ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

J.F.,
Student,

v. **Case No. 2017-0368**

[redacted]
DISTRICT #[redacted],
School District.

Philip C. Milsk,
Impartial Hearing Officer

FINAL DETERMINATION AND ORDER

I. BACKGROUND AND PROCEDURAL HISTORY

On April 3, 2017, A.F. and R.F., ("Parents") on behalf of themselves and their daughter, J.F. ("Student") submitted a request to [redacted] School District [redacted] ("District") for an impartial due process hearing under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1415. The Parents' request was submitted to the Illinois State Board of Education on April 7, 2017. The due process complaint notice requested an order directing the District to pay for all costs, fees and expenses related to the Student's placement at the [redacted] in [redacted] retroactive to March, 2017, and through the 2017-2018 school year. The District filed a Response on April 13, 2017, requesting that relief be denied.

On April 20, 2017, the parties agreed to participate in State-sponsored Mediation. The parties jointly moved for a continuance of the pre-hearing conference to the agreed date of June 6, 2017, to allow time for the Mediation process, and an Order was entered to that effect on April 25, 2017. However, on June 1, 2017, counsel for the Parents and Student notified the hearing officer by e-mail that the Mediation had failed to resolve any issues in the case.

The pre-hearing conference was held with counsel on June 6, 2017, and a final Pre-hearing Report and Order was issued to counsel on August 16, 2017.

The due process hearing commenced on September 12, 2017, and the hearing record was closed on September 21, 2017, with the submission by counsel of written closing arguments. The hearing was held at the main campus of [redacted] School in [redacted], Illinois.

Student is 16 years old and will turn 17 on May 20, 2018. She currently attends [redacted], a private residential school in [redacted], [redacted]. She was placed in [redacted] by her Parents unilaterally (without the agreement of the District) on March 11, 2017.

A.F., the Student's mother, testified that around the 5th or 6th grade Student started having noticeable anxiety. She started seeing a private clinical psychologist, J[redacted] F[redacted], in April,2013. Dr. F[redacted] testified that he saw Student almost weekly for

three years and continues to stay in touch with her Parents regarding her condition and progress since Student left the State in 2016. Student had also been a patient of Dr. J[redacted] K[redacted], a psychiatrist, since December, 2013. Dr. K[redacted] prescribed medications for Student and monitored them.

Student is diagnosed as having significant and chronic depression and anxiety with a history of self-destructive behaviors, suicide ideation, school avoidance and feigning illness. There are also references in testimony by several witnesses to sexual orientation conflicts and post-traumatic stress disorder. This diagnosis was confirmed by several witnesses including the Parents, Dr. F[redacted], Dr. K[redacted], K[redacted] S[redacted] and Dr. K[redacted] O[redacted] (see, Exhibit 16). There seems to be no dispute about the Student's diagnostic profile.

An individualized educational plan ("IEP") was developed for the Student at the end of the 8th grade in June, 2015. (Exhibit 7). Prior to the development of this IEP she had been in a "DBT" facility in [redacted] for about a month. This was the IEP in place for the Student when she entered [redacted] School. She was in general education classes during her freshman year, and received school social work services, resource help and testing accommodations. By all accounts she did very well her first semester academically. (see, e.g., testimony of J[redacted] K[redacted], her math teacher and basketball coach). She also excelled in softball and basketball, but suffered a concussion, and an ankle injury which required surgery.

Her situation deteriorated during the second semester of her freshman (2015-2016) year. Her case manager, L[redacted] R[redacted], attributed this in part to her injuries and difficulty getting around the school due to her ankle injury. Ms. R[redacted] also testified that doctors' appointments affected the Student's school work.

With a little over a month left in the semester, her school social worker, M[redacted] H[redacted], called A.F. and asked her to pick up the Student at school because she had threatened to harm herself and possibly attempt suicide. In mid-May, 2016, Student entered a partial hospitalization program at [redacted] System, [redacted] under the care of Dr. N[redacted] L[redacted], a child and adolescent psychiatrist. (Exhibit 3). She continued in that program for several months. On August 5, 2016, Dr. L[redacted] wrote that the Student needed a "higher level of care" and recommended a wilderness or residential program. Upon her discharge from the partial hospitalization program, the Parents requested an IEP meeting and shared Dr. L[redacted]'s letter with the District.

The IEP meeting was held on August 19, 2016. (Exhibit 10). At the meeting the District considered Dr. Liu's letter and additional letters from Dr. F[redacted] and Dr. K[redacted] recommending a residential placement for the Student. The District agreed to conduct a case study evaluation of the Student, including a psychiatric evaluation by Dr. K[redacted], the Student's treating psychiatrist, at the District's expense. Parents consented to the case study evaluation.

Due to the urgency of Student's circumstances, the case study evaluation was expedited, and the IEP team reconvened on September 7, 2016. (Exhibit 13). Student's eligibility continued to be based upon an emotional disorder and her goals remained the same. Placement was discussed and the IEP team agreed with the Parents and the Student's treating psychiatrists and psychologist that she needed a residential placement due to the need for around the clock monitoring. The District offered information about several potential placements. The Parents also discussed several possible residential schools

and some were on both the District's and Parents' lists.

R.F., the Student's father, asked about a wilderness program prior to enrollment in a residential school. The District's Director of Special Education, [redacted], told the Parents that the District would not pay for the Student to attend a wilderness program because it is not an educational program. Ms. [redacted] also informed the Parents that the District could not support a residential placement that was not on the list of approved Illinois State Board of Education facilities.

Before the September 7, 2016 meeting finished, Ms. [redacted] provided the Parents with release forms for the Parents and Student to complete and sign so that the District could share information with potential residential schools. The Parents completed and submitted their forms at the meeting and took home the forms for the Student to sign. Ms. [redacted] also discussed the Illinois State Board of Education placement approval process and the Department of Children and Family Services Interstate Compact procedure with the Parents.

The IEP team recommended an interim placement in a therapeutic day school or homebound instruction until a residential program could be found. (Testimony of Karen Shane, and Exhibit 13).

Following the September 7, 2016 IEP meeting, Student did not return to [redacted] School and did not attend a therapeutic day school. Her surgically repaired ankle was not healing properly, so the Parents' plan to put her in a wilderness program was unexpectedly delayed due to lack of medical clearance. (See Exhibit 15, e-mails from October 10-12, 2016, involving Parents, Ms. [redacted] and others). Dr. K[redacted] then signed a Medical Certification for Home/Hospital Instruction and she began to receive homebound instruction in mid-October, 2016. The Parents also hired Mr. K[redacted] as a private math tutor for the Student in October, 2016 for about five sessions. (Testimony of K[redacted]).

In late November, 2016, A.F. communicated with Ms. [redacted] by e-mail to inform her that the Student had surgery to remove the suture from her ankle and that it was healing nicely. A.F. stated further that she expected the Student to be released to go to wilderness the week of December 12, 2016. She also informed Ms. [redacted] that the family was planning to hire the Aspire Group, an educational consulting firm, to help them with the Student's case and that the consultants, [redacted] and [redacted], might call Ms. [redacted]. (Exhibit 18).

The homebound instruction was discontinued in mid-December when the homebound tutor was informed by the Parents that the Student had entered an out-of-state wilderness program. Ms. S[redacted] and A.F. then exchanged e-mails initiated by Ms. S[redacted] on December 14, 2016, in which A.F. informed Ms. S[redacted] that the Student had been taken to the Evoke wilderness program in Utah the previous day. Ms. [redacted] asked A.F. to "please keep me posted when you are ready to explore residential programs". (Exhibit 19). At this point the Student had not been withdrawn from [redacted] School and the Student's consent forms had not been submitted to the District.

On January 3, 2017, Ms. [redacted] e-mailed the Parents regarding the need to withdraw the Student because she is considered truant without the withdrawal. She also reminded the Parents about needing the consent forms from the Student regarding a residential placement. The e-mail also noted the non-approval of the current wilderness program "because it is not an IEP placement". (Exhibit 20). The next day A.F.

submitted a signed withdrawal. (Exhibit 21). On January 20, 2017, the A.F. returned the signed releases so the District could pursue applications at five residential schools approved by the State Board of Education. A.F. also stated in her e-mail message to Ms. [redacted] that five State-approved schools would be considered: [redacted], [redacted], [redacted], [redacted] and [redacted]. She also mentioned [redacted] and [redacted]. (Exhibit 22).

The Student participated in the [redacted] program until March 10, 2017. While she was at [redacted] her therapist was Paul Goddard. Goddard evaluated her when she arrived at [redacted]. A psychological evaluation was also conducted at [redacted] by K[redacted] O[redacted], a clinical psychologist, on January 29, 2017. (Exhibit 16). Similar to previous diagnostic findings, O[redacted] found significant depression and anxiety, potential for self-harm, and the need for further residential treatment. He made a number of specific findings and treatment recommendations. One of his recommendations was that the transition of the Student from [redacted] to a residential school should take place immediately after she completes the [redacted] program. According to the Parents, the O[redacted] evaluation report was offered to the District, but Ms. [redacted] told the Parents that they did not need the report because they had enough information to make a placement recommendation. Therefore, the report apparently was not shared with the District.

Between January 20, 2017, when the releases were received, and February 24, 2017, the District attempted to find a State-approved residential program opening from the list the District had provided. G[redacted] L[redacted], Private Placement Coordinator at [redacted] School, testified that she worked in conjunction with Ms. [redacted] in an attempt to find an appropriate program for the Student. This included an in-person visit by Ms. L[redacted] to one of the schools, Alpine Academy. (Testimony of G[redacted] L[redacted]; Exhibit 29). Ms. L[redacted] also testified that she reached out to I[redacted] W[redacted], the Parents' consultant and had one brief conversation with Ms. W[redacted]. From the testimony of Ms. L[redacted], the process of locating a residential program, seeking admission and completing the enrollment process is a challenge because openings can occur and then close quickly.

On February 24, 2017, counsel for the Parents and Student sent a 10-day notice to the District regarding the Parents' intent to unilaterally place the Student in a private residential school, either [redacted] or [redacted] in [redacted]. (Exhibit 4). On March 3, 2017, counsel sent another letter to District's counsel indicating that the three State-approved schools the Parents would consider had no vacancies and the other two schools, which Parents previously had stated they would consider, [redacted] and [redacted], were not appropriate for the Student. (Exhibit 31).

On March 11, 2017, the Student started at [redacted]. She continues to attend [redacted] and, according to her therapist, I[redacted] S[redacted], she will probably not be ready to graduate from [redacted] until no sooner than May, 2018, and more likely August, 2018. [redacted] is not on the list of Illinois State Board of Education-approved residential schools, meaning the State of Illinois will not provide any reimbursement for costs.

II. JURISDICTION

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

III. ISSUES[1]

1. Should the District be ordered to (a) reimburse the Parents for expenses incurred to date in relation to the unilateral placement of the Student at [redacted], including tuition, room and board, travel and other costs from March 11, 2017, and (b) prospectively pay said expenses until Student is graduated from the [redacted] in 2018 or otherwise discontinues her attendance at [redacted]?

2. Should the District be ordered to reimburse the Parents for expenses incurred in relation to the unilateral placement of the Student in the [redacted] wilderness program from December 13, 2016, until March 10, 2017?

3. Should the District be ordered to reimburse the Parents for the cost of a psychological evaluation conducted by Dr. K[redacted] O[redacted] while the Student was at the [redacted] wilderness program

IV. LEGAL FRAMEWORK

1. Reimbursement for Costs of Private Residential School

IDEA allows parents to recover or compel payment for the costs of a private school placement they have made unilaterally if the evidence establishes that (a) the school district's proposed placement failed to offer a free appropriate public education (FAPE) to the child, and (b) the private placement chosen by the parents is appropriate for the child. *Florence County School District Four v. Carter*, 510 U.S. 7 (1993) See also, *School Comm. of Burlington v. Department of Ed. of Mass.*, 471 U.S. 359 (1985) (IDEA's grant of equitable authority permits an order directing school authorities to reimburse parents for the costs of a private school education for their child if there is a finding that the private placement, rather than the proposed IEP, is proper under the Act.) An IEP offers a FAPE if it is reasonably calculated to enable the child to make progress that is appropriate in light of the child's individual circumstances. *Endrew F. v. Douglas County School District RE-1,* 137 S.Ct. 988 (2017).

The Court in *Carter* held that a placement chosen by the parents may be appropriate without meeting the FAPE standard or complying with State requirements as long as it is appropriate. The parents' chosen private placement is appropriate if it is reasonably calculated to enable the child to receive educational benefit and provides instruction specially designed to address the unique needs of the child. *Frank G. v. Bd. of Educ. Hyde Park*, 459 F.3d 356(2nd Cir. 2006).

Once the two-part *Carter/Burlington* test is met, the hearing officer or court must then apply equitable considerations in determining whether to award reimbursement or payment for the costs a unilateral parental placement and, if so, whether the payment amount should be reduced. For example, parents'

[1] Note that the dates indicated in the Pre-hearing Report and Order in this case are incorrect. The issues statements in this Final Determination and Order have been corrected to align with the actual chronology of events as reflected by the hearing record.

lack of cooperation can be a basis for denying reimbursement. *Patricia P. v Board of Educ.of Oak Park-River Forest High School Dist. 200,* 203 F.3d 462 (7th Cir. 2000).

2. Issues not Raised in Due Process Complaint Notice

IDEA clearly provides that the party requesting a due process hearing shall not be allowed to raise issues at the hearing that were not raised in the due process complaint notice unless the other party agrees. 20 U.S.C. §1415(f)(3)(B).

V. FINDINGS OF FACT

1. It is not in dispute that the Student is eligible for special education and related services due to an emotional disorder.
2. It is also not in dispute that the Student suffers from significant depression and anxiety and is at risk for self-injurious behaviors and is a potential risk for suicide.
3. The parties seem to agree that the Student has good academic skills and cognitive abilities and definitely has college potential. Her treating psychiatrist, Dr. K[redacted], testified that an appropriate program for the Student would challenge her academically. Her math teacher at [redacted] School, J[redacted] K[redacted], testified that she was a very good student and performed well in his class. Student is also an excellent athlete and has competed in basketball and softball.
4. There is no disagreement that the Student has required a residential placement to address her significant and complex social and emotional needs since the beginning of the 2016-2017 school year and that it was inappropriate for her to return to [redacted] School. This is strongly supported by the testimony of various witnesses and was the recommendation of the IEP team at the last IEP meeting held for the Student on September 7, 2016 (Exhibit 13). At this meeting the District gave the Parents some information regarding State-approved private residential programs including [redacted], [redacted], [redacted], [redacted] and [redacted]. No one specific placement was offered to the Parents at the IEP meeting or in the IEP itself. (Exhibit 13).
5. The District clearly limited the Parents' choices to State-approved residential Programs. (Exhibit 13; Testimony of Parents, [redacted] and G[redacted] L[redacted]).
6. Student was not placed in a residential program until March 11, 2017. (Testimony of her mother). This was due to a number of factors. First, Parents had decided that the Student should first participate in a wilderness program. A wilderness program was not part of the September 7, 2016 IEP, but the Parents followed the advice they received from consultants they hired at the [redacted], I[redacted] W[redacted] and J[redacted] G[redacted]. A wilderness program was also supported by the Student's treating psychiatrists and psychologist. (Testimony of Dr. F[redacted] and Dr. K[redacted], Exhibit 3). The purpose of the wilderness program is to stabilize the Student and get a clearer picture of the Student's personality and needs away from the usual stimuli in an outdoor

environment with healthy food, no electronic devices and good sleep patterns. (Testimony of P[redacted] G[redacted]). The Parents requested that the District pay for a wilderness program and the request was denied by Ms. [redacted] at the September 7, 2016 IEP meeting on the grounds that wilderness programs are not educational and not approved by the State Board of Education for reimbursement.

7. Enrollment in the wilderness program was delayed due to the Student's medical issues regarding surgery on her injured ankle that did not heal properly. (Testimony of A.F.)
8. The Parents requested and Student received homebound instruction from the District from mid-October, 2016 to mid-December, 2016. The Parents were satisfied with the homebound tutoring. (Exhibit 19).
9. The Student's homebound services were discontinued when the Student was enrolled in the [redacted] wilderness program in Utah on December 13, 2016. The Parents informed the District in advance that the Student would be initially placed in a wilderness program before she was ready for a residential placement, but did not provide a 10-day written notice prior to her enrollment in [redacted].
10. The Student's withdrawal from [redacted] School by her Parents on January 4, 2017 did not waive the Student's right to an IEP and appropriate educational placement. The clear purpose of the withdrawal was to address the District's concerns about truancy due to the discontinuation of homebound services and enrollment in the [redacted] program.
11. Student was evaluated at [redacted] by Dr. O[redacted] in late January, 2017. The Parents did not request that the District provide additional psychological testing prior to Dr. O[redacted]'s independent evaluation. The O[redacted] evaluation appears to have been part of the Evoke program and was not necessary in order to enable the District to determine FAPE or a placement for the Student since the District had already agreed to the Student's eligibility and a residential placement based upon evaluations conducted in August, 2017 by K[redacted] S[redacted], the School Psychologist at [redacted] School, and Dr. K[redacted], the Student's treating psychiatrist. The O[redacted] report was not shared with the District because the Parents were told that the District already had sufficient information. (Testimony of Parents).
12. Ten-day notice of intent to place in a residential program was provided by Parents' and Student's counsel to the District on February 24, 2017.
13. Student completed the [redacted] program on March 10, 2017, and was placed at [redacted] in [redacted], [redacted] on March 11, 2017.
14. It was appropriate for the Student to enter the residential program immediately following her completion of the wilderness program. (Testimony of I[redacted] W[redacted]). Delaying her placement after wilderness was not clinically indicated and the transition should be seamless. (Testimony of Dr. F[redacted]).
15. The District first received the consent forms signed by the Student from the Parents on January 20, 2017, over four months after they were provided to the Parents. Following the receipt of the consent forms, Ms. L[redacted] endeavored to determine the availability of private residential schools on the list of State-approved programs shared with the Parents by Ms. [redacted]. Despite Ms. L[redacted]'s efforts, no specific residential program was offered to the Parents, and no letter of acceptance was secured for the Student.
16. When the Student was ready to leave the [redacted] program and needed an immediate or almost immediate transition into a residential program, [redacted] was available and the Parents placed her there.

17. Student required in 2016-2017 and continues to require in 2017-2018 a residential program that provides a safe, secure, nurturing environment with a strong therapeutic component with an academic program that will prepare her for college. Her primary needs relate to her depression and anxiety, not cognitive functioning, specialized instruction or communication skills. (Testimony of K S).
18. The evidence supports a finding that the Student needs an all-girls residential program. (Testimony of Dr. W , I S , Dr. F and Dr. K). As Dr. F explained, having adolescent boys present would have been detrimental to the Student's treatment because adolescent boys tend to be more sexually aggressive. The Student needs a trusting and safe environment in order for her program to be successful. In addition, Student was struggling with sexual orientation issues and having boys present would create further complications. However, a single-gender placement is not part of the Student's current IEP and the need for an all-girls placement was not communicated to the District for its consideration until the due process hearing. (Testimony of).
19. It is undisputed that is not on the Illinois State Board of Education's approved list for private residential schools.
20. is a private residential school for teenaged girls in grades 9-12 that provides clinical services to students and actively involves families in the clinical aspects of the program. The program does not admit students with conduct disorders. The information about was provided mainly by I S , the Student's individual therapist, who testified at the hearing by telephone. Students receive individual therapy at least once each week for 90 minutes and group therapy at least once per week for 90 minutes. Additional therapy time can be provided if needed. The academic program is a college preparation program and includes SAT and ACT preparation. The teachers do not hold special education certification, but accommodations for students are addressed. Students take a full academic load. The Student is currently taking English 200, Chemistry 200, US History 200, Geometry 205, Algebra II 300 and Physical Education and doing well academically. The teachers meet on a weekly basis. Student also participates in the physical activity component of the program that includes daily cross-fit, dance and yoga, and physical education class two-three days per week. There is a community life staff at the facility to assist students with their day to day issues. The program has four phases. Student is currently in Phase 2 and at the cusp of Phase 3. During Phase 2 the students work on trauma and family issues. Home visits begin during Phase 3 and are expanded during Phase 4 before the student is transitioned back to her home. It is possible that the Student will complete the program by May, 2018, but more likely that she will need to continue in the program until August, 2018. She is making progress, but at a methodical pace. (Testimony of I S).
21. Switching residential schools at this time, even to a comparable all-girls program, would be detrimental to the Student and inappropriate. Several witnesses addressed this issue and offered the same opinion. Dr. F , for example, stated that premature termination could be damaging due to a severance of the patient-therapist relationship, a loss of trust, loss of friendships and peer supports, and a sense of abandonment. Ms. S gave similar testimony as did Dr. W . Dr. K testified that early removal would only be appropriate if the child is not doing well and a more suitable program can be located. The evidence shows that the Student is doing well

and making progress at [redacted].

22. The cost to the Parents for placing the Student at [redacted] since March 11, 2017, is shown in Exhibits 35 and 36. Tuition has been billed at the rate of $8,500.00 per month except the March, 2017 tuition was prorated starting on March 10, 2017. The total billed for tuition as of the due process hearing was $67,950.00, including a billing for September, 2017. Other charges including a monthly personal allowance have totaled $1,660.00.
23. Before the Student was placed at [redacted] the Parents explored at least five potential residential programs suggested by the District including [redacted], [redacted], [redacted], [redacted] and [redacted]. They included all five on their list of possible placements in an e-mail dated January 20, 2017. (Exhibit 22). They looked into a possible opening at [redacted] in [redacted]. (Exhibit 23). However, during the hearing they and Dr. W[redacted] testified that [redacted] and [redacted] were not appropriate because they are co-ed and accept students with aggressive behaviors.
24. The District did not convene any meetings regarding the Student after September 7, 2016, but there were e-mail communications between the Parents and District staff, mainly Ms. [redacted], until the 10-day notice was sent to the District on February 24, 2017. Following the 10-day notice the communications that occurred were between counsel. Once the [redacted] placement took place the District stopped searching for a program for the Student. (Testimony of G[redacted] L[redacted]).
25. There were no available openings at [redacted], [redacted] or [redacted] when the Student needed a residential placement.
26. The Parents were provided an opportunity to meaningfully participate in all IEP meetings convened by the District through the September 7, 2016, meeting, and the Parents, in turn, attended the meetings, participated fully and signed all necessary consents through that date.
27. Current State-approved cost rates of the five State-approved programs suggested by the District and the cost to the Parents of the [redacted] program show that the [redacted] program cost is the least expensive by a considerable amount.

VI. CONCLUSIONS OF LAW

A. Standard of Proof

The standard of proof in this case is a preponderance of the evidence.

B. Payment for Evoke Wilderness Program and O'Keefe Evaluation

Parents are not entitled to reimbursement for the cost of the Student's participation in the [redacted] wilderness program. They are also not entitled to reimbursement for the cost of Dr. O[redacted]'s psychological evaluation while the Student was at [redacted]. Parents' due process hearing complaint notice seeks reimbursement for the cost of [redacted] and prospective payment for [redacted] until the Student completes that program. There is no request for reimbursement for [redacted] or Dr. O[redacted]'s

evaluation.

As is noted above, IDEA provides that the party requesting the hearing shall not be allowed to raise issues at the due process hearing that were not raised in the due process complaint notice, absent an agreement from the other party. 20 U.S.C. §1415(f)(3)(B). The District clearly objected to Parents' attempt to raise the issues of reimbursement for [redacted] and Dr. O[redacted]'s evaluation during the hearing, so there was no agreement to allow the Parents to raise these issues.

To consider the Parents' request for reimbursement now as part of the final order in this case would be unfair to the District due to the lack of notice and an opportunity to prepare a case in opposition to the request. Indeed, if one of the issues in the case had been reimbursement for the [redacted] program, the hearing preparation and strategy of both sides would have been substantially different.

There may be additional grounds upon which to deny reimbursement for these costs, but the application of §1415(f)(3)(B) is sufficient and appropriate.

C. Reimbursement and Prospective Payment for Spring Ridge Academy

1. FAPE

a. FAPE through September 7, 2016

The *Carter/Burlington* test first requires a determination of whether the District offered a FAPE to the Student. The IEP of September 7, 2016, was the last IEP written for the Student before she entered [redacted]. No IEP meeting has been held since that date. In determining whether FAPE was offered, the first question is whether there were procedural violations by the District that impeded the child's right to a FAPE, significantly impeded the Parents' opportunity to participate in the decision-making process, or caused a deprivation of educational benefits. 20 U.S.C. §1415(f)(3)(E) (ii). The record shows that there were no procedural violations in relation to the September 7, 2016, meeting. Parents were duly notified of the meeting and fully participated in the meeting. There was no denial of educational benefit to the Student due to the District's actions related to the meeting.

The second FAPE issue is whether the IEP substantively offered FAPE to the Student in accordance with the standard set forth in *Endrew F.* The parties seemed be in agreement regarding the September 7, 2016 IEP. The Student's eligibility was not in dispute and the parties agreed that she required a residential placement. The District provided the Parents with information about several potential private residential programs for their consideration. The next step was to find an appropriate residential placement for the Student. The one point of contention was the wilderness program. The District clearly stated that it would not pay for a wilderness program and it was not included as part of the Student's IEP. The Parents could have opted to challenge the District's position on the wilderness program, but instead they chose to pay for it themselves. There is nothing in the record to indicate that the Parents were not fully informed of the procedural safeguards under IDEA at that time. The District's argument that the District offered FAPE to the Student through September 7, 2016, is supported by the evidence.

b. FAPE After September 7, 2016

It is the period after September 7, 2016, when the process of finding a residential placement for the Student bogged down. The parties share responsibility for the delay and the eventual decision by the Parents to enroll her at [redacted].

Placement was first delayed due to the Student's medical issues that required the provision of homebound services starting in mid-October, 2016. The Student's ankle injury may not have prevented her from enrolling in a residential program with healthcare services on site, but she was not medically cleared to participate in a wilderness program until December.

The wilderness program further delayed the residential placement almost three months until March, 2017. This is not to say that the Parents' decision to put the Student in a wilderness program was wrong, but it was not part of the IEP and it delayed the placement process.

The Parents' delay in returning the Student's signed consent forms for over four months until January 20, 2017, further impeded the District's ability to submit complete packets of information to potential residential placements.

On the other hand, the Parents are correct in arguing that the District had an affirmative obligation to place the Student in an appropriate educational placement. As the Parents argue, recommending a residential placement and offering the Parents a list of potential State-approved placements were just the first steps in the process. The District had an affirmative responsibility post-September 7, 2016, to actually locate one or more appropriate programs.

The Parents are also correct that the District had an obligation to convene a meeting with the Parents after the Student entered the [redacted] program to coordinate efforts and share information about various residential programs and their availability. The meeting did not need to be a full blown IEP meeting, but should have included Ms. L[redacted] and Ms. [redacted]. Because of the new psychological evaluation by Dr. O[redacted], Ms. S[redacted] should have been involved, too. As the Parents contend, a meeting would have fostered collaboration in the process and allowed the Parents the opportunity to involve their consulting team. IDEA requires local educational agencies to ensure that the parents are members of any group that makes decisions on the educational placement of their child. 34 C.F.R. §300.327. Parents were not given this opportunity. However, it is important to note that the Parents, who are intelligent and resourceful, could have more effectively encouraged their consulting team to work closely with the District. As Ms. L[redacted] testified, she reached out to Dr. W[redacted] and they had one brief conversation on the phone. The Parents' consultants, who are their agents, should have been more proactive in working directly with District staff, especially Ms. L[redacted].

Eventually, in March, 2017, the Student was ready to leave [redacted] and needed a seamless transition into a residential program. [redacted] was one of two programs available for the Student and both programs were not on the Illinois State Board of Education approved list. The Parents apparently had no other options at that point in time.

On the question of whether the District denied a FAPE to the Student, I conclude that the Parents are correct that FAPE was denied due to the District's failure to more aggressively pursue an appropriate residential program for the Student after the

September 7, 2016 IEP meeting, and its failure to convene any meetings with the Parents after that date to involve them directly in the decision-making process and to ensure that the placement process was done in a timely and collaborative manner.

On the other hand the actions and inactions by the Parents described above contributed to the delay in making a placement decision and are equitable factors in determining the extent to which they should be granted relief in this case.

2. Appropriateness of [redacted] Academy

[redacted] Academy is an appropriate placement for the Student. (See, Finding of Fact No. 20). She is receiving regular individual and group therapy and physical activity. She is in a college preparatory curriculum and doing well. Her therapist testified that she is making progress and is expected to complete the program in the next eight to eleven months. The program is addressing her depression and anxiety and meeting her individual needs. According to the testimony of Ms. S[redacted], the environment is nurturing, safe and secure, and provides the monitoring and supervision she needs. Although her teachers do not have special education credentials, her primary needs are social and emotional, not academic or cognitive. Academic accommodations are available to students. Under *Carter*, the program need not be State-approved or meet State standards to be an appropriate parental placement eligible for reimbursement by the District. 510 U.S. at 14.

3. Equitable Considerations

Carter held that in order to be entitled to reimbursement, equitable considerations relating to the reasonableness of the Parents' actions must favor them. Equitable considerations are considered to determine whether, and how much, relief is appropriate. *C.B. v. Garden Grove Unified School District*, 635 F.3d 1155 (9th Cir. 2011).

The equitable factor that weighs in the most favor for the Parents is the fact that when they placed their daughter at [redacted] Academy in March, 2017, they had identified [redacted] as an appropriate facility and had no other options when the placement needed to be made. In addition, the cost of [redacted] Academy is low compared with the five residential facilities suggested by the District. (Exhibit 37). In fact, tuition and room and board at [redacted] is over $30,000.00 less expensive annually than the next cheapest program, Yellowstone. The equitable factors weighing against the Parents were included in the post-September 7, 2016 FAPE discussion above.

Both the Parents and the District engaged in efforts to serve the best interests of the Student. The Parents did what they thought was necessary for their daughter and followed the advice of their treating professionals and consultants. The District took steps to try to find a program for the Student. The lack of cooperation and hostility frequently seen in special education disputes was not present in this case. See. e.g, *Patricia P. v Board of Educ.of Oak Park-River Forest High School Dist. 200,* 203 F.3d 462 (7th Cir. 2000).

Nevertheless, in weighing equitable factors, the Parents and the District share responsibility for the lack of a coordinated effort and delays after September 7, 2016, that culminated in the placement of the Student in a non-approved residential program. Consequently, the relief granted in this case will reflect the balancing of

these equitable considerations.

VII. ORDER

It is hereby Ordered as follows:

1. The Student' s educational placement shall continue at the [redacted] through the 2017-2018 school year until she completes the program or is voluntarily withdrawn from [redacted] by her Parents.

2. The School District shall pay fifty per-cent of the Student's expenses at [redacted], including tuition, room and board, personal allowance and other customary charges incurred by the Parents as indicated on the invoices issued by [redacted]. Payments shall be made on a monthly basis and in a timely manner to [redacted]. Parents will provide the invoices to the District on a monthly basis when they are received.

3. Within 45 calendar days of the date of this Order, the District shall reimburse the Parents for fifty per-cent of the costs they have incurred for the Student's participation in the [redacted] since March 10, 2017, including room and board, tuition, personal allowances and other customary charges as shown on invoices from [redacted].

4. Within 45 calendar days of the date of this Order, the District shall reimburse the Parents for fifty per-cent of their travel expenses for one round-trip to take the Student to [redacted] when she entered [redacted] in March, 2017, including airfare, lodging and car rental. The Parents must provide all necessary receipts to the District.

5. Within 30 calendar days after the submission of receipts by the Parents, the District shall reimburse the Parents for fifty per-cent of the cost of two-round trips for one Parent or one round-trip for both Parents to visit with the Student at [redacted] during the 2017-2018 school year including airfare, lodging and car rental.

6. The District shall convene an IEP meeting for the Student no later than May 18,2018, for the purposes of reviewing her progress and any new diagnostic information, and discussing her IEP services and placement for the 2018-2019 academic year. Appropriate representatives from [redacted] shall be invited to participate in the meeting, by telephone if necessary. If there is a charge for the participation of the [redacted] staff, the District and the Parents shall share the cost equally. Parents may bring their team of consultants and private service providers to the meeting at the Parents' expense. If the Student's participation in the [redacted] program is terminated prior to her completion of the program, the School District shall convene the IEP meeting within 10 school days of the termination.

7. The Parents' request for reimbursement of the cost of the [redacted] wilderness program is denied.

8. The Parents' request for reimbursement of the cost of Dr. K[redacted] O[redacted]'s psychological evaluation in January, 2017 is denied.

9. The District shall provide verification of compliance with this Order to the Illinois State Board of Education in writing within 15 calendar days of the completion of each action required by the Order.

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: September 26, 2017

Philip C. Milsk
Philip C. Milsk, Hearing Officer
[redacted]

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 persons by certified mail on September 26, 2017:

Steven E. Glink
Law Offices of Steven E. Glink
[redacted]

Jennifer A. Smith
Jamel Greer
Franczek Radelet, PC
[redacted]

[redacted]

Andy Eulass
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Philip C. Milsk