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SPECIAL EDUCATION
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ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

[REDACTED]

Student,

v.

Case No. 2016-0487

[REDACTED]

School District.

Philip C. Milsk,
Impartial Hearing Officer

FINAL DETERMINATION AND ORDER

BACKGROUND

A. Student History and Profile

[REDACTED] ("Student") is 17 years old¹ and resides with her Parents, [REDACTED] ("Mother") and [REDACTED] ("Father") within the boundaries of the School District. She currently attends a therapeutic day school at the expense of the School District. Her current educational placement is not an issue in this case.

The Student was born in Russia and adopted by her Parents through an international adoption agency at the age of 3 years, 5 months. Several months after the adoption she was evaluated by Dr. [REDACTED] and a team of professionals at the [REDACTED] in [REDACTED]. The [REDACTED] findings were reportedly consistent with prenatal alcohol or substance exposure. She was diagnosed with Mixed Receptive-Expressive Language Disorder and Fetal Alcohol Exposure.²

After the first grade a comprehensive private psychological evaluation of the Student at age 7 years, five months was conducted in 2007 by [REDACTED] [REDACTED], a Clinical Child Psychologist, and reported on August 5, 2007.³ Dr. [REDACTED] identified many clinically elevated levels of anxiety, decreased self-esteem, relatively less favorable social skills than peers, significant challenges in language-based problem solving, perceptual reasoning difficulties, and impaired working memory. Dr. [REDACTED] found the Student to have relatively low cognitive ability and to be highly distractible. At that time Dr. [REDACTED] found that the Student did not meet the clinical criteria for Attention Deficit-Hyperactivity Disorder ("ADHD").

¹ Date of birth December 31, 1999
² Exhibit #25; Testimony of Mother
³ Exhibit #25

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Dr. [REDACTED]'s report included a long list of recommendations including an IEP or 504 plan for the Student and various educational accommodations and modifications. Her report provides excellent background information for purposes of understanding the Student's social and educational history, and is consistent with the Student's subsequent educational challenges and her current needs.

Another private evaluation was conducted in 2010 at the request of the Parents by Drs. [REDACTED] and [REDACTED] of the [REDACTED] in [REDACTED], Illinois.⁴ The Student was finishing the fourth grade. The referral for this re-evaluation was made by [REDACTED], an educational consultant who has worked with the Student since 2006.

Drs. [REDACTED] and [REDACTED] found specific learning disabilities, a speech and language impairment, and ADHD. (At this time the Student was on medication to treat ADHD.) They specifically found weak vocabulary knowledge, great difficulty with sequencing given multi-step directions, word retrieval difficulties, and problems with math word problems. Her teacher reported that the Student was impulsive and hyperactive at school and had some social difficulties. Testing showed that she was about two years below her chronological age in receptive vocabulary. It was clearly stated in the report that a highly verbal and conceptual curriculum would be difficult for the Student.

A number of the recommendations in the 2010 evaluation report are noteworthy. First, it was suggested that Language Arts instruction and speech and language therapy be coordinated for the Student. Second, assistive technology for written expression was recommended. Third, a multi-sensory sequential explicit math program that included, for example, visuals, manipulatives and practical examples was suggested. The evaluators also recommended an IEP goal for improving executive functioning. Other recommendations included extended time for testing in a separate room, breaking down longer instructional units, regularly checking her comprehension, including visuals and repetition in the instruction, using multiple choice and word banks on tests to help her retrieve information, and using study guides that mimic the actual tests.

In the mid 5th grade (2011) the Student's educational placement was changed to the [REDACTED] School, a therapeutic day program in the northern suburbs of Chicago. She remained at [REDACTED] until the late 7th grade (late 2012-2013 school year) when she returned to the [REDACTED] School. The hearing record lacks detail as to why she was placed at [REDACTED] other than that she was having difficulties at [REDACTED]. Her Mother testified that [REDACTED] was not an appropriate placement for the Student because the Student felt that the other students were socially below her level. Mother and other witnesses noted that part of Student's disability is a strong desire to fit into the general student body socially and a belief that she is able to do so.

⁴ Exhibit #1

The Student attended [REDACTED] School during the 8th grade and prepared to transition to [REDACTED] High School. The elementary and high school districts are separate in [REDACTED], so after 8th grade students change districts. There are two IEP conference reports prepared when the Student was in the 8th grade that merit discussion.

First, there is a document dated September 23, 2013, that purports to be an IEP conference summary.⁵ However, there are no participants' signatures. The document reports certain information about the Student including health history, social history, speech and language data, psycho-educational information, a records review, and social and developmental information. Most of the information recited on this document is a recap of diagnostic findings from the 2007 and 2010 private evaluations and other information dating back to 2010.

Second, an IEP conference summary report from February 7, 2014, was introduced into evidence by the Parents.⁶ There are no participants' signatures on this document, and Mother testified that she was not notified of this meeting and did not attend the meeting. None of the District's personnel who testified attended this meeting, and the on the first page of the document under "participants" the high school representatives are listed as "TBD". It appears that this document was prepared in anticipation of a meeting that was never held.

There apparently was a meeting at [REDACTED] School in late January, 2014, to facilitate the transition of students to the high school. The testimony of [REDACTED] and [REDACTED], private educational professionals who are paid by the Parents and have provided services to the Student for many years, was that they attended the transition meeting, an event was held in either a gymnasium or auditorium for many families and students, and that it was not an IEP meeting held for the Student.

The Student graduated from [REDACTED] School and entered [REDACTED] High School in the late summer of 2014 for her freshman year. The IEP for the Student during the first semester of her freshman year was the February 7, 2014, document.⁷

The District convened its first IEP meeting for the Student on January 26, 2015, and prepared a revised IEP. Her previous eligibility was continued as a specific learning disability and a speech and language impairment. Mother, Ms. [REDACTED] and Ms. [REDACTED] attended this meeting.

The Student received passing grades during her freshman year, but her grades fluctuated throughout the year. She struggled academically and socially and experienced a high level of anxiety. She was admitted to the [REDACTED] partial hospitalization treatment program in late 2014 by her treating psychiatrist, Dr.

⁵ Exhibit #40

⁶ Exhibit #24

⁷ Testimony of [REDACTED], [REDACTED] and [REDACTED]

[REDACTED], because he believed she was in need of a higher level of care. Her Mother reported that [REDACTED] was drinking alcohol with acquaintances and inhaling Sharpie fumes.⁸ Dr. [REDACTED] noted that she was discharged from [REDACTED] because the [REDACTED] psychiatrist did not think she functioned well enough socially to benefit from the program.

During the second semester of the freshman year, Parents, concerned about the Student's increasing levels of anxiety, which they attributed in significant part to inappropriate instructional and curriculum modifications and supports at the high school, began to explore alternative educational placement options for her. They were assisted in this effort by their private team of consultants, Ms. [REDACTED], Ms. [REDACTED] and Dr. [REDACTED]. After considering a few options such as [REDACTED] in [REDACTED], Illinois, they decided to enroll the Student in the [REDACTED] School, a private residential school in Hardwick, Massachusetts for the 2015-2016 academic year. Written notification of the Parents' intent to place the Student was provided to the District by Parents' counsel in June, 2015.

After an exchange of correspondence by Parents' and District's counsel, an IEP meeting was convened on September 3, 2015, attended by counsel, District personnel, Mother and Ms. [REDACTED]. The District's recommendation was that [REDACTED] should remain at [REDACTED] High School.⁹ Parents disagreed and the Student attended [REDACTED] School in 2015-16.

In the summer of 2016 after the due process hearing request was submitted, the parties reached an agreement to conduct new evaluations and review the Student's eligibility, IEP services and educational placement.¹⁰ The District completed a speech and language evaluation and a school psychological evaluation. It also agreed to pay for a private psychiatric evaluation and a private psycho-educational assessment. This was considered to be a three-year re-evaluation by the District, but in actuality there had not been new diagnostic evaluations completed for the Student since the 2010 [REDACTED] evaluation.

The team met on September 6, 2016. The findings were generally consistent with previous evaluations and reports concerning the Student's disabilities, including expressive and receptive language deficits, word retrieval problems, difficulty with higher language tasks, inferences, multiple meanings, problem analysis, and social language skills. Anxiety continued to be a significant concern. Reading comprehension continued to be an area of concern as well. A therapeutic day school placement was recommended for the Student. Parents disagreed and re-enrolled her in [REDACTED] School.

In October, 2016, the Student was dismissed from [REDACTED] School for an incident involving another student. After the incident the Student left the campus without authorization. [REDACTED] has a no tolerance rule and a no refund policy.

⁸ Testimony of Dr. [REDACTED]

⁹ Exhibit #21

¹⁰ Exhibit #28

¹¹ Therefore, she was not allowed to continue in the program, but the Parents are responsible for the full tuition costs for 2016-2017. The Student then returned home and was subsequently placed by the District in the therapeutic day school she currently attends.

B. Procedural History

This case was commenced on April 26, 2016, when a request for a due process hearing was submitted to the School District by counsel representing the Parents and Student. The hearing request was not submitted to the State Board of Education by the District's counsel until June 21, 2016. The reason for the delay is unknown. The hearing officer appointment was made on June 22, 2016. The District's response was filed on June 30, 2016. On July 5, 2016, the parties signed an agreement to use State-sponsored mediation to attempt to resolve the dispute. The parties then jointly moved to continue the pre-hearing conference and extend the 45-day decision timeline for several months because they had agreed in mediation to additional testing of [REDACTED] and to hold a follow-up IEP meeting.

The pre-hearing conference was held on September 28, 2016. However, due to a significant change in the Student's circumstances, namely her dismissal from [REDACTED] School in October, 2016, and, upon her return home, an incident described at the time by her counsel as a suicide attempt, it was necessary to delay the proceedings and convene another pre-hearing conference on November 10, 2016. A pre-hearing Order was issued on November 18, 2016.

The parties then agreed to try mediation again since the Student's circumstances had changed. Mediation dates were postponed several times, and this resulted in a series of Joint Motions to continue and Orders granting the Motions. A series of status conferences were held, and once schedules of counsel and the hearing officer were aligned, the first hearing date was finally established as April 12, 2017. The parties continued to engage in settlement discussions throughout this process.

In late March, 2017, the hearing officer was notified that the lead attorney for the Parents and Student, [REDACTED], had left the law firm. Hearing dates then needed to be coordinated with other counsel from the firm.

Five day disclosures were made by counsel on April 7, 2017. A revised and updated pre-hearing Order was provided to counsel prior to the hearing. The hearing commenced on April 12, 2017. Oral testimony was also taken on May 15 and 16 and June 5, 2017, to accommodate the availability of various witnesses, counsel and the hearing officer, and the hearing was completed on June 8, 2017, with the filing of written closing arguments.

¹¹ Testimony of Mother and [REDACTED]

The procedural history of the case is contained in the Hearing Officer's Exhibits folder.

JURISDICTION

This hearing officer has jurisdiction under 20 U.S.C. 1415, 34 C.F.R. 300.507, and 105 ILCS 5/14-8.02a.

ISSUES

The issue in the case is whether the School District should reimburse the Parents for all or part of the tuition and costs of the Parents' unilateral placement of the Student in the ██████████ School, a private out-of-state residential school, for the 2015-16 and 2016-17 academic years.

- A. Did the School District offer a free appropriate public education to the Student in a timely manner prior to the unilateral private school enrollment?
- B. If not, was the private school placement appropriate, i.e., did the private school provide educational services specifically designed to meet the unique needs of the Student, even if it did not meet State standards?
- C. If so, do the equities weigh in favor of ordering the School District to reimburse the Parents for the cost of the private school, or are the equities a factor in determining the amount of reimbursement ordered?
 - (1) Did the Parents provide timely notice to the School District at either the most recent IEP meeting or in writing of the rejection of the proposed placement at least 10 business days before removing the Student from the School District, including a statement of their concerns and intent to enroll the Student in a private school at public expense? If not, do any exceptions apply?
 - (2) Prior to the Student's removal from the School District, did the District duly make a request to evaluate the Student and, if so, did the Parents refuse to make the Student available for the evaluation? If so, does an exception apply to the Parents' refusal to comply with this request?
 - (3) Are there other equitable factors to be considered with respect to whether the Parents' actions were unreasonable and, if so, how should those factors be weighed?

PROPOSED RESOLUTION

The Parents request full reimbursement of private school tuition and expenses, including travel, for the 2015-16 and 2016-17 academic years.

The District requests that all relief be denied.

FINDINGS OF FACT

After considering the evidence and arguments of counsel, this hearing officer makes the following findings of fact:

A. The Student

1. [REDACTED] ("Student") is 17 years old, resides with her Parents, and is a resident of [REDACTED] High School District No. [REDACTED]
2. Student was born in Russia and was adopted by her Parents through an international adoption agency at the age of 3 years 5 months.¹²
3. Student has multiple disabilities that have significantly affected her educational and social and emotional development. Her disabilities are confirmed throughout the hearing record, and most notably by the private evaluations in 2007 and 2010, the testimony of her Mother, the testimony and written statements of Ms. [REDACTED]¹³, Ms. [REDACTED]¹⁴ and Dr. [REDACTED]¹⁵, as well as the testimony of District's witnesses including [REDACTED], her IEP case manager and language arts teacher in 2014-15, [REDACTED] the District's School Psychologist and [REDACTED], the District's Speech and Language Pathologist. Student has a language disorder that affects various expressive and receptive language abilities including processing speed, word retrieval, comprehension of higher level language such as inferences and social pragmatics (i.e, she has trouble understanding sarcasm, inferences and social communication that is not concrete), a reading comprehension disability, a math disability, poor working memory, an executive functioning disorder, and attention deficit-hyperactivity disorder ("ADHD") for which she has taken medication prescribed by Dr. [REDACTED]. In addition, she suffers from severe anxiety that is exacerbated when she is under academic or social stress. When she is under significant stress she becomes "psychotic", her thinking becomes disorganized, she cannot think clearly or act responsibly and under such circumstances her safety is at risk. The testimony of her Mother and some of the e-mail exchanges between her Mother and District staff in 2014-15 in the record confirm the impact of her anxiety

¹² Exhibit #25; Testimony of Mother

¹³ Exhibit #35

¹⁴ Exhibit #43

¹⁵ Exhibits #38 and #39

disorder on her ability to learn and adapt to the high school environment.¹⁶ She has been on medication to treat her anxiety.¹⁷ The apparent root cause of some or all of the Student's disabilities is fetal alcohol exposure or fetal alcohol syndrome.¹⁸

4. The Student requires direct instruction, a high level of structure to her days, small class sizes, one-on-one attention, coordination between speech and language therapy services and language arts instruction, multi-sensory instruction in math, modifications in course material, assistive technology for written expression, and other accommodations and modifications for instruction, homework and other assignments, and exams such as extra time, preferential classroom seating and a separate testing area.¹⁹
5. Student is very athletic and enjoys physical activities such as sports and dancing.²⁰

B. Evaluations

6. Until the summer of 2016, when the District conducted a comprehensive re-evaluation of the Student pursuant to a Mediation Agreement, the only comprehensive diagnostic evaluations of the Student available to the Parents and the School District were the private evaluations obtained by the Parents in 2007 by Dr. ██████████²¹ and in 2010 by Drs. ██████████ and ██████████²². Information from the Parents' private team of consultants, private tutors hired by the Parents, therapists who had worked with the Student, and progress reports and grades were also available.
7. The School District was under the mistaken belief that the Student had been evaluated by District ██████████ in 2013. A re-evaluation for the Student had not been conducted since the 2010 private evaluation. Exhibit #28 includes an evaluation by Ms. ██████████ that states: "On 9/23/2013 at the beginning of her 8th grade year, (Student) was again re-evaluated for special education." Ms. ██████████ also testified that it was her understanding that an evaluation was conducted in 2013. However, Exhibit #40, the IEP/IEP Conference Summary Report of September 23, 2013, reports diagnostic information from the 2007 and 2010 private evaluations, other information dating back to 2010 and 2011, some updated progress information, but no new diagnostic information. In addition, there are no participants' signatures on the first page of this document so it is unclear whether a meeting was even held on September 23, 2013.

¹⁶ See, e.g., Exhibits ##6,7, 18 and 19

¹⁷ Testimony of Dr. ██████████

¹⁸ Testimony of Dr. ██████████; Report by Dr. ██████████ in Exhibit #28

¹⁹ Exhibits #1 and #25; Testimony of ██████████ and ██████████

²⁰ Testimony of Mother; Exhibit #28, reports from ██████████ School staff

²¹ Exhibit #1

²² Exhibit #25

C. IEPs

8. The IEP dated February 7, 2014²³ was the IEP used for the Student by the School District during her first semester of freshman year, 2014-15. School District personnel were under the mistaken belief that this IEP had been developed at a properly convened IEP meeting because it was included in the Student's records transmitted to the high school by District █. ²⁴ However, according to their testimony, none of the District's witnesses were invited to attend an IEP meeting on February 7, 2014, and the Mother testified that she did not attend a meeting on that date and never received notification of a meeting. Further, there are no participants' signatures on the first page of the document and the high school representatives listed on that page are unnamed.²⁵ This IEP summary report was prepared in anticipation of a meeting that never took place.

9. The IEP written on January 26, 2015, was the first IEP prepared for the Student by the School District.²⁶ The Student's Mother attended the meeting with Ms. █ and Ms. █. Student's eligibility was continued to be a specific learning disability and speech and language impairment. No new evaluations were presented.. General education teachers Mr. █ and Mr. █ and the School Nurse were not in attendance. There is no parental consent to the non-participation of these individuals. This is the IEP that was in effect for the Student when the Parents enrolled her in the █ School for the fall of 2015.

10. The January 26, 2015, IEP offered the Student speech and language therapy, counseling by Ms. █, and some accommodations listed on page 25 of 39 of Exhibit #2. The accommodations were mainly used for testing and included extended time, a separate testing location, modification of test format, a calculator and reading tests to her. She was also generally offered note-taking assistance, computer/word processing for all assignments, forgiveness for spelling errors and increased time for assignments. Ms. █ testified that the language goals implemented by Ms. █ were appropriate for the Student. Ms. █ testified that she provided group and individual therapy sessions, but stopped the pull-out sessions so the Student would not miss class. She provided her group sessions in coordination with the language arts class. Ms. █ provided group and individual sessions. Both Ms. █ and Ms. █ focused much of their time with the Student on social pragmatics, and gains were made in that goal area.

²³ Exhibit #24

²⁴ Testimony of █ and █

²⁵ █, the District's Special Education Department Chair in 2013-14, who no longer works for the District, may have been able to shed some light on the transition process between District █ and the School District,, but she did not appear in response to a subpoena from Parents' counsel.

²⁶ Exhibit #2

11. The IEP of January 26, 2015, IEP was deficient in several areas. First, it did not require one-on-one direct instruction and did not identify when this would occur and whether and how it would occur in every class.²⁷ Second, preferential seating may have been used in some classes²⁸, but it was not mentioned as an accommodation in the IEP. Third, no assistive technology other than computer/word processing was indicated to support the Student, despite the 2010 evaluation report of Drs. ██████████ and ██████████,²⁹ who specifically recommended the use of assistive technology to help her with written expression such as keyboarding proficiency, written use of spell check and grammar check and other software designed to improve written language, and the use of other software programs such as Read:OutLoud, Write:OutLoud, Co:Writer, and Draft:Builder.³⁰ An IEP goal for executive functioning skills recommended in 2010 is not included in the IEP. Speech and language services were coordinated within her English class. However, the Student's language deficits affected her performance in every class, and several teachers testified that they did not coordinate with the speech and language therapist.³¹ The IEP also fails to include the services recommended in 2007 and 2010 to address her reading comprehension disability and does not indicate whether or how multi-sensory instruction was used.

The IEP does not provide and was not subsequently revised to provide no behavioral and social/emotional interventions for the Student despite several clear indications that she was experiencing the types of meltdowns predicted by Dr. ██████████. For example, she was admitted into the partial hospitalization treatment program at ██████████ in late 2014. In addition, according to her Mother there were at least two incidents in which she was a victim of bullying by students at school, and these incidents appeared to be related to her disabilities. She also missed Mr. ██████████'s class without permission three times and as a result risked a failing grade, prompting a letter from the Dean of Students.³²

D. Placement

12. Parents signed a contract to place the Student at the ██████████ School, a private residential school, for the 2015-16 school year. The contract is dated June 10, 2015.³³ Parents paid tuition room and board in the amount of \$70,564.00 to ██████████ School for the 2015-16 school year.³⁴

²⁷ District witnesses including ██████████ and ██████████ testified she performs better with one on one instruction.

²⁸ Math teacher Ms. ██████████ testified that she used preferential seating

²⁹ Exhibit #1

³⁰ Exhibit #2, page 25 of 39 for assistive technology the box is checked for no services or devices

³¹ Testimony of ██████████, Testimony of ██████████, Testimony of ██████████

³² Exhibit #5

³³ Exhibit #10

³⁴ Exhibit #11

13. The Parents, by their counsel, provided prior written notification to the School District of their intention to enroll the Student in an alternative educational institution at public expense.³⁵
14. The School District convened an IEP meeting on September 3, 2015, to review the IEP and consider placement options.³⁶ The IEP team made a determination that residential placement was too restrictive for the Student and that ██████████ High School was an appropriate placement.
15. The Student attended ██████████ School in 2015-16.
16. ██████████ School is not on the Illinois State Board of Education's approved list of private special education facilities.³⁷ According to its blog, ██████████ is not staffed or equipped to address the needs of students with significant attention deficits, social and emotional or behavioral disabilities.³⁸ However, ██████████ accepted the Student after reviewing her records and interviewing Parents, and re-accepted her for a second school year.
17. The information in the record on ██████████ consists of the testimony of the Student's Mother, who did not directly observe the Student's instruction at ██████████, three pages of staff reports submitted in response to a request from the Parents that are part of Exhibit #28, and Exhibit #49, a single page from ██████████'s web site or blog that briefly describes ██████████ School and the types of students it serves. Exhibit #49 was introduced by the District because it states that ██████████ is unable to support students with significant hyperactivity, impulsivity, or difficulty with self-control. From this information it appears that the Student received Individualized support and modified course material. Her days were tightly scheduled and structured from morning until night. She received good grades³⁹, participated in soccer, basketball and softball, and made friends through sports. She experienced some incidents of anxiety at ██████████ during which she went off on her own to a quiet place without authorization. She also came home for four days due to anxiety. Parents had online access to her grades and regular communication from the school. Dr. ██████████ and Ms. ██████████ conversed with the Student and with ██████████ staff occasionally during the 2015-16 school year.⁴⁰ No ██████████ IEPs, individualized service plans, goal statements, or evaluation reports regarding the Student were offered into the record. There was no testimony from ██████████ staff or administrators.

³⁵ Exhibits ##45, 46 and 47

³⁶ Exhibit #21

³⁷ Testimony of ██████████

³⁸ Exhibit #49

³⁹ Exhibit #15

⁴⁰ Testimony of Mother; Exhibit #28-reports of ██████████ staff

18. In the summer of 2016, pursuant to an interim Mediation Agreement after the commencement of these proceedings, the School District conducted a re-evaluation of the Student. The re-evaluation consisted of a review of records, assessments functional performance and academic achievement by ██████████, an evaluation of cognitive functioning by ██████████, a private clinical psychologist, a communications evaluation by ██████████, a health history by the School Nurse, ██████████, and a psychiatric diagnostic evaluation by ██████████, MD. Post-secondary transition interviews and surveys were conducted by the School District with respect to employment, education, training and independent living skills.⁴¹ Short written summaries from ██████████ School staff were included for consideration.
19. The IEP team met on September 6, 2016, to consider the evaluation reports and information. The team recommended a therapeutic day school placement and also changed her primary eligibility to Other Health Impaired(ADHD), with secondary Emotional Disability and Speech or Language Impairment. The Parents disagreed with the placement recommendation.⁴²
20. The Parents re-enrolled the Student in ██████████ School for the 2016-17 school year. There is no contract in the record for 2016-17, but Exhibits ##12,13 and 14 show payments to ██████████ totaling \$72,840.00 between March 9, 2016 and August 30, 2016. According to the Mother, these payments were non-refundable.
21. On or about October 3, 2017, the Student was dismissed from ██████████ School for an incident involving another student, and the Student left campus without authority to find a quiet place. ██████████ School has a no tolerance policy.⁴³
22. The Student returned home to ██████████ and following her return she took an overdose of an over the counter pain medication.⁴⁴ This is the incident referred to earlier as a suicide attempt, according to her counsel at the time, Mr. ██████████.
23. Subsequently, the Student was placed in a therapeutic day school at the School District's expense.⁴⁵ Her current placement is not an issue in this case.
24. There is nothing in the hearing record regarding travel expenses, mileage or other costs incurred by the Parents associated with the Student's attendance at ██████████ School.

⁴¹ Post-secondary transition assessments and goals were not raised as issues in this hearing

⁴² Exhibit #28

⁴³ Testimony of Mother and ██████████

⁴⁴ Testimony of Dr. ██████████

⁴⁵ Testimony of Mother and ██████████

CONCLUSIONS OF LAW

Standard of Proof

The standard of proof in impartial special education due process hearings under IDEA is preponderance of the evidence. 20 U.S.C. 1415(i)(2)(C)(iii). Under this standard, the party seeking relief must establish that the fact sought to be proved is more probable than not.

Tuition Reimbursement

To determine whether the Parents are entitled to retroactive reimbursement of tuition and other costs of their unilateral private school placement, the Parents must meet a two-pronged test: First, they must show that the IEP proposed by the District failed to offer the Student a free appropriate public education (FAPE). Second, they must show that the private placement was appropriate to meet the Student's needs. If the Parents meet this two-part test, then the hearing officer or court may consider equitable factors in determining the reimbursement award. *Sch. Comm. Of Burlington v. Dept. of Educ.*, 471 U.S. 359, 105 S.Ct. 1996(1985); *Florence County Sch. Dist. Four v. Carter ex rel. Carter*, 510 U.S. 7, 114, S. Ct. 361(1993).

A. FAPE

The Parents have clearly met the first part of the Burlington/Carter test by establishing by a preponderance of the evidence that the School District's IEP did not offer the Student a FAPE. Looking at the Student's entire freshman year of 2014-15, the IEP implemented during the Student's first semester was the document dated February 7, 2014. This IEP, Exhibit #24, and the process used to develop it were seriously procedurally flawed and, as a result, the Parents were denied a meaningful opportunity to participate in the IEP process, denying the Student educational benefit.

First, the IEP was not developed at a properly convened IEP meeting. In fact, it was written for a meeting that was never held. There are no participants' signatures on the document. The high school representatives listed are only identified as "TBD" (to be determined), and, none of the high school staff who testified at the hearing, including Ms. [REDACTED], the IEP case manager, Ms. [REDACTED], the school psychologist, and Ms. [REDACTED], the speech and language therapist, attended a meeting on February 7, 2014. High school staff mistakenly assumed that this IEP was the one in place for the Student when she made the transition from 8th to 9th grade.

The Parents were not invited to a meeting on February 7, 2014, did not participate, and were not provided an opportunity to have their private team of service providers/consultants of long standing participate. Meaningful

parental participation in the IEP process is a core principle of IDEA. The IEP process is the "central vehicle" for collaboration between parents and schools. *Schaffer v. Weast*, 546 U.S. 49 at 52, 126 S.Ct. 528 (2005).

Even though the February 7, 2014 IEP was prepared at the elementary school district, someone at the high school district clearly dropped the ball by failing to coordinate the Student's transition to high school with the staff at ██████████ School, failing to ensure that a properly developed IEP was in place when the Student entered high school, and neglecting to inform the high school staff, including the IEP case manager, that an IEP meeting should have been held prior to the Student's arrival at the high school. The February 7, 2014, IEP was fatally flawed and denied the Student a FAPE.

The Student's IEP for the remainder of her freshman year also denied her a FAPE. To provide FAPE the IEP and educational placement must be reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances. *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 69 IDELR 174 (U.S. Sup. Ct., 2017).

The IEP of January 26, 2015, Exhibit #2, met IDEA's procedural requirements, but failed to substantively address her educational and related services needs in accordance with the evaluations and recommendations available to the District at the time. It was also based on dated information from 2007 and 2010.

First, the IEP did not provide for one-on-one instruction for the Student and did not identify when and how this would occur during the school day. Second, while there was testimony about preferential seating by at least one teacher, the IEP did not require preferential seating as an accommodation. Third, assistive technology services and devices to support written expression deficits were not provided in this IEP. There was no goal for executive functioning skills development. When the Student's behaviors and social-emotional needs became an issue (for example, her admission to ██████████ skipping classes, bullying incidents), no action was taken to develop services to address those needs. Further, coordination with the speech and language therapy services did not occur in several of the classes in which language and vocabulary skills were necessary, according to the testimony of the teachers. As the Mother and her consultants pointed out, the accommodations were mainly provided for testing, not daily instruction.

Some of the services in the IEP were clearly appropriate, such as the group speech and language services and group counselling to address social pragmatics and word retrieval, and the individualized accommodations in math class such as scaffolding. However, the January 26, 2015, IEP and her placement in the high school overall failed to address many of the Student's needs for intense direct instruction, multi-sensory learning and structure. As a result, her anxiety increased to a point where on several occasions she

melted down, as Dr. ██████████-predicted. The Student needed a much more structured educational environment than ██████████ High School,

In addition, the record does not support the District's position that the Student was re-evaluated in 2013. The record establishes that prior to 2016 the last comprehensive re-evaluation was the private evaluation in 2010. The Student should have been re-evaluated in 2013 by the elementary district. The only data from 2013 were academic progress reports on the WAIS and NWEA referred to by Ms. ██████████ in her 2016 report, and no evaluation reports or actual testing data from 2013 was offered for admission into the hearing record. The District should have recognized this and evaluated the Student during her freshman year.

B. THE PRIVATE PLACEMENT

While they have met the first part of the two-part test to establish entitlement to retroactive reimbursement, the Parents have not met their burden of establishing that the ██████████ School was an appropriate placement for the Student.

This is a difficult determination given the circumstances of this case.. First, the record clearly demonstrates that since they adopted the Student the Parents have diligently secured private psycho-educational and medical assessments of the Student at their own expense to better understand her educational and medical needs. They retained several qualified professionals to treat and assess the Student over a long period of time. For example, Ms. ██████████ and Ms. ██████████ have worked with the Student since she was very young. Dr. ██████████ has been her treating psychiatrist since 2009. The Parents have hired tutors to work with the Student in math and other subjects.

Second, all indications are that the Parents have consistently and fully participated in the IEP process for the Student throughout her school career. There is no evidence in the record that the Parents have been uncooperative. On the contrary, they appear to have pursued every avenue available to obtain appropriate services and supports for the Student.

Nevertheless, the hearing record supports the District's argument that the record is insufficient to support the Parents' contention that ██████████ School was an appropriate placement. To be clear, this conclusion is not based on the fact that ██████████ is not on the State of Illinois' approved list of private schools or that it may not meet State standards. *Florence County Sch. Dist. Four v. Carter ex rel Carter*, 510 U.S. at 14; *Frank G. v. Board of Educ. Of Hyde Park*, 459 F.3d 356, 364(2nd Cir. 2006). It is also not based on whether or not it was the least restrictive educational environment appropriate for the Student. *M.S. v. Bd. of Educ.*, 231 F.3d 96(2nd Cir. 2000); *Warren G. v. Cumberland County Sch. Dist.*, 190 F.3d 80 (3rd Cir. 1999).

The key question is: Does the record show that the private placement provided educational instruction specifically designed to meet the unique needs of the child with a disability, supported by such services as are necessary to permit the child to benefit from instruction? *John M. v. Brentwood Union Free Sch. Dist.*, 66 IDELR 129 (E.D.N.Y. 2015) (affirming hearing officer's denial of tuition reimbursement).

The District's argument is correct that the evidence was presented at the hearing about ██████████ School was insufficient. The Student's Mother testified that ██████████ offered small classes and significantly more structure for the Student than ██████████ High School. She testified further that ██████████ specializes in educating students with language-based learning disabilities and teaches social pragmatics. However, as the District's written argument points out, the Mother has no firsthand knowledge of the classes or supports provided for the Student at ██████████ and could not offer any details as to how the services were put into practice for the Student.

The record also shows that the Student had passing grades at ██████████ School. (Exhibit #15). However, grades alone are not sufficient proof that the Student's unique educational needs were being addressed at the school. The record has no information other than the brief written summary reports from teachers (Exhibit #28) as to how she earned her grades. It is noted that she also had passing grades at ██████████ High School in 2014-2015, but did not make progress in many of her areas of need. In fact, despite her passing grades at ██████████ High School she repeated freshman year at ██████████ as advised by her educational consultant, Ms. ██████████.

Dr. ██████████ and Ms. ██████████ testified that they had limited contact with the Student and the staff at ██████████ during the 2015-16 school year, and they had very little information to offer about the services at ██████████.

Denial of reimbursement is justified if the evidence is insufficient to establish the propriety of the private placement because it is too general or lacking in detail. *M.B. v. Hamilton Southeastern Schools*, 668 F.3d 851,864(7th Cir. 2011). In the instant case there are no IEPs, individual service plans, progress reports or goal statements for the Student from ██████████ School in the record. No witnesses from ██████████ testified in the hearing and there is no other direct evidence regarding ██████████ or the services provided to the Student. The District's argument on this point is persuasive.

ORDER

It is hereby ordered that the Parents request for reimbursement by the School District for tuition and costs associated with the Student's attendance at the ██████████ School, during the 2015-16 and 2016-17 school years be and is hereby denied.

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NOTICE OF RIGHT TO REQUEST CLARIFICATION

Pursuant to 105 ILCS 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 to the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, Illinois 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's 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.

DATE: June 19, 2017

Philip C. Milsk
Philip C. Milsk, Hearing Officer


CERTIFICATE OF SERVICE BY CERTIFIED MAIL

I, Philip C. Milsk, Impartial Hearing Officer in the above-captioned matter, hereby certify that I served a true and correct copy of the foregoing Final Determination and Order upon the following individuals by certified mail on June 21, 2017:



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[REDACTED]

[REDACTED]

Andy Eulass
Illinois State Board of Education
100 N. First Street
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Philip C. Milsk
Philip C. Milsk