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SPECIAL EDUCATION SERVICES

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[redacted]

Student,

Case No: 2016-0002

v.

[redacted]

Jennifer A. Leisner,
Impartial Due Process Hearing Officer

School District

FINAL DETERMINATION AND ORDER

PROCEDURAL BACKGROUND

A.R. ("Student") is currently an eighteen (18) year old student receiving transition programming pursuant to an eligibility designation of Specific Learning Disability, Other Health Impairment, and Speech/Language Impairment. (District #10.)[1] The Parents filed a due process complaint notice ("DPCN")[2] on July 6, 2015, and the School District filed its Response on July 17, 2015. In their DPCN, the Parents requested reimbursement for their unilateral

[1] In addition to documented vision problems, the Student presents with the following conditions: unspecified Neurodevelopmental Disorder, Generalized Anxiety Disorder, Language Disorder, Developmental Coordination Disorder,

[2] The Parents seek a hearing pursuant to the *Individuals with Disabilities Education Act ("IDEA")* 20 U.S.C. §1415(f)(1) and (3), the *School Code of Illinois ("School Code")* 105 ILCS 5/14-8.02a, and their respective implementing regulations. *See,* 34 C.F.R. §300.502 and 23 Ill. Admin. Code 226.600-226.690.

placement of the Student at [redacted], a private residential facility located out of state, and for a finding that [redacted] be the Student's prospective placement for the remainder of the 2015-2016 school year. The School District has requested that the Parents' claims for reimbursement and prospective placement be denied, and that the Student be placed in an accredited therapeutic day transition program, such as [redacted].

The parties concluded the Resolution Meeting process by conducting the State-sponsored mediation on July 17, 2015 and attempting settlement negotiations directly through counsel. On September 11, 2015, a telephonic prehearing conference was initiated, and it was continued to September 15, 2015 when it was completed. The case went to hearing on the following dates: October 21-23, November 10, November 24, 2015 and January 4, 2016.[3] Counsel for the parties requested closing argument with the opportunity to present the Hearing Officer with legal authority; and the hearing was closed on January 4, 2016.[4]

[3] The Parents requested a closed hearing. A list of witnesses is attached to this ruling as Appendix A. Both parties submitted binders with exhibits, all of which were admitted into the record. In this opinion, references to the Parents' Exhibits will be P-#; for the School District's Exhibits it will be SD -#. A court reporter was present at the hearing, although copies of transcripts were not available to the Hearing Officer in time to complete this Final Determination and Order.

[4] Throughout the litigation, counsel for the parties made written requests for extensions of the 45 day hearing deadlines in order to attempt resolution, conduct State-sponsored mediation, and schedule a hearing (including the submission of briefs) around attorney, hearing officer and witness schedules. The Hearing Officer approved the continuances.

ISSUES

The following issues were addressed at hearing:

Issue #1: *Whether the School District developed IEPs for the Student that provided appropriate services for the 2015-2016 school year; and that addressed the Student's needs for Extended School Year ("ESY") during the summer of 2015?*

Issue #2: *Whether the School District developed IEPs for the Student that provided appropriate placement for the 2015-2016 school year, including ESY during the summer of 2015?*

Issue #3: *Whether, during the period from July 6, 2013 through the present, the School District complied with the procedural protections of the Individuals with Disabilities Education Act ("IDEA") by properly considering private evaluations regarding the Student that were provided by the Parents? If not, whether any failure to properly consider said private evaluations impeded the child's right to a free appropriate public education ("FAPE"), significantly impeded the Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or caused a deprivation of educational benefit to the Student?*

Issue #4: *Whether the School District improperly violated the procedural protections of the IDEA by sending the Student's educational packet directly to Acacia Academy without notifying the Parents or obtaining their permission or the Student's? If so, whether this action impeded the child's right to a free appropriate public education ("FAPE"), significantly impeded the Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or caused a deprivation of educational benefit to the Student?*

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 Overall

The Student has completed the 12th grade at the [redacted] (a therapeutic day school) and has earned enough credits for graduation, albeit on a modified grading system. He did not graduate, but remains eligible for services until he reaches 22. (District #10, 11) In his 12th grade year, the Student's grade equivalents in math, writing, and reading comprehension were several grade levels behind: specifically, Brief Math (G.E. 4.4); Broad Math (G.E. 4.7); Math Calculation (G.E. 5.5); Calculation (G.E. 5.1); Math Fluency (G.E. 6.6); Applied Problems (G.E. 3.8), Punctuation and Capitalization (G.E. 7.6) and Passage Comprehension (G.E. 5.9). (District #5).[5] Although difficult to test accurately, the Student obtained a Full Scale IQ score of 93 (32%), which placed him in the average range. (Id.)

Socially, the Student presents with many impairments: communication is a problem for the Student, especially expressively. (District #10, 11; Ms. G Testimony.) His Daily Living Skills are severely delayed; and his ability to care for himself and for living in the community are low. His socialization skills were just within the Borderline Range: his ability to related to others and for play and leisure were low and his adapting skills were below average. His overall

[5] In fact, the School District's "Report of Psychological Re-Evaluation" shows that when the Student was evaluated in the 12th grade, some of these scores (Brief Math, Broad Math, Math Calculation, Applied Problems, Punctuation and Capitalization and Passage Comprehension) were noticeable lower that when they were evaluated in 2012.

adaptive functioning was categorized in the Delayed Range. (District #10; Ms. W Testimony; Dr. J Testimony.)

Despite the fact that his IEP does not include an eligibility designation of Emotional Disability, the Student also presents with a significant Generalized Anxiety Disorder. (Dr. J Testimony, District #10, 11) He is inattentive, disorganized, distractible, and has many odd or unusual behaviors, such as making odd (and sometimes loud) noises. (Id.; District #10, 11) In short, the Student is a complex individual, presenting with a number of serious deficits.

His mother testified that the Student is highly dependent on his family for day-to-day living skills. She testified that the Student cannot get himself to his therapies or other community activities independently, and that he can't ask for help. (Mother's Testimony.) She testified that the Student is unaware of his disability or how it impacts him[6]: he cannot get himself up or ready independently; he needs reminders to bathe and wash his long hair; he won't cut his fingernails; he cannot plan a menu or buy groceries (although he has limited cooking skills). He struggles to generalize skills from one setting to another. (Mother's Testimony.)

The Student's former private therapist, Dr. J testified that he had been under her care for several years, although he is no longer her patient. (Dr. J

[6] For example, the Student was asked to fill in a self-assessment at Mansfield Hall (Parent's F118); and, consistently gave himself high marks (e.g., "I'm aware of when in need of a shower" "Almost Always") when in fact his functioning level is much lower. (Parents' F118, Ms. E Testimony)

Testimony.) Even though the Student was in high school, she continued to use play-based therapy for him, as he does not respond to conventional talk therapy. (Dr. J Testimony.) While not psychotic, she describes the Student as a "magical thinker" who is cognitively rigid. (Dr. J Testimony). The Student told Dr. J that in his Junior Year at [redacted] he felt sexually threatened and urinated in a hallway. He also told her that he played with a friend's father's gun and exhibited very violent play. (Dr. J Testimony) She described the Student as someone with nearly crippling anxiety to the slightest difficulty, yet exhibiting no self-awareness of his inability to perform certain tasks: she described his plan to support himself by making You Tube videos of him playing video games, as seeming very realistic to him. (Dr. J Testimony.) He is pleasure-based and ruled by his desires: he directs himself on what he feels like doing, and is resistant to non-preferred tasks. (Dr. J Testimony).

2. The School District Individualized Education Plan (IEP).

During the Student's 12th grade year, the IEP team met on January 29, 2015 to discuss programming for his Senior Year. (Mr. K Testimony, Mother's Testimony, District #10, 11).[7] The provision of special education and related services contained in the January 29, 2015 IEP ("the IEP") ~ as they pertained to

[7] This hearing concerned the programming for the 2015-2016 year only. It should be noted that the Parent could have brought a claim that the January 29, 2015 IEP was inappropriate as it pertained to [redacted] School, but did not. Despite evaluation reports (District #5) and some testimony (e.g., Dr. J) that the Student was struggling, the issue of the appropriateness of the portion of the January 29, 2015 IEP as it pertains to [redacted] school is not before this Hearing Officer.

the remainder of the Student's Senior Year ~ appear appropriate and are not at issue in this hearing.

A. Extended School Year ("ESY"). There is disagreement as to whether the Student's IEP adequately provided for ESY within the four corners of the document. On the one hand, the IEP specifically mentions that the Student is set to graduate (on a modified curriculum) in June 2015. (District #11). However, the Extended School Year section of the IEP was completed in detail, and noted that the Student "is at a critical stage of development where [a] window of opportunity will be lost without ESY" and that he "needs continuity as he will be transitioning to a new program in the Fall." (Id.)

Testimony regarding whether ESY was discussed in January 2015 was mixed, however. In her testimony, the Student's mother stated that it was her understanding that ESY would be decided at another IEP meeting in May 2015. (Mother's Testimony.) Through her counsel, she emphasizes the following statement (also contained in the IEP):

> *The team has agreed to have [the Student] remain at [redacted] until June 2015. This IEP does not affirm agreement for a separate day setting* ***beyond June 2015.*** *Prior to the end of the school year the team will reconvene (or relevant parties collaborate for a revision) to decide on a next assignment (level of service and school assignment). CPS will connect family to the Transition Department to learn an[d] visit potential public programs. This IEP will be revised prior to June 2015 to include a 2015-2016 grid and setting selection to affirm the agreed upon level of service for the next school year.*

(District #11) (Emphasis Supplied). A School District administrator, Mr. K was emphatic in his testimony that he told the Parent's representative that ESY would

be provided to the Student at [redacted], unless another site for the services was available. (Mr. K Testimony.)[8]

However, the agreed-upon IEP did not take place at the end of the 2015 school year, nor at any other time. (Mother's Testimony, Mr. K testimony.) Although the School District did initiate the process of connecting the family to the Transition Department (Mr. K Testimony, Ms. M Testimony, Ms. A Testimony), and have conversations with the Parent through her counsel's office about transition services from February through June 2015 (Mr. K Testimony), the IEP meeting was never convened. (Mr. K Testimony).

A paralegal in the Parent's counsel's office sent Mr. K an email dated May 26, 2016 asking to set up the IEP meeting, and offering dates in early June. (District #33; Mr. K Testimony, Mothers Testimony.) In a series of emails between the School District staff, starting on June 1, 2015, the School District first looks to be setting up the agreed-upon meeting. (District #33, 34.) On June 1, 2015 Mr. K writes to the Parent's paralegal "[redacted]'s regular school years ends on 6/4 and ESY starts on ESY 6/12, but not all staff are here in the summer." (District 33, Mr. K Testimony.) Later that day, Mr. K writes an email to another School District staff member asking about the Student's eligibility, and the staff member replies, "Yes, as per the January IEP meeting. [redacted] has not gotten a final confirmation because the Parents were indicating that we were still working on

[8] The parties agreed that Cove did not offer a "5th year" program, and that it would not be the Student's programming starting in the fall of 2015. (Mother's Testimony, Mr. K Testimony.)

his placement." (District #33, Mr. K Testimony). This contemporaneous email indicates that, despite her testimony to the contrary, the Parent was aware that ESY had been offered at [redacted], but that she wanted to decide his ESY placement and his transition placement together. This is confirmed in another email thread dated June 4, 2015, when a [redacted] School staff member wrote the Parent asking if she intended to send the Student to [redacted]'s ESY Program. The Parent responded, "No, he starts the Summer Session for his Transition Program on June 13th. Thanks!" (District #34, Mr. D Testimony, Mother's Testimony.)

That said, there is no dispute that the IEP fails to contain a placement for the fall of 2015 and beyond; and, that the goals and objectives, accommodations, related services and transition plan contained therein were designed to be implemented while he remained at the [redacted] School, and not beyond that (District #11, Mother's Testimony, Mr. K Testimony), even though the IEP didn't technically expire until January 2016. (District #11.)

When pressed as to why the agreed upon IEP to create the Student's transition plan and placement never took place, Mr. K at first testified that as he was having informal conversations with the Parents' paralegal, no firm date was set until June because the parties were informally exploring different programs. Then, after a date in June was selected for the IEP meeting, Mr. K cancelled it (and did not reschedule it) as he had received the Parents ten (10) day notice that the Student was going to be unilaterally placed by the Parents (at School District expense), and since the Student would not be returning to [redacted], he could not

have the IEP there. (Parent G38, Mr. K Testimony). The School District administrator admitted to abandoning attempting to reschedule it after that. (Mr. K Testimony, Mother's Testimony, District #33.) Mr. K admitted that he could have conducted the meeting, or at least made an attempt to send a Notice of Conference, but chose not to as he assumed it would be a waste of time, as the Parent had already unilaterally placed the Student. (Mr. K Testimony.) The Student's mother testified that she was always willing to participate in an IEP meeting to discuss options, even after the unilateral placement. (Mother's Testimony.)

B. Transition Planning for the 2015-2015 School Year. The January 29, 2015 IEP does contain a transition plan. (District #11.) Transition Assessments were completed in the fall of 2014, and the Student participated in a transition program while still at [redacted]. (District #11, Mother's Testimony, Ms. W Testimony). He was employed at Jimmy Johns, as his previous assessments showed that he was interested in a food service industry. (District #11.) It is clear that the transition plan as stated in the IEP was intended to be provided while the Student remained at [redacted]. (District #11.)

In April 2015, the Parents hired Ms. W1, a transition specialist, to assess the Student. (Ms. W Testimony, District #35.) In her report, Ms. W1 noted that the Student was transported to work via taxi, and that he is largely unsupervised at work. (District #35, Ms. W1 Testimony.) In her observation, Ms. W1 noticed that the Student used bleach without safety precautions, was oblivious to messes

he created, took recyclables out to the trash in an unsafe manner (and nearly got run over by a truck) and was making odd noises and grunts and talking to himself. (Ms. W1 Testimony, District #35.) She noted that the student has several strengths, including: "*time management at the worksite, functional reading for everyday skills, memory for everyday tasks, able to follow and retain verbal instructions, able to stay on task at the worksite, able to learn new tasks, able to use a diagram, good general orientation skills, able to read a map to perform simple map reading activities, able to use keyboard and computer monitory, increased exposure to work environments, expressed interest in food service work, expressed enjoyment for participating in current worksite, positive experience at worksite, and family support.*" (District #35.)

She also noted limitations, including: "*decreased bilateral keyboarding skills, decreased motor skills of fine and gross motor, muscle power, and bimanual dexterity, decreased perceptual speed, decreased attention to detail, decreased problem solving skills, poor conversation skills, decreased eye contact, verbalizing repeated statements and sounds in community settings, gives up easily if not interested, transportation skills not formally assessed, post secondary vocation setting not established, does not recognize or acknowledge his limitations, decreased independent living skills, dependent for higher-level activities of daily living: Transportation, Medical Management, Money Management, Household Management, Nutritional Management, and Incomplete Transition Plan.*" (District #35.)

The Parents gave a copy of Ms. W1's evaluation report to the School District. (Mother's Testimony.) Since the agreed-upon IEP never took place, the

School District did not have the ability to formally consider it. (Mother's Testimony, Mr. K Testimony.)

The Student's transition plan contained in the January 2015 IEP was written to be implemented at [redacted], but not beyond his 12th grade year. (District #11, Mr. K Testimony, Ms. G2 Testimony. Ms. R Testimony.) In particular, the IEP states that "[u]pon graduating from high school, Andrew will improve his problem solving skills within social and/or academic settings, and determine sequential steps to solve the problem and provide a solution." (District #11). The transition plan describes his planned course of study at [redacted], but does not fill in anything for "Extended Age 18-22". (District #11.) It describes the coordinated set of activities by describing his enrollment at [redacted]: the Student "attends a therapeutic day program that offers a modified curriculum, smaller teacher-student ratio, and class size, comprehensive and integrated services, testing and classroom accommodation, and highly specified educational staff. He received test prep/practice instruction in advisor and academic classes prior to his EXPLORE, PLAN and ESCAPE exam. (District #11.)

3. **Unilateral Placement at Mansfield Hall.**

On June 1, 2015, the Parents, through their counsel, sent the School District a letter stating that they intended to unilaterally place the Student at [redacted] a private school located in Wisconsin, at pubic expense on or about June 12, 2015. (Parents G22.) They sent another ten (10) day notice letter on August 12, 2015 indicating that the Student would be starting at [redacted] on August

27, 2015. (Parents G55.) There is no issue that the Parents' notice of unilateral placement was timely.

According the Parent, during the winter and spring of 2015, while she was exploring transition programs with Mr. K, she was also doing independent research. (Mother's Testimony.) She had contacted [redacted] School in [redacted] (also suggested by [redacted] staff) and even sent an application packet, but the Student was rejected. (Mother's Testimony). She learned of [redacted] through the [redacted] school and looked into their program for the Student. (Mother's Testimony.)

a. [redacted] *Generally.* [redacted] is a non-public private residential program located in Wisconsin. (Mother's Testimony, Dr. L Testimony). While the program is not designed to provide special education and related services, or to specifically service students through their IEPs, it was founded (and staffed by) professionals with special education training. (Dr. L Testimony.) Dr. L, a former school psychologist, one of the co-founders of [redacted], co-founded [redacted] in Vermont and Wisconsin, with his brother, a former director of special education. (Dr. L Testimony).

[redacted] is not a school. It does not provide academic coursework or curriculum. (Dr. L Testimony.) It is a residential support program helping students bridge between high school and college. (Dr. L Testimony.) It reinforces four "core values:" Learning, Living, Giving and Engaging. (Dr. L Testimony, Dr. E Testimony, Parents F1 - F2.) The residential program focuses

on independence, and is based on a support/coaching model. (Parents' F1-F2, Dr. L Testimony, Dr. E Testimony.)

Typical students at [redacted] have disabilities, even if they are not placed there pursuant to an IEP. (Dr. L Testimony, Parents' F3.) They are between 17 and 22 years of age and have received a high school diploma or in the process of completing high school credits through an IEP. (Parents' F3) The students are "college bound or want to explore college life and academics", taking classes at a local community college. (Id.) [redacted] does not accept students with significant behavioral, mental health or substance challenges" (Id., Parents' F8.) and it is not a primarily vocational program, although it does give its students the opportunity to volunteer in the community. (Dr. L Testimony Dr. E Testimony.)

[redacted] uses a team approach: academic directors, coaches and writing specialists work on academics; social communication specialists help students improve their social skills and social cognition; and a community outreach directly connects students the community. (Parents' F5.) The program uses two primary assessment tools: the BRIEF (Behavior Rating Inventory Executive Functioning), a standardized tool for assessing executive functioning capability; and the Pathways to Independence Inventory, a tool to help assess independence and college life skills. (Parents F7.) The program itself is designed by the students using these tools. (Dr. L Testimony, Ms. H Testimony, Dr. E Testimony, Ms. W2 Testimony.)

The School District submitted evidence that [redacted] did not provide special education and related services, that it was not implementing the Student's IEP, that its staff was either not certified, or at least not certified to deliver certain services, that it was not the least restrictive environment. (Parents' F1 -F45, Dr. L Testimony, Dr. E Testimony, Ms. W2 Testimony, Ms. W3 Testimony.)

b. *The Student's Progress at* [redacted]. At [redacted], the Student is enrolled in community college enrichment and remedial academic classes, and is making progress. (Ms. W2 Testimony.) The coaches at [redacted] largely assist the Student with his work, and there is a dedicated study period each day to allow him to do his work. (Ms. W2 Testimony.) When the Student entered in the summer program, his main objective was to adjust to the fall semester program. (Ms. W2 Testimony). He took enrichment classes and learned the routine of the program. (Id.) The Student's August 21, 2015 Summary Sheet summarized his progress. (Parents' F46 - 49.) Staff engaged in daily reminders throughout the day and evening for the Student to take his medications, engage in personal hygiene, manage his personal calendar, keep his apartment room clean and be aware of how his behavior affects others. (Parents' F46.) Academically, the Student teamed with his academic director to review the course catalogue for class assignments, although the Academic Director actually assumed responsibility for enrollment. (Parents' F 47, Ms. W2 Testimony.) For the Summer of 2015 the Student enrolled in Harmonica and Comic Book Inking;

he was able to attend class with increasing independence over the summer. (Parents' F47, Ms. W2 Testimony.) During the Fall 2015 Semester, the Student was enrolled in Math Concepts (remedial math), Drawing Fundamentals and Ceramics. He scored a 94% in his math class and was passing the additional classes. (Parents' F 47, Ms. W2 Testimony.)

Socially, the Student has demonstrated improvement since attending [redacted]. He sees a private therapist (arranged for by his mother) once every two weeks. (Dr. E Testimony, Mother's Testimony.) Reports from [redacted] are that, although the Student still demonstrates odd behaviors and generalized anxiety, he is fitting in with the other students; even engaging in problem-solving to address how they were reacting to some of his behaviors. (Dr. E Testimony). It is clear that [redacted] focuses on preferred tasks to address behaviors: it is unclear if the Student's behavior is improving because he's learning better strategies, or if his anxiety is generally reduced because he is given so much control over his classes and other experiences. (Ms. W2 Testimony.) When he is presented with a non-preferred task, he still demonstrates a marked resistance, and he requires significant encouragement to help him address and complete it. (Ms. W2 Testimony.) His mother reports that when he comes home from [redacted] he now does things that he didn't do before: he does dishes and laundry, his eye contact is better, he is generally more attentive, and he is more social and spends time with his friends. (Mother's Testimony.)

4. [redacted].[9]

The School District acknowledges that the Student cannot continue at [redacted] School for his transition programming between ages 18-22. (Mr. K Testimony, Mr. D Testimony.) During the winter and spring of 2015, the School District investigated multiple transition options for the Student. (Ms. M Testimony.) Some of the proposed programs were housed in School District high schools, and some were private schools. (Ms. M Testimony, Mr. K Testimony, Ms. A Testimony.) Mr. K testified that he would share brochures and other informational data on these programs with the Parents' paralegal, but that the Parent wasn't interested in them. (Mr. K Testimony.)

One of the identified programs was at [redacted], a private day therapeutic school. (Mr. K Testimony, Mother Testimony.) The Student's mother testified that she knew about [redacted], though not through the School District; and, she never sent them an application. (Mother's Testimony.) Mr. K testified that [redacted] was mentioned as early as the January 2015 IEP meeting,[10] and that he discussed it with the Parents' paralegal. (Mr. K

[9] Counsel for the Parents made a Motion In Limine to exclude all testimony regarding [redacted], on the grounds that since the School District didn't offer it as part of the IEP process, it was irrelevant. The Hearing Officer allowed the parties to provide authority on the admissibility issue. The Hearing Officer concluded that information regarding [redacted] would be allowed to address the issue of the Student's records being sent there allegedly without the Parents' permission, and because the School District was seeking equitable remedies; but, for no other purpose.

[10] None of the other School District witnesses who attended the January 2015 IEP meeting recollected discussing any specific post-high school programs, including

Testimony.) After the DPCN was filed and just prior to hearing, the Student's mother received a telephone call from Ms. F, at [redacted] who had received information regarding the Student from the School District. (Mother's Testimony, Ms. F. Testimony.) The Mother testified that she did not give consent, and the School District stipulates that it did not get prior written consent from the Student or either of the Parents before sending the Student's school records over to [redacted]. (Mother's Testimony.) When the Student's mother received a telephone call from Ms. F, she was shocked to learn that [redacted] was actually being considered. (Mother's Testimony.) The Student's mother asked Ms. F to forward a copy of the information she had received from the School District, which she did. (Mother's Testimony, Ms. F Testimony.)

Ms. F describes [redacted]'s transition program as distinct from its high school program. (Ms. F testimony.) Unlike [redacted], [redacted] is accredited school, staffed with special education teachers and related service providers. (Id.) The transition program at [redacted] is located in Illinois, and it uses curriculum. (Id.) The program services students with IEPs; and, at least preliminarily, it appears that the Student would qualify and that there is one space available. (Id.) It has a strong emphasis on independent living skills, vocational services and functional academics. (Id.) For example, Ms. F testified

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[redacted]; and, it is not mentioned in the January 2015 IEP document. (Ms. A Testimony, Ms. G1Testimony, Mr. D Testimony, Dr. J Testimony, Ms. G2 Testimony, District #11.)

that the majority of the Students enrolled in [redacted] either take classes at the local community college and/or are enrolled in vocational training. (Id.)

The Student's mother testified that if [redacted] had been presented to her as an option in the Spring of 2015 at an IEP meeting, she would have considered it. (Mother's Testimony.) However, she also testified that (1) she already knew about [redacted] and did not pursue it independently and (2) by the spring of 2015 she was in the application process with [redacted], including a site visit and an interview. (Id.) Dr. L testified that the summer program at [redacted] is designed to be an orientation program for the Fall; and, the Student's mother testified that she wanted the Student to take advantage of that. (Dr. L Testimony, Mother's Testimony) Receipts from [redacted] indicate that the Parents paid costs and deposits of $11,400.00 by May 12, 2015 (Parents F59.),[11] well ahead of the period of time in which the School District had was to reconvene the IEP.[12]

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 for each of the issues presented by the parties.

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[11] Additional invoices from [redacted] indicate that the Parents paid $15,000.00 (out of total amount owed of $28,950.00) by the end of June 2015 towards his Fall Semester bill. (Parent's F58)

[12] As will be discussed below, the IEP provides ESY for the summer of 2015 school year. The language in the IEP indicating that the IEP meeting was to be scheduled prior to June 2015 cannot be read as to negate the entire Section 14 providing ESY.

A. **Issue #1:** *Whether the School District developed IEPs for the Student that provided appropriate services for the 2015-2016 school year; and that addressed the Student's needs for Extended School Year ("ESY") during the summer of 2015?*

The Parents submit that for the time period stated above, the School District denied the Student a free appropriate public education ("FAPE") by failing to create IEPs that addressed the Student's comprehensive academic, social, emotional, transition and functional needs across all school settings, including ESY for the summer of 2015. The School District submits that for the time period stated above the Student was not denied a FAPE due to the Student's IEPs. The School District further submits that the Student's IEPs for this time period appropriately addressed the Student's comprehensive academic, social, emotional, transition and functional needs across all school settings, including ESY.

The *Individuals with Disabilities Education Act*, 20 U.S.C. §1414(d)(2)(A) (*"IDEA"*) requires an IEP to be in effect for eligible children "at the beginning of each school year." *See also*, 34 C.F.R. §300.323. In this case, the January 29, 2015 IEP ostensibly would cover two school years: the last semester of the 2014-2015 school year, and the first semester of the 2015-2016 school year, inclusive of summer services. (District #11.) The Parents did not challenge the appropriateness of the IEP as it pertained to the services the Student was receiving at [redacted]. The Parents argued at hearing that (1) the January 2015 IEP does not provide for ESY in the summer of 2015; and (2) that the IEP lapsed prior to the start of the 2015-2016 school year per specific agreement; and since no IEP

replaced it, the School District essentially failed to create a valid IEP for the 2015-2016 school year at all.

1. *Extended School Year ~ Summer 2015.* There is certainly basis for confusion regarding whether the IEP on its face covers ESY for the summer of 2015. The January 2015 IEP states that it "*does not affirm agreement for a separate day setting beyond June 2015. Prior to the end of the school year, the parties will reconvene (or relevant parties will collaborate on a revision) to decide on a next assignment (level of service and school assignment). This IEP will be revised prior to June 2015 to include a 2015-2016 grid and setting section to affirm the agreed upon level of services for the next school year.*" (District #11.)

Since [redacted]'s ESY begins in June and runs for six weeks (District #11, Mr. K Testimony), the Parent argues that the Student might not be eligible at all for ESY services. Yet, further in the document is a section entitled "Extended School Year" which provides goals for ESY in English/Language Arts, Mathematics, Social Services and decision-making. (District #11, Mr. D Testimony.) The rationale stated for ESY is that the Student "*is a critical stage in development where the window of opportunity will be lost without ESY*" and that the Student "*needs continuity as he will* ***be transitioning to a new program in the Fall.***" (Id.) (Emphasis supplied.) The term of ESY is six-weeks (Id.) beginning on June 4, 2015. (Mr. K Testimony, Mr. D Testimony, District # 33-34). It is unreasonable to ignore this entire section of the IEP because of a statement indicating the

anticipated scheduling of a prospective IEP meeting, and this Hearing Officer rejects that the IEP terminated at the end of the Spring Semester 2015.

The ESY Section of the IEP clarifies the statement that, while the IEP lapses in June (and is not intended to provide services or placement for the fall of 2015), it does in fact include ESY. It is clear from the face of the IEP itself that the IEP includes ESY services for the summer of 2015 but not programming for the fall of 2015. (District #11.) The Student's mother testified that during the winter and spring of 2015 she was exploring programming for the fall: and, when she realized that [redacted] had a summer program, she wanted to begin his orientation to that program. (Mother's Testimony) The Parent was contacted on June 4, 2015 (the last day of school), by [redacted] staff because she had not yet signed up the Student for the ESY that was contained in the IEP (District #33) and the Student's mother declined because the Student was starting "the Summer session **of his Transition Program on June 13th.**" (District #33) (Emphasis supplied) The Hearing Officer finds that the Parent did not avail herself of "self-help" in signing up the Student for the Summer Program at [redacted] because the January IEP provided ESY services for the summer of 2015 on its face.

Furthermore, the Parent did not present any evidence at the hearing that the ESY services were inappropriate on their face (or even present that argument), only that ESY was not offered at all. Because the goal of ESY services is to prevent regression and recoupment of a student's IEP goals, a student's ESY services will likely differ from the services offered in the regular IEP. *Letter to*

Myers, 16 IDELR 290 (OSEP 1989). The Student's ESY goals are consistent with the goals and objectives in the Student's IEP program, and the Hearing Officer finds they are appropriate in order to prevent regression and recoupment. *See, e.g., Glynn County School Dist.*, 114 LRP 46669 (SEA GA 2014) (denying a parent's request to increase her child's ESY services because she wanted him to work toward additional behavioral and academic goals during the summer that were not necessary for him to receive FAPE).

2. *Transition Programming for the 2015-2016 School Year.*

As stated above, the January 2015 IEP Program does not provide programming for the 2015-2016 school year.[13] The School District argues that it is an excusable oversight as the Parent had already placed the Student at [redacted], and there was no need to develop an IEP that would very likely be rejected. The Student's mother testified that she remained willing to have an IEP meeting, even after the Student was placed at [redacted]. (Mother's Testimony.) There is no indication in the record, and the School District did not put on any additional evidence except Mr. K's assumptions of the Parents' intentions, to demonstrate that the Parents had abandoned the IEP process.

The duty to create an IEP is an affirmative one. 34 C.F.R. §§300.320-323. Under the *IDEA*, "a state must confer an education providing 'significant learning' and 'meaningful benefit to the child.'" *School District of Philadelpha v*

[13] If the IEP did not expressly terminate before the Fall 2016 Semester, it would have been in effect at the beginning of the 2015-2016 school year, and an analysis of the appropriateness of its goals, objectives, related services, etc. would be necessary.

Kirsch, 115 LRP 55547 (E.D. Pa 2015), *citing, D.S. v Bayonne Bd. of Ed.,* 602 F.3d 553, 556 (3rd Cir. 2010). This is done by developing an appropriate IEP that "is reasonably calculated to enable the child to receive educational benefits." *Id.; Bd. of Education of Hendrick Hudson Cent. Sch. Dist. v. Rowley,* 458 U.S. 176, 206-07 (1982). While it would be simple to simply note that the School District violated the *IDEA,* by failing to have an IEP in place at the beginning of the 2015-2016 school year, there must be a finding of a "deprivation of an educational benefit" as a result. *Id.*

Even if the January 2015 IEP didn't specifically state that it wasn't providing services for the 2015-2016 school year, the January 2015 IEP was written while the Student was in the 12th grade at [redacted] School, and does not contain special education and related services, goals or accommodations to be provided after the Student left [redacted] The goals and objectives, related services, and placement were designed around the curriculum at [redacted] which was focused on high-school academics, and a transition plan that could be implemented there. (District #11, Ms. J Testimony.) The Student had met the academic requirements for graduation, and was set to exit cove at the end of ESY to go on to different programming in the Fall. (District #11.) The transition program was silent as to any academic coursework the Student would be taking once he turned 18. (District #11.)

The School District did not argue, nor could it, that the content of the IEP was appropriate for a separate program for students 18 -22. Even if the IEP had

not expressly stated that it expired before the beginning of the 2015-2016 IEP, it would not be appropriate for services once the Student had exited [redacted]. The transition services contained in the IEP must contain "appropriate, measurable post-secondary goals based upon age appropriate transition assessments, related to training, education, employment, and independent living skills; and the transition services, including courses of study needed to assist the child in reaching those goals." 34 C.F.R.§300.321(b). The transition program memorialized in the January 2015 IEP was written solely to be implemented at [redacted]. The planned course of study only focused on [redacted]s curriculum and did not mention any academic coursework during the extended age of 18-21 to reach his post-secondary outcomes. (District #11.) The vocational part of the plan focused solely on his Jimmy Johns experience, and did not contemplate that that job would follow him when he exited [redacted]. (Id.) And the independent living skills section was devoid of necessary life skills training such as hygiene, cooking and laundry, despite the fact that the Student was clearly unable to complete these types of tasks independently. (Id., Mother's Testimony, Dr. J Testimony.) The Student was expected to leave [redacted] and work on separate goals and objectives at another transition program, to be determined before the start of the 2015-2016 school year. (District #11.)

As if to underscore this point, the School District's proffered remedy at hearing, [redacted], separates its high school from its transition program, and considers them wholly separate. (Ms. F Testimony.) [redacted] isn't

just a continuation of a placement at [redacted] it is a completely new placement with a strong emphasis on independent living skills (especially transportation), functional academics and vocational training. (Ms. F Testimony.) The January 2015 IEP as written would not be appropriate even if it were to be implemented at [redacted].

Because of the lack of a viable IEP at all for the beginning of the 2015-2016 school year, this Hearing Officer finds that the School District failed to develop an appropriate IEP that addressed the Student's comprehensive academic, social, emotional, transition and functional needs across all school settings for the 2015-2016 school year.

Finding: For the Parent in part and for the School District in part.

B. **Issue #2**: *Whether the School District developed IEPs for the Student that provided appropriate placement for the 2015-2016 school year, including ESY during the summer of 2015?*

The Parents submits that the School District failed to create an IEP that placed the Student at an appropriate residential placement for the 2015-2016 school year, including ESY during the summer of 2015. The Parents further submit that [redacted] is an appropriate placement, and they are entitle to reimbursement for ESY services in the summer of 2015 and beginning in Fall 2015; and, that [redacted] should be the Student's placement for the remainder of the 2015-2016 School Year. The School District submits that for the time period set forth above, the Student's placement at the [redacted] School was appropriate and that the Student received a FAPE accordingly; and that it was

excused from drafting an IEP for the 2015-2016 school year due to the unilateral placement of the Student in [redacted]. The School District further submits that [redacted] would now make an appropriate placement for the Student.

1. *Preliminary Considerations.* The implementing regulations of the IDEA are straightforward:

> *"If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs."*

34 C.F.R. §300.148.

The parties appear to stipulate that the Parents provided the School District with appropriate notice pursuant to 20 U.S.C. §1412(a)(10)(C)(iii)(I) and 34 C.F.R. §300.148(d)(1), for unilateral placement in the summer 2015 program and the start of the fall semester and the Hearing Officer agrees. Similarly, there is no evidence or argument from the School District that, prior to the Student's removal, the School District requested to evaluate the Student. *See,* 20 U.S.C. §1412(a)(10)(C)(iii)(II); 34 C.F.R. §300.148(d)(2). In fact, the School District admits that it did not convene any IEP meeting at all to discuss any placement for the start of the 2015-2016 school year. (Mr. K Testimony.)

2. *Appropriateness of the January IEP.* The next step in the inquiry is to determine if the School District made a "free appropriate education available to the child in a timely manner" prior to the Parents' unilateral placement. 20 U.S.C. §1412(a)(10)(C)(ii); 34 C.F.R. §300.148(a), (c).

a. *Summer 2015 ESY.* As discussed above, this Hearing Officer finds that for the Summer 2015 ESY, the School District *did* make a FAPE available to the Parents, by offering ESY at [redacted] This finding of appropriateness disqualifies the Parent from any reimbursement. *See, T.R. v. Kingwood Twp. Bd. of Educ.*, 205 F.3d 572, 582 (7th Cir. 2000).

b. *2015-2016 Programming and Placement.* As to the whether the School District provided a FAPE for the 2015-2016 school year, the Hearing Officer concludes that it did **not** offer FAPE to the Students by creating an appropriate transition program for the 2015-2016 school year. In addition, this Hearing Officer finds that the School District failed to provide a FAPE to the Student for the 2015-2016 school year because it did not make an appropriate offer of placement to any program whatsoever.

Although the School District stipulates that it did not convene an IEP meeting to develop a program for the 2015-2016 school year, it argued at hearing that the informal discussions between Mr. K and the Parents' paralegal, and the "offer" of [redacted] as an alternative placement at hearing constituted a valid offer of placement outside of the IEP process.

"An LEA's failure to timely convene an IEP meeting to revise the child's IEP violates the *IDEA*." *District of Columbia Public Schools,* 114 LRP 39055 (D.C. SEA 2014), *citing, Foster v. District of Columbia,* 553 IDELR 520 (C.D. D.C. 1982). This is a "fatal procedural violation because it deprives the parents of any opportunity in the educational planning process." *School District of Philadelphia v. Kirsch,* 115 LRP 55547 (E.D. Pa 2015). Preliminary negotiations are not equivalent to an IEP meeting or amendment, unless the School District can demonstrate that these negotiations provided the Parents with all of their procedural safeguards. *See, e.g.,* 34 C.F.R. §§300.320 -328, 300.500-505. The School District admitted that although it was actively engaged in placement (and later settlement) negotiations, the parties never seriously discussed [redacted] as the firm offer of placement, only one of several options. (Mr. K Testimony, Mother's Testimony.) The School District did not demonstrate that it observed all of the procedural protections of an IEP meeting in these settlement negotiations. Similarly, for the School District to use the due process hearing to circumvent the procedural protections of the *IDEA,* is not appropriate as those procedural safeguards not the same as those for developing an IEP. *Compare,* 34 C.F.R. §§300.320 -328 and 300.500 505 with §300.507-516. Therefore, this Hearing Officer finds that the School District failed to offer FAPE when it failed to present Acacia Academy as the placement for the 2015-2016 school year outside of the IEP process. The Parents are entitled to have an IEP meeting where the placement is

offered and discussed with the relevant members of the IEP Team in attendance and participating.[14]

Because the Hearing Officer concludes that the School District failed to offer FAPE for the 2015-2016 school year by failing to draft an IEP reasonably calculated to enable the child to obtain a reasonable benefit and by failing to identify a placement, the Parents are eligible for reimbursement for their costs for the 2015-2016 school year if they can show that placement at [redacted] was appropriate. 34 C.F.R. §300.148(c). *Jenna R.P. v City of Chicago School District #229,* 114 L.R.P. 4 (1st Dist. Ill. 2013).

c. *Appropriateness of* [redacted]. The Parents submit that [redacted] is appropriate, especially since it provides for a residential component to the program, which the Parents believe is necessary to provide a FAPE. The School District submits that the Student does not require residential placement, and that [redacted] is inappropriate as it doesn't provide special education and related services, it does not have certified staff, it is not on the approved list of ISBE providers, and is essentially a "super dorm".

Parents who unilaterally place their children in private schools are judged by a more relaxed standard of appropriateness. *Florence County School District Four v Carter,* 510 U.S. 1 (1993). Parents have to prove that their unilateral placement is "reasonably calculated to provide and educational benefit" specifically designed to meet the unique needs of their child. *See, Bd. of Educ. v.*

[14] Or, if the placement at Acacia had been agreed, the Parties could have amended the IEP pursuant to 34 C.F.R. §300.324(a)(6).

Risen, 61 IDELR 130 (N.D. Ill. 2013); *Jenna R.P. v. City of Chicago Public Schools #299,* 114 LRP 4 (1st Dist. Ill. 2013). This educational benefit also has to address an educational need of the child that the IEP did not. *Jenna* R.P., 114 LRP 4. The procedural requirements of the IDEA, including the approval status of the school, the certification of teachers, and the least restrictive environment, are not material considerations. *Jenna R.P.,* 114 LRP 4; *See, Bd. of Educ. of City of Chicago v. Illinois State Bd. of Educ.,* 46 IDELR 219 (N.D. Ill. 2006).[15]

The Parents identified some specific areas where [redacted] gave the Student a particular educational benefit not provided by the School District's IEP: (1) that it was a residential program, and the reinforcements provided to the Student on academics, vocational and independent living skills were necessary outside of a standard school day and (2) that [redacted] focused on independent living skills, especially in the area of personal hygiene (including laundry and food preparation), problem solving and social interaction in a way that the Student's previous placement (and by extension, [redacted]) could not do. The School District highlighted that the Student's severe Generalized Anxiety Disorder required more intense programming than [redacted]

[15] The School District did establish that [redacted] did not provide special education and related services, that it was not implementing the Student's IEP, that its staff was either not certified, or at least not certified to deliver certain services, that it was not the least restrictive environment. (Parents' F1 –F45, Dr. L Testimony, Dr. E Testimony, Ms. W1 Testimony, Ms. W2 Testimony.) Nevertheless, these facts are not material in determining whether [redacted] is appropriate as a unilateral placement. *See,* discussion above.

provided,[16] and that residential therapy ~ while beneficial to the Student, was not necessary in order to provide him a FAPE.

There is not doubt that the Student has made social/emotional gains while at [redacted], as well as gains in his independent living skills. (Mother's Testimony, Parents F46 -F56.) It is also clear that the student-led program at [redacted] with its emphasis on preferred over non-preferred tasks places fewer demands on the Student, and motivates him to participate in the Program. (Dr. E Testimony, Ms. W1 Testimony, Dr. J Testimony.) While the Student benefits from the reinforcements her receives at [redacted] because he resides there, this Hearing Officer concludes that they are **not** necessary to deliver a FAPE. If the program at [redacted] relied more on forcing non-preferred tasks, it is likely it would not be as successful as a day therapeutic program that also stressed non-preferred tasks. Dr. J, the Student's previous therapist testified that he is a pleasure seeker, and that any unwanted challenge triggers an anxiety response. (Dr. J Testimony).[17] This Hearing Officer concludes, especially based on Dr. J's testimony, that the fact that the Student can direct his programming, and is pursing preferred activities is the main reason the Student is successful at [redacted]. (Dr. J Testimony.)

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[16] Although the Student's mother did testify that he is seeing a private therapist in Wisconsin. (Mother's Testimony.)

[17] Again, the fact that [redacted] is not the least restrictive environment is not fatal to the evaluation of its appropriateness as a unilateral placement. *See*, discussion above.

Another area of progress the Student has demonstrated at [redacted] is his marked improvement in his independent living skills and social skills, and the generalized ability to transfer those skills back home when he visits. (Mother's testimony). Certainly the transition plan contained in the January 2015 IEP does not emphasis skills such as laundry, personal hygiene and transportation; and his progress with social skills while at the [redacted] school was much less. (District #11.) Again, day therapeutic schools such as [redacted] can address these same skills, so the residential component does not appear to be needed. However, since the School District never made an offer of [redacted] through an IEP process, this distinction is largely irrelevant.

This Hearing Officer finds that the Student is receiving an educational benefit designed to meet his unique needs, especially in the area of independent living at [redacted] at this time. It remains to be seen if the Student will continue to make progress towards more demanding post-secondary goals (college-level classes, sustained employment, etc.) if he continues to remain at [redacted]. But certainly, for the 2015-2016 school year, the Parents have met their burden in showing that [redacted] is an appropriate placement.

Ruling: for the Parent in part and for the School District in part.

C. **Issue #3:** *Whether, during the period from July 6, 2013 through the present, the School District complied with the procedural protections of the Individuals with Disabilities Education Act ("IDEA") by properly considering private evaluations regarding the Student that were provided by the Parents? If not, whether any failure to properly consider said private evaluations impeded the child's right to a free appropriate public education ("FAPE"), significantly impeded the Parent's opportunity to participate in the decision-making process regarding the provision of*

FAPE to the Student, or caused a deprivation of educational benefit to the Student?

The Parents submit that in May 2015, Ms. W1 completed a private vocational evaluation at Parents' expense; and, that a copy of Ms. W1's evaluation report was made available to the School District prior to a previously-scheduled IEP meeting on June 16, 2015. Parents further submit that the School District improperly cancelled the June 16, 2015 IEP meeting and never rescheduled it; and, therefore failed to consider the contents of the private evaluation report. The Parents further submit that the School District's alleged failure to consider Ms. W1's report impeded the Student's right to a FAPE, significantly impeded the Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the Student, or caused a deprivation of an educational benefit to the Student.

The School District submits that it appropriately cancelled the June 16, 2015 IEP meeting as the Parents had submitted written notification of their intent to unilaterally place the student in a residential setting, and [redacted] School was no longer an appropriate place to conduct the IEP. (Mr. K Testimony.) Additionally, the School District submits that it was only obligated to consider Ms. W1'a report at an IEP meeting where the subject matter was discussed; and, that the inability to schedule an IEP at a mutually agreeable date and time was not inappropriate under the circumstances. The School District contends that for these reasons, the Student's right to a FAPE was not impeded, that the Parents' were not impeded in their opportunity to participate in the decision-making process regarding the

provision of a FAPE to the Student, or that the Student did not experience a deprivation of an educational benefit.

If a violation of procedural safeguards is alleged at a due process hearing, an impartial due process hearing officer only has jurisdiction to consider it if the alleged procedural violation (a) impeded the Student's right to a FAPE; (b) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the Student; or, (c) caused a deprivation of educational benefits to the child. 20 U.S.C. §1415(f)((3)(E)(ii).

Ms. W1's report regarding the Student's transition needs is highly relevant to his educational planning now that he is out of high school. (Ms. W1 Testimony, District #35.) If a parent obtains an independent educational evaluation at their own expense, and shares that report with a school district, the evaluation report must be considered by the school district in any decision made with respect to the provision of FAPE to the child. 34 C.F.R. §300.502(c)(1).

The Parent obtained the evaluation report in April 2015 (District #35, Ms. W1 Testimony.) The School District was required to send a notice scheduling the IEP meeting within ten (10) days after receiving the evaluation report. 23 Ill. Admin. Code §226.180(d). The School District admits that the meeting did not take place. (Mr. K Testimony). This Hearing Officer finds that the Parents were significantly impaired in their ability to participate in the decision-making process regarding the provision of FAPE to the Student by not having the chance to participate in an IEP meeting to consider Ms. W1's report.

Finding: for the Parent.

> **Issue #4**: *Whether the School District improperly violated the procedural protections of the IDEA by sending the Student's educational packet directly to Acacia Academy without obtaining their permission or the Student's? If so, whether this action impeded the child's right to a free appropriate public education ("FAPE"), significantly impeded the Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or caused a deprivation of educational benefit to the Student?*

The Student's mother testified that neither her child nor herself gave written consent to the School District to share the Student's confidential information with [redacted]. (Mother's Testimony) Ms. F, the director of [redacted] also testified that the Parent was surprised to hear that [redacted] had received a packet of the Student's school records (containing personally identifiable information), and that she asked Ms. F to forward a copy of what the School District sent her. (Ms. F Testimony.) Parental consent of a child who has reached the age of majority in Illinois must be obtained before personally identifiable information is released to officials of participating agencies or officials of private schools not located in the school district. 34 C.F.R. 300.622(b)(2), (3).

As a procedural violation, the Hearing Officer cannot rule on this issue unless the parent proves that the violation denied the Student a FAPE, significantly impaired the ability of the Parent to participate in the decision-making process with regard the provision of FAPE to the Student, or denied the Student an educational benefit. 34 C.F.R. §513(a)(2). As this Hearing Officer has

not determined that the Student would be better served at [redacted], and if fact the Hearing Officer has ruled that [redacted] is appropriate for the 2015-2016 school year (or otherwise considered the placement at Acacia Academy as an equitable remedy) the Hearing Officer does not find that the procedural violation met the criteria set forth in 34 C.F.R. 513(a)(2).

Ruling: for the School District.

ORDER

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

1. The School District is to reimburse the Parents for the reasonable educational costs incurred by them in unilateral placing the Student at [redacted] for the 2015-2016 school year (**excluding** services provided to the Student in the summer of 2015) within thirty (30) days of receiving written proof of the Parents' actual out-of-pocket costs to [redacted].
2. No later than February 16, 2016, the Student's IEP must be amended to change the Student's placement for the remainder of the 2015-2016 school year to [redacted] at public expense.
3. The School District is directed to convene an IEP meeting no later than April 29, 2016 to plan for ESY Summer services for the summer of 2016 and to make an appropriate placement for the 2016-2017 school year.

If the School District wants to share personally identifiable information regarding the Student with any program it intends to recommend, the School District is ordered to first obtain written consent of the Student and his Parents before doing so. Nothing in this paragraph, however, will prevent the School District from making an offer of an appropriate placement to any program in the event the Student and/or the Parents refuse to give consent.

4. The parties may begin investigating the process for the Student's 2016-2017 program and placement recommendations. Towards that end, the School District is to make any potential placement options available to the Parents and to [redacted] staff for reasonable observation. Similarly, the Parents are ordered to cooperate in whatever measures they have available to allow School District staff to make reasonable observations at [redacted] for any/all educational planning purposes.

5. Nothing in this order is to be construed as a delegation of the Student's IEP planning to [redacted] staff. To the extent it deems necessary, the Student's IEP team is to continue to meet and make recommendations as to appropriate special education and related services to be contained in the Student's IEP and implemented during the remainder of the 2015-2016 school year.

In accordance with 105 ILCS 5/14-8.02a(h), within sixty (60) school days of receipt of this Order, the District shall 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 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.

IT IS SO ORDERED.

January 15, 2016

[redacted]

/s/ Jennifer A. Leisner
Jennifer A. Leisner,
Impartial Due Process Hearing Officer

[redacted]

APPENDIX A

[redacted] v. [redacted]
Case No: 2016-0002

Child	[redacted]
Attending School/Program	[redacted] (Private)
School Last Attended pursuant to IEP	[redacted]
Child's Parents/Petitioners	Drs. [redacted] and [redacted]
Witnesses (Proper Name): 1. [redacted] 2. [redacted] 3. [redacted] 4. Dr. [redacted] 5. [redacted] 6. [redacted] 7. Dr. [redacted] 8. Dr. [redacted] 9. [redacted] 10. [redacted] 11. [redacted] 12. [redacted] 13. [redacted] 14. [redacted] 15. [redacted] 16. [redacted]	Witnesses (Initials for Opinion) 1. Mother 2. Mr. K 3. Ms. W2 4. Dr. L 5. Ms. W3 6. Ms. G2 7. Dr. J 8. Dr. E 9. Mr. D 10. Ms. G1 11. Ms. J 12. Ms. R 13. Ms. A 14. Ms. M 15. Ms. W1 16. Ms. K

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[redacted]

Student,

Case No: 2016-0002

v.

[redacted]

Jennifer A. Leisner,
Impartial Due Process Hearing
Officer

School District

CERTIFICATE OF SERVICE

I, JENNIFER A. LEISNER, certify that on January 15, 2016 copies of the Final Determination and Order were served upon the following persons in the manner indicated:

Sent via Email and Certified Mail

[redacted]

Sent via Email and Certified Mail

[redacted]

Andrew Eulass, ISBE Due Process Cooridinator
AEULASS@isbe.net

[redacted]

Dated: January 15, 2016

/s/ Jennifer A. Leisner
Jennifer A. Leisner
Impartial Due Process Hearing Officer

[redacted]