

**ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING**

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STUDENT<sup>1</sup>,

Student,

Case No: 2018-0073

v.

Janet K. Maxwell-Wickett,  
Impartial Hearing Officer

██████████ HSD ██████,

School District.

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**FINAL DETERMINATION AND ORDER**

**JURISDICTION**

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

**BACKGROUND**

The Student is a 14-year-old, male who is a 9th grade student at a private residential facility. He qualifies for special education services under the disability categories of emotional disability (ED) and other health impairment (OHI), pursuant to IEP meetings held on May 11, 2017, July 18, 2017, and September 5, 2017. The Student has ADHD, inattentive type. He struggles with school refusal, anxiety, and depression and was found to have executive functioning needs in the areas of organization, task

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<sup>1</sup> Personal identification information is provided in Appendix A.

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completion/work avoidance, and problem solving. He was found to have educational needs in the areas of: reading, writing, and spelling. The Student has processing speed and visual perceptual skill deficits. The Student was initially found to be eligible for special education services during the 2015-2016 school year, while in seventh grade. The Student was placed by his elementary/middle school district at a private therapeutic day school during the second half of his eighth grade year, in March 2017. Parent did not believe that the District interventions were working and therefore, removed the Student in May 2017 to a wilderness program. After the conclusion of the wilderness program, Parent unilaterally placed the Student in a private non-ISBE approved residential facility. Parents disagreed with the placement determination in the IEPs dated May 11, 2017, July 18, 2017, and September 5, 2017. Parent maintains that a residential facility, not a therapeutic day school placement, is the least restrictive environment in which the Student's individual needs can be met and in which he can make adequate educational progress. (IHO Exhibit #1.)

The Parent filed a due process hearing request on September 1, 2017. (IHO Exhibit #1.) The parties participated in mediation on October 17, 2017. However, they were unable to resolve the outstanding issues. Prior to the commencement of the due process hearing, the District filed a Partial Motion to Dismiss requesting that this Hearing Officer deny Parent's request for prospective funding of the Student's placement at the non-ISBE approved residential facility at which Parent had unilaterally placed him. This Hearing Officer denied the District's Partial Motion to Dismiss per her oral ruling on December 6<sup>th</sup> and her Order Denying District's Partial Motion to Dismiss dated December 6, 2017. (IHO Exhibit #12.)

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The Parties jointly requested a continuance of the 45-day deadline on November 6, 2017 to continue the prehearing conference in order to accommodate the parties' schedules and agreed upon due process hearing dates. The requested continuance was granted for good cause shown pursuant to this Hearing Officer's order dated November 13th. (IHO Exhibit #7.) The Prehearing Conference was completed on November 13th and the Due Process Hearing dates were set by agreement for December 12-13<sup>th</sup>, 2017. The decision due date is set for December 23, 2017. (IHO Exhibit #7, 9.)

The Parent opted for a closed hearing. The Due Process Hearing was held on December 12-13, 2017. Ms. [REDACTED] of [REDACTED] represented the Parent. Ms. [REDACTED] of [REDACTED] represented the District. The parties presented their individual witnesses and several joint witnesses.<sup>2</sup> The Parent presented the following Exhibits (PE): #1-12, 14-20, 22-32, 34-43 which were admitted into evidence. The District presented the following Exhibits (SD): #1-3, 5, 7-10 which were admitted into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-15. Both parties submitted oral closing statements, a written outline thereof, and any case law relied upon.

### **ISSUES**

The issues raised by the Parent are as follows:

(a) Whether the District's May 11, 2017 IEP, as updated in July and September 2017, provided the Student with a placement and IEP reasonably calculated to enable the Student to receive educational benefit.

(b) Whether the Parent's unilateral placement provides educational instruction specifically designed to meet the unique need of the Student, supported by such services as are necessary to permit the Student to benefit from the instruction.

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<sup>2</sup> Witnesses presented by both parties are identified in Appendix A.

(c) Whether the balancing of the equities favor the Parent or District considering the following factors: (1) whether Parent provided the District with timely notice of her rejection of the proposed placement, including Parent's concerns and intent to enroll the Student in a private residential facility at public expense; (2) whether, prior to the removal, the Parent made the Student available to the District for evaluation; (3) whether the Parent's actions were unreasonable; (4) whether the cost of the private placement is unreasonable; and (5) whether there was a lack of parental cooperation with the District.

The District maintains that its proposed May 11, 2017 IEP, as updated in July and September 2017, and proposed therapeutic day school placement provide the Student with an appropriate IEP and placement reasonably calculated to enable the Student to receive educational benefit.

Parent maintains that the District's proposed IEP and educational placement were inappropriate. Parent further maintains that her unilateral placement provides educational instruction specifically designed to meet the unique needs of the Student, supported by such services as are necessary to permit the Student to benefit from instruction. Further, the balancing of the equities favors the Parent therefore entitling her to the requested relief of tuition reimbursement, prospective payment of tuition at a non-ISBE approved residential placement facility and extended school year services for the 2017-2018 school year.

### **FINDINGS OF FACT**

This Hearing Officer did not have the benefit of a transcript with respect to the testimony heard when writing this decision. Therefore, the following is based upon this Hearing Officer's personal notes, recording of the hearing, and recollection. This Hearing Officer carefully considered the testimony of all witnesses presented and all documents introduced and admitted into evidence whether or not specifically referred to or cited when making her final determination. After considering all the evidence, as well as the arguments of both District counsel and Parent's counsel, this Hearing Officer's Findings of Fact are as follows:

1. The Student is a 14-year old male who is currently a 9<sup>th</sup> grade student at a private residential facility, [REDACTED]. He qualifies for special education services under the disability categories of emotional disability (ED) and other health impairment (OHI)

due to the Student's ADHD, primarily inattentive type, diagnosis. (Testimony of Mother, Dr. J<sup>3</sup>, Dr. D<sup>4</sup>; PE #16, 12-13.)

2. He was initially found eligible for special education services as a 7th grade student, pursuant to an eligibility meeting on March 23, 2016. (Testimony of Mother; PE #18, 20.)
3. The Student struggles with school refusal, anxiety, and depression. (Testimony of Mother, Dr. J, Dr. D; PE #12-13, 16, 18-20.)
4. He was found to have executive functioning needs in the areas of organization, task completion/work avoidance, and problem solving. He was found to have educational needs in the areas of reading, writing and spelling. The Student has average intellectual abilities. However, he also has processing speed and visual perceptual skill deficits consistent with a learning disability in reading and written language. (Testimony of Dr. J, ML<sup>5</sup>; PE #16, 20, 34.)
5. The Student's struggles with school refusal, anxiety, and depression; his identified executive functioning needs; and his identified educational needs are undisputed. (Testimony of Mother, Dr. J, Dr. D, ML; PE ##12-13, 16, 18-20.)

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<sup>3</sup> Dr. J provided an independent psychological evaluation at the request of Parent. Dr. J holds a Master's Degree and Ph.D in clinical psychology. She is a licensed clinical psychologist in Utah, Idaho, and holds a temporary license in North Carolina. (Testimony of Dr. J; PE #23.)

<sup>4</sup> Dr. D holds a Master's Degree and Ph.D. in clinical psychology. He is the Clinical Director at TDS. He is licensed in the State of Illinois as a clinical psychologist, school psychologist, and a school administrator. In his capacity as Clinical Director at TDS, he provides direct, individual, and group therapy, oversees intake referrals, program development, academic interventions, internal consultation with case management teams, and clinical consults related to academic issues. (Testimony of Dr. D.; SD #8.)

<sup>5</sup> ML is the Educational Director at TDS. She is responsible for ensuring the education for the population of TDS. She is responsible for curriculum, lesson plans, and the well-being of students and works collaboratively with Dr. D. She holds a Master's Degree in Curriculum and Instruction and is licensed to teach regular education, K-8, special education, K-12. She also holds a K-12 administrative license and is a licensed Superintendent in Illinois. She has worked in education for the past forty (40) years. (Testimony of ML; SD #7.)

6. The Student's primary presenting need was a history of school refusal and anxiety. The Student has a history of refusing to get out of bed at home and attend school. (Testimony of Mother, Dr. J, Dr. D; PE #12-13, 16.)
7. The Student attended a general education middle school until March 24, 2017, at which time he was transferred to a private therapeutic day school, TDS. At the time of this transfer, the Student was an 8<sup>th</sup> grade student in his previous school district. (Testimony of Mother; PE #16, 22.)
8. The Student attended TDS from March 24, 2017 to May 23, 2017, for forty school days. (Testimony of Mother, Dr. D; PE #22.)
9. On May 24, 2017, Parent removed the Student from TDS and enrolled him in a wilderness program from May 24, 2017 through August 10, 2017. The Student was enrolled at [REDACTED] commencing on August 10, 2017. (Testimony of Mother, Dr. D; PE #22.)
10. Parent is not seeking reimbursement for the wilderness program. (Testimony of Mother.)
11. Parent provided notice to the District of her intent to unilaterally place the Student at [REDACTED] on July 27, 2017. (Testimony of Mother; PE #32.)
12. On May 11, 2017 a transition IEP was created for the Student to transition him from the middle school district to his current high school district. A District representative was in attendance and participated at that meeting. (Testimony of PP; PE #16.)
13. The May 11, 2017 IEP identifies the Student's primary presenting need as a history of school refusal and anxiety. The Student is not consistent in the classroom or in work production and has difficulty initiating classwork, staying on-task, and avoiding

engaging in off-task behaviors. He is rarely receptive to staff when redirected or offered assistance. (Testimony of Mother, Dr. D, ML; PE #16.)

14. The May 11, 2017 IEP provides goals targeting work completion, improving engagement, and targeting anxiety. Parent agreed with these goals and the corresponding areas of need. (Testimony of Mother, Dr. D, ML; PE #16.)
15. The Student's IEP included a behavior intervention plan with the goal of "instead of avoiding uncomfortable situations, to avoid 'failing,' [REDACTED] will use coping strategies/repair relationships with adult prompts." Parent agreed with the identified target behaviors and this goal. (Testimony of Mother, Dr. D; PE #16.)
16. The Student's May 11, 2017 IEP goals considered and documented his present levels of performance and provided benchmarks by which to measure the goals. This is undisputed by the Parent. (Testimony of Mother; PE #16.)
17. The May 11, 2017 IEP provided for a therapeutic day school placement at TDS. It provided special education for 360 minutes per day of academic instruction, 45 minutes of counseling services per week, 90 minutes of group counseling per week, 45 minutes of parent counseling per week and special transportation. (Testimony of Dr. D, ML; PE #16.)
18. The Student's post-secondary education goals were addressed in the IEP. The Student is musically talented and his interests lie in the art A/V technology and human services fields. He desires to pursue a career as a musician or therapist. (Testimony of Mother, Dr. D, ML; PE #16.)
19. The May 11, 2017 IEP was subsequently reviewed on July 3, 2017 at Parent's request and on September 5, 2017 to consider Parent's outside evaluation. (Testimony of Mother; PE #12, 14.)

20. TDS is a private therapeutic day school which is designed for and provides services to students with emotional disabilities, autism spectrum disorder, specific learning disabilities and other health impairments, depending upon the basis for the health impairment. TDS has a small group instructional model for student who are at or above grade level intellectually and academically. TDS is not designed for students with severe intellectual or academic deficits. (Testimony of Dr. D, ML, Dr. W, PP.)
21. TDS teaching staff are all special education certified and content area certified.  
(Testimony of ML, Dr. D, Dr. W.)
22. All paraprofessional staff at TDS meet Illinois state requirements for certification.  
(Testimony of ML; Dr. D.)
23. All related service providers at TDS, including all therapists, meet Illinois state requirements for licensure or certification. (Testimony of Dr. D; ML.)
24. TDS has a 5 to 1 student to teacher ratio in its high school program. (Testimony of ML, Dr. D.)
25. TDS provides after school opportunities for students while maintaining the 5 to 1 student to teacher ratio. After school opportunities include the ability to practice social skills and participate in activities such as rock band and art studio. The Student loved music and playing the guitar and had a post-secondary education goal of pursuing a career in music. (Testimony of Dr. D, ML, Mother.)
26. TDS has a separate room to which students can go for individualized emotional and/or academic care. In this room, students receive one to one therapy and/or academic support and both the Academic Director and a therapist would assist the student in that environment. (Testimony of ML; Dr. D.)

27. TDS has an eight period bell schedule that includes math, science, social studies, and English; physical education; art; and a lunch period. All academic periods are with the same group of students and the same teacher. The Student's IEP provided that he receive forty-five (45) minutes per week of pull out counseling services. Dr. D's contact with the Student far exceeded that requirement while he was enrolled at TDS, as the program is designed to be clinically supportive. The Student was assigned to Dr. D's case load and he provided individual, group, and family therapy to the Student. On average, he spent fifteen to twenty hours per week with the Student while he was enrolled at TDS. (Testimony of Dr. D; PE #16.)
28. TDS has a multi-step school refusal program developed and implemented by Dr. D. The program features an eight (8) week parent training model to ensure that parent and school expectations are completely aligned. The first three weekly sessions are designed to gather information to assess the causes of school refusal. For the Student, the key cause of school refusal was lack of "buy-in," he could not acknowledge the importance of going to school each day. There was also a mood component that impacted the Student's motivation and his sense of self. The Student also experienced social anxiety which contributed to school refusal. (Testimony of Dr. D.)
29. The next part of the school refusal program was to work with the Parent to establish a menu of intervention options. For this Student, TDS implemented daily check-ins, counseling sessions with the Parent, and therapeutic treatment goals to attempt to get the Student invested in school. Dr. D was working with the Parent and Student to determine the Student's interests and to attempt to incorporate those interests into his curriculum to get him "invested" in school. Dr. D also worked with the Parent to set

up reasonable, enforceable consequences for school refusal. TDS was at this stage of the school refusal program when Parent removed the Student from TDS. (Testimony of Dr. D., Mother.)

30. TDS provides individualized attendance coaching with a trained attendance coach. Dr. D works with the parent and attendance coach to develop a plan with clear expectations for the parent and coach. The attendance coach goes go to the student's home three days per week with a specific thirty minute plan to attempt to build the student's skills. This is a short term intervention that is generally used for four to eight weeks. Parent removed the Student from TDS before TDS was able to develop and implement such a plan for the Student. (Testimony of Dr. D.)
31. While enrolled at TDS, the Student attended thirty-three out of forty school days for an 82.5% attendance rate. The Student's attendance did not prohibit his progress. In Dr. D's opinion, given additional time, additional sources of school refusal would have been identified and positive progress could have been achieved toward addressing the Student's school refusal. (Testimony of Dr. D, ML.)
32. TDS was able to implement the Student's May 11, 2017 IEP, track the Student's progress toward the stated goals, and provide the academic supports and intensive individual, group, and family therapy required by the IEP to meet the Student's emotional needs. (Testimony of Dr. D, ML, Dr. W<sup>6</sup>, PP<sup>7</sup>.)
33. The Student's emotional and academic profile met that of the students for which TDS's program was designed to support. (Testimony of Dr. D, ML, Dr. W, PP.)

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<sup>6</sup> Dr. W is the District Director of Special Education. She is a licensed School Psychologist, Learning Behavior Specialist I, Superintendent, and Director of Special Education. (Testimony of Dr. W; SD #10.)

<sup>7</sup> PP is the District Assistant Director of Special Education Operations. She is a licensed and certified special education teacher and Special Education Director. (Testimony of PP; SD #9.)

34. Based upon their respective education, training, knowledge, and lengthy experience working with students with disability profiles similar to those of this Student, this Hearing Officer finds the testimony of Dr. D, ML to be credible and persuasive.
35. While at TDS, the Student attended five academic classes. At the time he was removed from TDS, the Student was failing three out of his five academic classes due to inconsistent academic and work completion and missing assignments. (Testimony of Mother, ML; SD #3.)
36. Dr. J, Parent's psychological evaluator, evaluated the Student in June 2017. She recommended the following for the Student: (1) a full-time therapeutic program that has expertise working with students with similar profiles of emotional and learning difficulties; (2) a program that can offer both sophisticated clinical care and skilled academic support; (3) smaller class size (fewer than 10 students); (4) study skills integrated into the Student's curriculum in all classes; (5) program must include therapists and staff trained to help him identify his maladaptive thoughts and behaviors when they happen. (Testimony of Dr. J; PE #34.)
37. The Student currently attends ██████████, a private residential facility in Utah. (Testimony of Mother, NB<sup>8</sup>, CA.)
38. ██████████ is a non-ISBE approved residential facility. (Testimony of Mother, NB, PP, Dr. W.)
39. Since his arrival at ██████████, the Student has continued to struggle with school refusal. From August 10, 2017 through the beginning of November 2017, the Student was

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<sup>8</sup> NB is holds Bachelor's and Master's Degrees in English. She is a licensed English teacher for grades 6-12 and is the Academic Director at ██████████. She has no background or licensure in special education. She is listed as a counselor at ██████████. However, she is not state qualified or licensed to be in that role. (Testimony of NB; PE #26.)

receiving one hour of academic instruction per day. He was struggling with a full class load so his schedule was reduced to one academic class. (Testimony of NB.)

40. When the Student chooses not to attend classes, mentors encourage him to attend and walk him between school buildings. Mentors are college students who have an interest in psychology. Mentors receive unspecified training from [REDACTED]. No evidence was presented regarding any other interventions implemented to address the Student's school refusal. (Testimony of NB.)

41. As of the end of November 2017, the Student was enrolled in three classes – math, English and art. (Testimony of NB.)

42. As of November 30, 2017, the Student was failing two of his three classes. He was receiving a D- in Art and was failing English and math. He had not completed any assignments in English and was missing assignments and not completing math assignments outside of class. (Testimony of NB; PE 28.)

43. The Student's Art teacher is a local artist who is not an educator and has no special education training or background. (Testimony of NB.)

44. The Student's math teacher is not a certified teacher. The Student is failing math. The Student struggled with the subject, rarely showed up for class, exhibited defiant behavior with mentors, neglected to do homework, used an online solver to solve his homework problems for him, is very distracting, and needs a one-on-one math teacher or tutor. (Testimony of NB; PE #29.)

45. The Student's English teacher is a certified teacher but she does not have any special education training or background. As of November 28, 2017, the Student was struggling in English class, did not turn in a single assignment, refused to attend class, was disruptive during class, and had executive functioning skills "among the weakest

I have seen.” The English teacher noted that the Student needs individualized instruction. (Testimony of NB; PE #29.)

46. Learning Strategies is the Student’s study hall in which he spends approximately four to five hours per day under the direction of his academic coach. His academic coach is not a certified teacher. She is a college student finishing her undergraduate degree with a math major. Learning Strategies provides systems of organizing homework. The Student is failing Learning Strategies as he exhibits off-task behaviors which negatively impact his grade. No testimony was presented at hearing regarding specialized instruction provided to address this need. (Testimony of NB; PE#28.)
47. The Student meets with a reading specialist. She is a certified elementary school teacher who works in that capacity full-time at another school. No evidence was presented at hearing regarding any formal testing done by the reading specialist or an education plan specifically created for this Student to target his deficit areas in reading, writing and spelling. (Testimony of NB; PE #29.)
48. The student to teacher ratio at ██████ is a little under 10 to 1. (Testimony of NB.)
49. The Student receives individual and family therapy once per week and group therapy four times per week. Group therapy focuses on working on interpersonal skills, processing through emotions, and practicing conflict resolution. (Testimony of CA<sup>9</sup>.)
50. The Student has difficulty with daily living tasks such as making his bed and taking care of himself. He has difficulty in class and does not want to go to school. (Testimony of CA.)

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<sup>9</sup> CA is a licensed clinical social worker and is the Student’s primary therapist. She holds a Bachelor’s Degree in sociology and psychology and a Master’s Degree in social work.

51. CA is the Student's primary therapist. She does not have any special education training or credentials. She does not implement IEPs for Students. (Testimony of CA.)
52. CA is on-site at [REDACTED] from approximately 9:00 a.m. until 5:00 p.m. Monday through Friday. There are no therapists or licensed therapy clinicians with the Student overnight. The Student is supervised by a mentor overnight and a therapist is on call. There are no therapists on-site over the weekend. Mentors supervise the Student on weekends. (Testimony of CA.)
53. During hearing, CA testified that she believes that the Student is making progress in therapy. However, she did not provide any data or specific examples which formed the basis for that conclusion. (Testimony of CA.)
54. The Student requires one to one supports. At [REDACTED], senior students provide tutoring to struggling students and the Student receives support via tutoring services from these students. (Testimony of NB.)
55. No testimony or evidence was presented at hearing regarding a specialized education plan provided by [REDACTED] for the Student to address deficits in the identified areas of school refusal and anxiety; executive functioning needs in the areas of organization, task completion/work avoidance, and problem solving; or educational needs in the areas of reading, writing and spelling. (Testimony of NB, CA.)
56. [REDACTED] did not implement the Student's May 11, 2017 IEP. (Testimony of NB, CA.)
57. Mother is and has been an active participant in the Student's education and family therapy. At both TDS and [REDACTED], she complied with all requests for her assistance and support and actively participated in her son's education and therapy. (Testimony of Mother, Dr. D, CA.)

58. The cost for the Student to attend ██████ is \$10,012.50 per month. Parent's insurance has covered approximately \$2,000.00 per month of that expense. Parent is unsure what, if any, portion of the Student's tuition and fees at ██████ will be covered by insurance in 2018. (Testimony of Mother; PE #36-39.)

### **CONCLUSIONS OF LAW**

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

The Parent requests relief in the form of tuition reimbursement and prospective funding of Parent's unilateral placement. IDEA provides as follows:

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 . . . 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 has not made a free appropriate public education (FAPE) available to the child in a timely manner and that the private placement is appropriate. 34 C.F.R. §300.148(c); *Burlington v. Department of Education of Massachusetts*, 471 U.S. 359 (1985); *Florence County School District Four v. Carter*, 510 U.S. 7 (1993).

In applying what has come to be known as the three-prong *Burlington-Carter* standard, "equitable considerations are relevant in fashioning relief and the courts enjoy 'broad discretion' in so doing." *Burlington* at 374, 369. "Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required." *Carter* at 16.

### **Free Appropriate Public Education (FAPE)**

The first prong of *Burlington-Carter* requires that the hearing officer must determine whether a free and appropriate public education was made available to the

child in a timely manner. 34 C.F.R. §300.148(c); *Burlington* at 359; *Carter* at 7. The Individuals with Disabilities Education Act (“IDEA”) guarantees children with disabilities the right to a free, appropriate, public education (“FAPE”). 20 U.S.C. §1412(a)(1). In order to determine whether a school district has provided a FAPE requires the determination of whether the school district complied with the procedural and substantive requirements of IDEA. *Board of Education of the Hendrick Hudson Central School District, Westchester County et. al. v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034 (1982). As recently clarified by the United States Supreme Court, under the Individuals with Disabilities Education Improvement Act (“IDEA”), a school satisfies its substantive obligation to provide a free appropriate public education by offering a child “an IEP reasonably calculated to enable a child to make progress in light of the child’s circumstances.” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, No. 15-827, 137 S.Ct. 988 (U.S. Mar. 22, 2017.)

In the instant case, Parent does not allege any procedural violations of the IDEA. Therefore, the inquiry focuses on the District’s substantive obligation. “An IEP is not a form document. It is constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth. See *Endrew F.*, 137 S. Ct. 988, 999. The child’s circumstances are described by such information and drive the educational planning.

Under IDEA, an IEP must include “(1) a statement of the child’s present levels of academic and functional performance, including how the child’s disability affects the child’s involvement and progress in the general education curriculum” and “(2)(i) [a] statement of measurable annual goals, including academic and functional goals designed to (A) Meet the child’s needs that result from the child’s disability to enable the child to

be involved in and make progress in the general education curriculum.” 34 C.F.R. 300.320(a). “[A]n IEP is reasonably calculated to confer educational benefit when it is ‘likely to produce progress, not regression or trivial educational advancement.’” *Alex R. ex rel. Beth R. v. Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 615 (7<sup>th</sup> Cir. 2004.) [T]he progress contemplated by the IEP must be appropriate in light of the child’s circumstances. . . . The instruction offered must be ‘*pecially designed*’ to meet a child’s ‘*unique needs*’ through an *individualized* education program.” *Andrew F.*, 137 S.Ct. 988. The testimony and documentary evidence presented at hearing illustrate the following.

Immediately prior to the Student’s enrollment in the District, a transition IEP was created on May 11, 2017. A District representative was present at that meeting and participated. (FF #12.) This IEP was subsequently reviewed at Parent’s request in July and September 2017. (FF #19.) The Student’s primary presenting need was a history of school refusal and anxiety. (FF #3, 5-6, 13.) He is not consistent in the classroom or in work production and has difficulty initiating classwork, staying on-task, and avoiding engaging in off-task behaviors. He is rarely receptive to staff when redirected or offered assistance. (FF #13.) The Student’s IEP supported these needs through goals created to address work completion, improving school engagement and managing anxiety. Parent did not dispute the Student’s needs or disagree with the goals created to target those needs. (FF #14.)

The IEP also provided a Behavior Intervention Plan (BIP) to target the Student’s avoidance of uncomfortable situations and assist him with coping strategies. Parent agreed with this target behavior and the corresponding goal. (FF #15.) The Student’s post-secondary goals were also noted and addressed in the IEP. (FF #18.) Further, the

IEP provided the Student with a therapeutic day school placement at which he would receive special education including 360 minutes of academic instruction per day, 45 minutes of individual counseling services per week, 90 minutes of group counseling per week, and 45 minutes of parent counseling per week and special transportation. (FF#17.)

Based upon the above, this Hearing Officer finds that the Student's May 11, 2017 IEP identified his emotional and academic needs, considered his present levels of performance, and contained goals, with the requisite benchmarks, to target the identified needs. The Student's IEP was reasonably calculated to enable the Student to make progress in light of his individual circumstances. Further, this was undisputed by Parent at hearing. (FF #14-15.) Therefore, in these respects, the Student was provided with a FAPE.

The disputed issue at hearing was the Student's therapeutic day school placement. The IDEA contemplates that "an appropriate education is one that occurs in the least restrictive environment." 20 U.S.C. §1412(a)(5); *Beth B. v. Van Clay*, 282 F.3d 493, 498 (7<sup>th</sup> Cir. 2002); *see Alex R. v. Forrestville Valley Comm. Unit Sch. Dist. #221*, 375 F.3d 603, 618 (7<sup>th</sup> Cir. 2004.) TDS is a private therapeutic day school that serves students with emotional disabilities who are at, or above, grade level intellectually and academically. (FF#20.) TDS is designed to provide specialized education to students with similar emotional and academic profiles as those of this Student. (FF#33-34.) TDS implemented the Student's IEP, was able to track his progress toward his goals, and provided the necessary academic and emotional support required by this Student based upon his unique individual disabilities and needs. (FF# 32, 34.)

The Student attended TDS for 40 days and during that time, had an attendance rate of 82.5%. (FF #31.) TDS has a 5 to 1 student to teacher ratio, provides one on one

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academic and emotional support to its students when needed by educated, trained, licensed special education teachers and educated, trained, and licensed clinical therapists. (FF#21-24, 26.) While the Student attended TDS, he was provided therapeutic services beyond what his IEP required. Those services were provided by Dr. D, TDS's Clinical Director. (FF#27.) TDS has a multi-step school refusal program, designed and implemented by Dr. D, to target the Student's primary need, school refusal. (FF #28-30, 6.) Dr. D began implementation of this program with Parent and the Student but was unable to continue when the Student was removed from TDS. (FF#29.) The Student did not receive the attendance coaching step of the program as Parent removed him from TDS prior to the implementation of that step. (FF #30.) Further, the Student was enrolled in five academic courses at TDS. (FF #27.) The Student was passing two of those five classes when he was removed. (FF #35.) Dr. D and ML credibly and persuasively testified that the TDS program was designed to meet the emotional and academic needs of this Student, provided educational benefit allowing him to progress, and given more time, this program would have provided additional benefits to the Student. (FF #34.)

Based upon the above, this Hearing Officer finds that the District provided the Student a FAPE when it placed him at TDS. TDS has a structured program designed to meet the emotional and academic profile of this Student given his disabilities and unique needs. It provides a small class environment; one to one emotional and academic support; individual, group and family therapy integrated into the academic day. It is staffed by educated, trained, licensed therapists and special education teachers. It is undisputed that the Student's primary need is school refusal. TDS has a specialized program designed and implemented by its Clinical Director, Dr. D, to address this issue.

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While Parent testified that she did not think that the TDS interventions would work, the evidence presented at hearing does not support the contention that they were not working. The Student had at 82.5% attendance rate while at TDS and was passing two of his five academic classes. He and Parent were working through the TDS school refusal program but that program was not completed prior to Parent's removal of the Student from the school. Further, the Student was able to participate in supervised afterschool activities targeted to his interest in music. For these reasons, it is the determination of this Hearing Officer that TDS provided the Student a free and appropriate public education in the least restrictive environment.

### **Appropriateness of Parents' Unilateral Placement**

At the outset, this Hearing Officer has determined that the District did make a FAPE available to this Student during the 2017-2018 school year. However, assuming *arguendo* that was not the determination, the inquiry would then turn to the second prong of the *Burlington-Carter* inquiry and the appropriateness of Parent's unilateral placement.

The second prong of the *Burlington-Carter* inquiry requires the Parent's unilateral placement to be appropriate. In determining whether a unilateral placement is appropriate, the relevant inquiry is "whether it is reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, No. 15-827, 137 S.Ct. 988 (U.S. Mar. 22, 2017.) More specifically, based on a totality of factors, "[a] unilateral private placement is only appropriate if it provides 'educational instruction *specifically* designed to meet the *unique* needs of . . . the child [with a disability].'" *Bd. of Educ. V. Risen*, 61 IDELR ¶130 (N.D. Ill. 2013); *Jenna R.P. v. City of Chicago Sch. Dist. No. 229*, 3 N.E.3d 927 (Ill. Ct. App. 2013)(both citing the *Rowley* quotation in *Frank G. v. Bd. of Educ.*, 459 F.3d 356, 365

(2d Cir. 2006)). “A unilateral private placement cannot be regarded as ‘proper under the [IDEA]’ when it does not, at a minimum provide some element of special education services in which the public school placement was deficient.” *Jenna R.P.* at 941. The testimony and documentary evidence presented at hearing illustrate the following.

The Student’s primary identified need is school refusal and anxiety. (FF #6.) It was well documented that, while at ██████████, the Student continued to refuse to attend his academic classes. (FF#44-46.) When the Student refused to attend classes, he was accompanied by a mentor around the campus who encouraged him to attend class. Mentors are college students with an interest in psychology. (FF #40.) Further, the Student exhibited defiant behavior with the mentors. (FF# 44.) During the testimony of AC at hearing, it was mentioned that the mentors received training. However, no specifics were provided regarding said training or the therapeutic interventions the mentors were alleged to be providing. (FF #40.) Further, the Student was supervised by the mentors a majority of the time – every weekday during the evening and overnight hours and on weekends. (FF #52.) This Hearing Officer finds that this intervention was not appropriate. The unspecified therapeutic interventions of the mentors were not successful as the Student continued to refuse to attend classes and was therefore not making academic progress. No evidence was presented regarding any other interventions in place or attempted that were designed to address this primary need of the Student. (FF #40.)

While the Student’s primary therapist testified that she believed that the Student was progressing in therapy, no data or specific examples were provided to support that contention. (FF #53.) Parent’s own psychological evaluator, Dr. J, recommended a therapeutic program that provided sophisticated clinical care and included therapists and

staff trained to help the Student identify maladaptive thoughts and behaviors when they happen. (FF#36.) This Hearing Officer finds that college student mentors do not constitute sophisticated clinical care. The Student was supervised by said mentors for a majority of the time with no trained or licensed therapist on site. This intervention did not provide trained staff and therapists who were able to address maladaptive thoughts and behaviors when they happened. While Parent, Dr. J and GB all testified that a residential placement was necessary to meet the Student's needs, it is the finding of this Hearing Officer that ██████'s residential component does not meet this Student's therapeutic needs as the overnight hours and weekends are supervised only by college students, not trained, credentialed, licensed therapists. Further, no evidence was introduced to support the contention that the Student required emotional supports during those time periods. Based upon the above, it is the finding of this Hearing Officer, that ██████ did not provide an individualized education program designed to meet this Student's unique emotional needs.

While at ██████, the Student was enrolled in limited academic course work. Due to the Student's lack of attendance and work completion, his academic course schedule was reduced to one academic class from August 10, 2017 through the beginning of November 2017. His one academic class was English, which the Student was failing. (FF #39, 45.) As he had limited academic demands, the Student spent much of his day in study hall, supervised by an academic coach who is a college student with no special education credentials, experience or licensure. The Student was failing that course due to his off-task behaviors. No evidence was presented at hearing regarding specialized instruction provided to the Student to address these behaviors. (FF #46.) Both the Student's math teacher (who was not a certified teacher) and his English teacher (who is

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a certified teacher but who does not have any special education training or background) reported that he required one to one academic support beyond what was offered in their respective classes. (FF #44-45.) Said one to one support was provided by another student for math and a reading specialist for English. (FF#54, 47.) While the Student was working with a reading specialist in English, no testimony or documentary evidence was presented regarding specialized instruction targeting the Student's identified academic needs in reading, writing, and spelling. (FF #47.) The one to one student directed math support was not meeting the Student's needs as he was failing math. ██████ did not implement the Student's IEP, as it is not required to do so. (FF #51.) Based upon this, this Hearing Officer finds that ██████ did not provide a specialized education plan for this Student designed to address his academic, executive functioning, and emotional deficits and needs.

“A unilateral private placement cannot be regarded as ‘proper under the [IDEA]’ when it does not, at a minimum provide some element of special education services in which the public school placement was deficient.” *Jenna R.P.* at 941. When compared to TDS, this Hearing Officer finds that ██████ simply does not provide special education services not provided by the District's recommended private therapeutic day school placement, TDS. In fact, this Hearing Officer finds the opposite to be true. The Student has regressed both academically and emotionally while at ██████. The Student continues to refuse to attend academic classes, engages in off-task behaviors, struggles academically in math and English, and refuses to complete class assignments and homework. (FF #39, 42, 44-47.) There is no specialized education plan in place to address these needs. The student tutoring and reading specialist interventions are not effective as the Student is failing both math and English classes. While this Hearing

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Officer understands that certifications and licensure are not dispositive of the appropriateness of Parent's unilateral placement, this Student has a complex emotional and academic profile. Parent's own expert emphasized the need for a program with "expertise working with this Student's learning and emotional difficulties," "sophisticated clinical care," "skilled academic support," and "therapists and staff trained to identify and manage maladaptive behaviors." There is simply no evidence to support the contention that [REDACTED] staff have the required training, expertise, and skill to provide the Student with the individualized supports designed to meet his unique emotional and academic needs.

While this Hearing Officer recognizes and empathizes with Parent's position regarding her challenges to manage the Student's behavior outside of school and her inability to get him to leave his bed to attend school, it is well settled that school districts are not responsible for funding residential placements to manage behavior outside of school. See *Dale M. v. Board of Educ. of Bradley-Bourbonnais High Sch. Dist. 307*, 33 IDELR 266 (7<sup>th</sup> Cir. 2001.); *Board of Educ. of Oak Park and River Forest Dist. No. 200 v. Illinois State Bd. of Educ.*, 29 IDELR 52 (N.D. Ill. 1998). No testimony or documentary evidence was presented at hearing to support the contention that Parent's request for a residential placement was primarily educational. (FF #32-34.)

This Hearing Officer finds that [REDACTED] is not an appropriate educational placement for this Student as it does not address his unique identified academic and emotional needs and does not provide a specialized education program reasonably calculated to enable him to make progress in light of his circumstances.

### **CONCLUSION**

Based upon the Findings of Fact and Conclusions of Law, the District, at all times in question offered to the Student a free and appropriate public education (FAPE) in the least restrictive environment, with the least restrictive environment being a private therapeutic day school.

### **ORDER**

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

Parent's requested relief is denied and Parent's complaint is dismissed with prejudice.

### **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**

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This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.

Dated: December 22, 2017

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/s/: Janet K. Maxwell-Wickett

Janet K. Maxwell-Wickett,  
Impartial Hearing Officer

[REDACTED]

**APPENDIX A**

[REDACTED] v. Evanston Township HSD 202  
Case No: 2018-0073

Child	[REDACTED]
Attending School	[REDACTED]
Child's Parent(s)/Petitioner	[REDACTED] (Mother)
<b>Parent Witnesses:</b>	
Catalyst Academic Director	[REDACTED] (NB)
Catalyst Therapist	[REDACTED] (CA)
Clinical Director – Wilderness Program	[REDACTED] (GB)
Psychological Evaluator	[REDACTED] (Dr. J)
Advocate	[REDACTED] (Advocate)
<b>Joint Witnesses:</b>	
Director of Special Education District 202	[REDACTED] (Dr. W)
Assistant Director of Special Ed District 202	[REDACTED] (PP)
[REDACTED] TDS Clinical Director	[REDACTED] (Dr. D)
[REDACTED] Educational Director	[REDACTED] (ML)
<b>District Witnesses:</b>	
ISBE Special Services Supervisor	[REDACTED] (DS)
<b>Schools:</b>	
[REDACTED] Residential Treatment Center	Unilateral Residential Facility ([REDACTED])
[REDACTED]	Therapeutic Day School (TDS)

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CERTIFICATE OF SERVICE VIA REGULAR MAIL

I, the undersigned Janet Maxwell-Wickett, certify that on December 22, 2017, a copy of (add list of documents here) was/were served upon the following persons via regular US Mail delivery by depositing the same in the United States Mail, in an envelope securely sealed, postage prepaid, and legibly addressed to the addresses set forth below:

CERTIFICATE OF SERVICE VIA CERTIFIED MAIL

I, the undersigned Janet Maxwell-Wickett, certify that on December 22, 2017, a copy of (add list of documents here) was/were served upon the following persons via certified US Mail delivery by depositing the same in the United States Mail, in an envelope securely sealed, postage prepaid, return receipt requested and legibly addressed to the addresses set forth below:

CERTIFICATE OF SERVICE VIA EMAIL

I, the undersigned Janet Maxwell-Wickett, certify that on December 22, 2017, a copy of (add list of documents here) was/were served upon the following persons via email transmission by attached said document(s) in pdf format to the email addresses set forth below:

**Micki Moran**  
**The Child And Family Law Center**  
**1950 Sheridan Road, Suite 201**  
**Highland Park, IL 60035**  
**mickim@lawforchild.com**

**Jennifer Smith**  
**Franczek Radelet, Attorneys And Counselors**  
**300 South Wacker Dr., Ste 3400**  
**Chicago, IL 60606**  
**jas@franczek.com**

**Andrew Eulass**  
**Due Process Coordinator**  
**Illinois State Board of Education**  
**Division of Special Education Services**  
**100 N. 1<sup>st</sup> Street**  
**Springfield, IL 62777**

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Dated: December 22, 2017

Signed:

A handwritten signature in black ink, reading "Janet K. Mitchell-Wickett". The signature is written in a cursive style with a large, stylized initial "J".

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