade schools), self-advocacy, life skills and housing training and counseling²⁶.

18. [REDACTED] staff teams meet weekly to address student progress and needs and communicate as needed to ensure continuity of goals across the various academic and therapeutic settings in the school²⁷.
19. In preparation for Student's transition to [REDACTED] Parents provided information to staff regarding concerns relating to Student's frequent elopement from home and inappropriate internet usage and warned staff to be prepare for attempted elopement from school²⁸.
20. Student began attending [REDACTED] on or about September 19, 2012²⁹. She was enrolled in the 11th grade Tier 3 program which is for students performing significantly below grade level. Her courses included Read 180, Writing, Math, Life Skills and U.S. History classes, with class sizes ranging from 4-10 students, taught by special education teachers and individualized according to student need³⁰. In addition, she began receiving individual and group therapy at [REDACTED]³¹.
21. While at [REDACTED] Student was described as a "model student." Her attendance was very consistent, she was engaged with the academic work, making mostly A and B grades in her classes. Student was also engaged with the therapy and counseling services provided and did not have any incidents of elopement from school or inappropriate sexualized behavior³².
22. The Student performed academic tasks with a high degree of independence and sought assistance for accomplishing academic tasks when she needed it³³. Although still performing significantly below grade level, the Student's reading and writing skills showed improvement both as measured by standardized assessments and based on her teachers' observations and assessment³⁴.
23. Due to her emotional issues, Student will often present initially as extremely compliant and sweet, seeking out attention and attaching easily and almost excessively to new adults³⁵. These behaviors were observed at

²⁶ Testimony of [REDACTED]

²⁷ Testimony of [REDACTED] and [REDACTED]

²⁸ Testimony of [REDACTED]

²⁹ Testimony of Father, [REDACTED], P Tab 34

³⁰ Testimony of [REDACTED] and [REDACTED]

³¹ Testimony of [REDACTED]

³² Testimony of [REDACTED], [REDACTED], [REDACTED], SD Tabs 5 and 14

³³ Testimony of [REDACTED] and [REDACTED], SD Tab 5

³⁴ Testimony of [REDACTED], [REDACTED], [REDACTED] and [REDACTED]

³⁵ Testimony of Father and Mother, [REDACTED], [REDACTED] and [REDACTED]

██████████ and discussed in her therapy³⁶. In the course of her individual and group therapy, appropriate roles of individuals in social settings were discussed and the Student was often able to identify appropriate responses to social situations when provided with examples, and even give advice to others, but was not consistently able to apply those lessons to her own behavior without support³⁷. Staff worked to address therapeutic goals outside of traditional talk therapy by working with teachers to practice those goals in real life settings³⁸.

24. Student also participated in numerous post-secondary Transition Program services at ██████████. She received career counseling and was in an exploratory phase regarding her post-secondary interests³⁹. She is interested in working with children in an educational capacity⁴⁰. Next steps with her would be assisting her in researching the various educational requirements for her identified job interests and helping her to find an avenue into that field that is consistent with her cognitive and academic abilities. In addition, she was participating in a consumer math course, intended to provide financial life skills along with basic mathematic skills and worked at the school store⁴¹.
25. Student attended a week-long out of state service learning trip in April of 2013. ██████████ staff chaperoned the trip and her participation throughout the travel and trip were appropriate⁴².
26. During the same time period when Student was enrolled at ██████████, she became increasingly noncompliant with her Parents and engaged repeatedly in risky behaviors including inappropriate internet contact, often of a sexual nature, with various individuals who she met online, leaving the house without permission, refusing to complete simple tasks assigned at home and being combative with her sister, father and mother⁴³.
27. ██████████ provided home behavioral consulting services from Mr. ██████████. This was not a related service in the Student's IEP but is sometimes provided by ██████████ to assist families with at-home behavior issues⁴⁴. Mr. ██████████ seeks to help families learn to adapt as behaviors evolve and respond to them appropriately and in a way that generates the compliance sought from a child⁴⁵.

³⁶ Testimony of ██████████

³⁷ Testimony of ██████████ and ██████████

³⁸ Testimony of ██████████

³⁹ Testimony of ██████████

⁴⁰ Testimony of Mother and ██████████

⁴¹ Testimony of ██████████ ██████████ and ██████████

⁴² Testimony of Father; Stipulation of Parties

⁴³ Testimony of Father and Mother; P Tab 34

⁴⁴ Testimony of ██████████ and ██████████

⁴⁵ Testimony of ██████████

28. [REDACTED] worked with Student's family focusing on issues of compliance at, and elopement from, home. He taught the Parents skills intended to diffuse arguments and apply consequences. Consulting sessions would occur in person and as new skills were incorporated in the family's routine, additional support was available to Parents over the phone to assist in the implementation of interventions or in the event of a behavior crisis. Parents were initially invested and compliant. However, over time, the Student's elopements interfered with the application of the interventions and consequences applied did not appear to curb the continued behaviors. The program [REDACTED] was implementing stagnated and was discontinued⁴⁶.
29. On at least three occasions while Student was attending [REDACTED] her elopement and observed online interactions devolved to a point that Parents believed they needed to hospitalize her to keep her safe⁴⁷. The intent of these hospitalizations was principally to keep her in a contained, safe environment that she couldn't run from, and in this way avoid giving her the ability to follow through on plans to meet with strangers. These plans were discovered by her Mother on the Student's online accounts, and at least on one occasion, discussed by the Student with her peers, therapist and teachers at [REDACTED]⁴⁸. Regarding this latter instance, the Student shared with a peer counseling group at school that she intended to spend Spring Break with someone she had met online in Rockford. Her peers counseled her against it and the plan was also discovered and discussed by her Parents with the Student's therapist. This resulted in one of the Student's hospitalizations. Student returned from Spring Break proudly reporting to staff and peers that she had not gone through with the plan⁴⁹.
30. During the time period that Student was enrolled at [REDACTED], her prior cutting and piercing behaviors diminished and her trichotillomania did improve, although not consistently and she did continue to engage in this behavior⁵⁰. At [REDACTED] the Student met peers who also engaged in hair pulling behaviors and found support in those peers⁵¹.
31. Parents believe that the Student was failing to progress academically based on their own observations and review of Student's standardized test scores⁵². In addition, they believe therapy provided by the School District was ineffective as evidenced by the continued devolvement of Student's behaviors at home and that rather than learning to make better choices

⁴⁶ Testimony of [REDACTED]

⁴⁷ Testimony of Father and Mother and [REDACTED]

⁴⁸ Testimony of Mother, [REDACTED] and [REDACTED]

⁴⁹ Testimony of Mother, Father and [REDACTED]

⁵⁰ Testimony of Mother and [REDACTED]

⁵¹ Testimony of [REDACTED]

⁵² Testimony of Father and Mother; P Tabs 27, 28 and 29

through therapy and counseling, the Student was kept safe on more than one occasion from engaging in dangerous behaviors through hospitalization⁵³.

32. In March of 2013, Parents requested an IEP meeting to review placement, believing that Student was not progressing at [REDACTED] and her behaviors were devolving to the point that residential placement was necessary⁵⁴. After discussion of the Parents' request, the IEP team decided to maintain Student's placement in the therapeutic day school⁵⁵.
33. Student attended [REDACTED] through approximately mid-May 2013, at which point she was unilaterally placed by Parents, pursuant to a ten-day notice to School District, a [REDACTED]⁵⁶.
34. [REDACTED] is a developmental attachment program in [REDACTED] serving primarily students aged eight through seventeen. It includes both a therapeutic day school and a residential component that work together to create a special therapeutic milieu with a strong focus on children from orphanages or foster care or children that experienced family disruption in early childhood⁵⁷.
35. [REDACTED] core teams comprised of staff from the therapeutic day school, residential cottages and therapists meet weekly to discuss coordination of individual student services⁵⁸. Students in the cottages participate in chores and other daily living activities under staff supervision and attend the therapeutic day school program for educational services⁵⁹.
36. [REDACTED]'s therapeutic day school provides a six instructional hour day set up to address the needs of students who struggle in general education and/or larger class settings and works to identify and meet student social emotional needs to make the student more available for core academics. There are approximately eighty students in the school in grade two through twelve with about forty-three or forty-four of those students also living in [REDACTED]'s residential setting⁶⁰.
37. Student was placed at [REDACTED] by Parents and arrived demonstrating below-grade level academic performance with cognitive deficits and complex emotional issues⁶¹.

⁵³ Testimony of Father and Mother

⁵⁴ Testimony of Father, [REDACTED] and [REDACTED]

⁵⁵ Testimony of Dr. [REDACTED]

⁵⁶ Testimony of Father and [REDACTED] P Tab 10; SD Tab 2

⁵⁷ Testimony of [REDACTED]

⁵⁸ Testimony of [REDACTED] and [REDACTED]

⁵⁹ *Id.*

⁶⁰ Testimony of [REDACTED]

⁶¹ Testimony of [REDACTED] and [REDACTED], P Tab 48

38. In therapy, the Student is working on attachment and low self-esteem issues, as well as working toward obtaining an increased understanding of her diagnoses so she can understand why she does what she does and begin to develop skills to engage in more healthy behaviors⁶². Her family participates in a weekly therapy call and the goal is to transition the student back to her home setting once she has stabilized and is ready to practice the skills acquired⁶³.
39. In the school setting, Student's last IEP developed at [REDACTED] is being implemented prior to a review that will take place after a four-six week implementation period. The goals contained therein have been found to be largely appropriate, with the possibly addition of a math computation goal⁶⁴.
40. The Student will also receive Transition services at [REDACTED] including services related to independent living tasks (e.g., cooking and chores) and post secondary goals. Student's post secondary goals are to be a kindergarten to fifth grade teacher and as next steps she will be assisted in researching vocational and educational requirements for that career, visit local classrooms and gain real life experience in her identified area of interest. She would have access to local community resources in the [REDACTED] area to further explore her career interests⁶⁵.
41. Parents' goal is for Student to return home and reintegrate into her family and community, but they fear that she will not be safe if that occurs without her attainment of significant social skills⁶⁶.

CONCLUSIONS OF LAW

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

The IDEA ensures that children with disabilities are provided with a free appropriate public education ("FAPE") and related services that meet their unique needs

⁶² Testimony of [REDACTED]

⁶³ *Id.*

⁶⁴ Testimony of [REDACTED]

⁶⁵ *Id.*

⁶⁶ Testimony of Father and Mother

and prepare them for further education, employment, and independent living⁶⁷. Implicit in the congressional purpose of providing access to a FAPE is the requirement that the education to which access is provided be sufficient to confer some educational benefit to the disabled child⁶⁸. A FAPE is defined as:

[S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA... include an appropriate preschool, elementary school, or secondary school education in the State involved and are provided in conformity with the individualized education program (IEP)⁶⁹.

In deciding whether a School District provided a student a FAPE, the inquiry is limited to (a) whether the School District complied with the procedural requirements set forth in IDEA; and (b) whether the student's IEP is reasonably calculated to enable the student to receive educational benefit⁷⁰.

In order to prevail on a claim of reimbursement for a unilateral parent placement in a private school or facility, a Petitioner must have provided ten-day notice of the intent to privately place a student and be able to prove:

1. The school district's placement fails to provide student a FAPE, and
2. The parentally selected private program is found to be appropriate under IDEA⁷¹.

In determining whether a private residential placement selected or sought by a parent can be ordered by a hearing officer, the standard in the 7th Circuit is whether the placement is primarily educational in nature⁷². If the placement is primarily educational in nature, it may be considered and ordered by a hearing officer; if the placement is not

⁶⁷ 20 USC §

⁶⁸ *Bd. Of Educ. V. Rowley*, 458 U.S. 176

⁶⁹ 20 USC §1401(9); 34 CFR §300.17

⁷⁰ *Rowley*, 458 U.S. at 206-207

⁷¹ *Burlington Sch. Comm. v. Massachusetts Dept. of Educ.*, 471 U.S. 359

⁷² *Dale M. v. Bradley-Bourbonnais High Sch. Dist. 307*, 33 IDELR 266 (7th Cir. 2001); *Butler v. Evans*, 33 IDELR 62 (7th Cir. 2000)

primarily educational in nature, but rather is primarily medical or for reasons related to home or behavior that occurs outside the school, a school district is not required to effectuate or fund the placement⁷³.

Furthermore, Districts are required to educate children with disabilities, to the maximum extent appropriate, with children who are not disabled. A child may only be placed in a separate setting when the student's needs are such that no less restrictive environment will afford him/her a FAPE⁷⁴.

Parents' claim that the School District failed to provide a FAPE by denying Parents' requests of August 2013 and March 2013 for residential placement, and in the alternative claim that a FAPE was denied as a result of Student's IEP goals not being objective and measurable; transition goals and a transition plan that fail to meet the requirements of IDEA's objective, outcome oriented requirement; and/or Student failure to make progress in academic areas necessary for her to meet the transition goals or Student failure to acquire basic life skills necessary for her to function in the real world.

In order to prevail on their claim for reimbursement and placement in the residential setting, Parents must first establish that the therapeutic day school placement at ████████ denied the student a FAPE. The balance of the evidence presented at hearing weighs in favor of the School District on this issue.

Parents base their claim on their observations that the Student failed to progress academically or in her transition goals, while her out of school behavior declined to a level that interfered with her education; thereby suggesting that the student was not receiving educational or social/emotional benefit in the therapeutic day placement. While

⁷³ *Id.*

⁷⁴ 20 USC §1412(a)(5)(A)

Parents have clearly made a significant investment in becoming informed of their Student's abilities and needs, and implemented a variety of therapeutic interventions in concert with, as well as in addition to those provided by the School District, the weight of the evidence suggests that in her year at [REDACTED] the student was offered an appropriate IEP and did receive an educational benefit as evidenced by both her academic and social/emotional progress.

It is instructive to note that in addition to the testimony provided by [REDACTED] and School District staff who credibly opined that the Student's IEP goals were appropriate, the Student was demonstrating progress on those goals and that [REDACTED] could meet the Student's needs and was, therefore, appropriate placement, testimony from Chaddock staff supported this contention as well. [REDACTED]'s Director of Education testified that in implementing the [REDACTED] IEP since Student's enrollment at the end of May through the hearing date in mid-July, staff had found the IEP goals appropriate and, to that date, would only consider addition of a math computation goal. Furthermore, the educational program overviews as described by [REDACTED]'s Assistant Principal and [REDACTED]'s Director of Education reveal very similar programs geared to meeting the needs of students with emotional challenges by, among other services, coordinating closely with staff members who provide therapeutic services, limiting class sizes, and modifying curriculum to make education services accessible to students with such challenges.

Furthermore, testimony presented regarding the Student's social/emotional needs and appropriate therapeutic approaches to address those needs demonstrates that the approach taken by [REDACTED] staff with regards to Student's therapy is appropriately tailored and addresses her needs. The Student's treating psychiatrist, as well as her therapist from

the [REDACTED] program, each testified that despite Student's outward appearance of compliance, time and intensive therapy are necessary for the Student to acquire skills that will allow her to develop mindful and authentic attachments with people and repair relationships with her family. These needs and therapeutic goals were echoed by [REDACTED]'s school psychologist who was also able to identify how she, together with other [REDACTED] staff members working with the Student were working to not only introduce these skills to the Student, but also to reteach these skills as required by the Student's cognitive abilities and give her opportunities to practice those skills in real life settings.

Similarly, evidence introduced regarding appropriate post-secondary transition activities for the Student demonstrated that the goals expressed in Student's IEP of November 15, 2012, and carried over in subsequent IEPs for the 2012-2013 school year, and the transition counseling and activities in which Student has engaged, and would prospectively engage in, at either the therapeutic day placement or the residential placement, in fact, mirrored each other.

The foregoing discussion supports the conclusion that the School District did, in fact, provide Student a FAPE; therefore, it is not necessary to reach analysis of the second *Burlington*⁷⁵ prong with regards to the question of whether reimbursement for the unilateral parental placement is appropriate.

Furthermore, the evidence presented strongly supports the conclusion that the residential placement was, in fact, primarily due to behaviors that occur outside of the school setting. Although witnesses presented by Petitioner, including her treating psychiatrist, her therapist at [REDACTED] and [REDACTED]'s Director of

⁷⁵ *Burlington Sch. Comm. v. Massachusetts Dept. of Educ.*, 471 U.S. 359

Education, indicated that they believed the Student's out of school behaviors could interfere with her ability to make academic progress, and those opinions were informed by their respective professional experiences, these beliefs were, largely, speculative. Evidence presented by [REDACTED] and School District staff indicates that although Student was engaging in a number of behaviors that her Parents, and the average individual, might deem risky and inappropriate outside of the school setting, aside from the Parent-initiated instances of hospitalization, those behaviors did not interfere with Student's attendance, engagement, or performance in the school setting. In fact, [REDACTED] staff were working with Student above and beyond the services required by her IEP to assist her in addressing those behaviors and were making progress in developing the necessary relationships to be able to move the Student's therapy forward.

Thus, Petitioners have not met their burden of proof to establish that School District failed to provide a FAPE by denying Parents' requests for residential placement, nor was sufficient evidence presented to sustain the claims that a FAPE was denied as a result of Student's IEP goals not being objective and measurable; that Student's transition goals and a transition plan that fail to meet the requirements of IDEA's objective, outcome oriented requirement; and/or that Student's failure to make progress in academic areas necessary for her to meet the transition goals or failure to acquire basic life skills necessary for her to function in the real world. While certain of these goals were still in progress and it remained to be seen whether Student would fully attain them, Parents' removal of the Student from [REDACTED] interrupted her progress there and did not allow for continued assessment of her performance. Meanwhile the evidence that does exist indicates that progress towards those goals had been made and credible testimony from

██████████ staff suggests that Student would have continued on that trajectory and received continued educational benefit from her placement in that setting.

ORDER

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

1. Parents' request for reimbursement of expenses related to Student's placement at ██████████ is denied;
2. Parents' request for prospective placement of Student at ██████████ for the 2013-2014 school year is denied;
3. Should Parents choose to present Student for re-enrollment in the School District, the Student shall continue placement at ██████████ and within twenty-one days of any notice of Parent's intent to re-enroll the Student, an IEP team meeting should be convened to review Student's March 22, 2013 IEP for any changes necessitated by the break in services from NSA and School District; and

In accordance with 105 ILCS 5/14-8.02a(h), within 60 school days of receipt of this Order, the District shall submit proof of compliance in the form of a communication indicating whether Student has been presented for re-enrollment and if so whether the ordered IEP team meeting has taken place to:

Andy Eulass
Due Process Coordinator
Illinois State Board of Education
100 North First Street
Springfield, IL 62777-0001

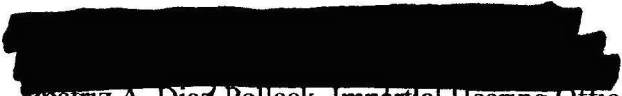
NOTICE OF RIGHT TO REQUEST CLARIFICATION

Pursuant to 105 ILSC 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification 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: August 9, 2013


Beatriz A. Diaz-Pollack, Impartial Hearing Officer

P.O. Box 5908
Elgin, Illinois 60121
(224) 227-7050 (telephone)
(224) 227-7025 (facsimile)
badiazpollack@gmail.com

APPENDIX A

[REDACTED] v. [REDACTED]
ISBE Case No: 2013-0418

Child	[REDACTED]
Attending School	[REDACTED]
Child's Parents/Petitioners	[REDACTED] and [REDACTED]

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the Final Decision and Order was sent to the Parties through their respective counsel identified below and to ISBE by certified mail and electronic mail and directed to:

[REDACTED]

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

on August 9, 2013.

[REDACTED]

Beatriz A. Diaz-Pollack
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