

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

Student, by and through his Parents¹

v.

Case No. 2018-0127

District²

Leah Trinkala
Impartial Hearing Officer

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 5/148.02a et.seq.

PROCEDURAL BACKGROUND.

The Petitioners are the parents (Parents) of an eighteen year old son (Student) with a disability. On October 13, 2017, the Parents filed a due process complaint (Complaint) against the District.³ The Complaint arose over a dispute concerning the reimbursement of tuition for the unilateral placement of the Student at a residential school. The Parents are represented by Debby Weiss of Whitted Takiff LLC. The District is represented by Caroline A. Roselli and Jeremy D. Duffy of Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd.⁴ The District filed its answer to the Complaint on October 18, 2017. On October 26,

¹ Personally identified information is found in Appendix A. The Student delegated his rights to make educational decisions to his mother on November 10, 2017. See, P 28-1. On January 22, 2018, the Parents were appointed as guardians of the Student. See, P 29-1.

² Personally identified information is found in Appendix A.

³ IHO Ex. 1

⁴ IHO Ex. 1

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2017, the Illinois State Board of Education (ISBE) appointed the undersigned as the Independent Hearing Officer (IHO) in this case.⁵ On October 28, 2017, the undersigned issued a Preliminary, Order, Rights of Parties, Hearing Process Guidelines and a Standing Order.⁶

The first telephonic status conference call occurred on November 4, 2017.⁷ The parties waived the resolution meeting and mediation.⁸ Dates were agreed upon for the Prehearing Conference and the hearing. The hearing dates were set for January 16, 2018 and January 17, 2018.⁹ The Prehearing Conference was set for December 19, 2017.¹⁰ A continuance order was issued to extend the 45-day timeline due to scheduling conflicts and to respond to a student records request.¹¹ The notice of the Prehearing Conference was issued on November 5, 2017.¹²

A second telephonic status conference call occurred on November 21, 2017. The District requested a continuance due to the unavailability of the Principal for the scheduled hearing dates.¹³ Dates were discussed and the parties were to confer with their witnesses to confirm availability with the IHO. ¹⁴The hearing dates were changed to February 28, 2018 and March 1, 2018.¹⁵ A continuance of the 45-day timeline was granted due to the unavailability of a witness.¹⁶

On December 1, 2017, the parties jointly requested a continuance of the Prehearing Conference since the hearing was postponed.¹⁷ The motion was granted and the Prehearing Conference was rescheduled to January 23, 2018.¹⁸ The Prehearing Disclosures from the parties were received on January 22, 2018.¹⁹ The Prehearing Conference occurred on January 23, 2018 and the Prehearing

⁵ IHO Ex. 9

⁶ IHO Ex. 10

⁷ IHO Ex. 12

⁸ IHO Ex. 12

⁹ IHO Ex. 12

¹⁰ IHO Ex. 12

¹¹ IHO Ex. 12

¹² IHO Ex. 13

¹³ IHO Ex. 13

¹⁴ IHO Ex. 13

¹⁵ IHO Ex. 19

¹⁶ IHO Ex. 19

¹⁷ IHO Ex. 20

¹⁸ IHO Ex. 20

¹⁹ IHO Ex. 22

Report and Order was issued on January 24, 2018.²⁰ Both parties requested changes to be made to the Prehearing Report and Order.²¹ The changes were approved except for the Parent's requested revision to Issue No. 1 which changed the substance of the issue.²² The Revised Prehearing Report and Order was issued on January 30, 2018.²³ No response was received from the parties upon the issuance of the Revised Prehearing Report and Order.

The hearing took place on February 28, 2018 at the elementary school. The parties provided the exhibit books to the IHO prior to the hearing on or about February 23, 2018. Counsels Debby Weiss and Neal Takiff represented the Parents at this hearing and Caroline Roselli and Jeremy Duffy appeared for the District. The Parents objected to the stated issues, however, the issues were already certified in the Prehearing Report and Order and stand. The Parents withdraw their claim for reimbursement for transportation: the District had subsequently reimbursed the Parents. At this hearing, the Parents and the District each called two witnesses²⁴

Admitted into the record were the following District's exhibits: R1 -1 - R1-3, R, 2-1-R 2-2, R 3-1 – R 3-2, R 4-1 – R 4-2, R 5-1 – R 5-2, R 6-1 – R 6-2, and R 7-1 – R 7-2.

The following Parents' exhibits were admitted into the record: P 2-1 – P 2-33, P 4-1 – P 4-2, P 6-1 – P 6-4, P 8-1 – P 8-2, P 9-1 - P 9-23, P 10-1 – P 10-2, P 12-1 – P 12-2, P 16-1 – P 16-5, P 28-1, P 29-1 - P 29-2 and P 30-1 – P 30-6.

The Joint Exhibit book was admitted into evidence which contains exhibits J 1 through J 20. Admission of exhibits P 1-1 – P 1-53, P 18-1 – P184, and P 19-1 – P19-3 were denied.

The IHO's exhibits are IHO 1-35. The parties provided courtesy copies of their case law and regulations to the IHO.

The decision of the IHO is due within 10 days of the conclusion of the hearing.²⁵

²⁰ IHO Ex.24

²¹ IHO Ex. 25 and 27

²² IHO Ex. 29

²³ IHO Ex. 29

²⁴ Personally identifiable information is in Appendix A

²⁵ 105 ILCS 5/14-8.02a(g55)(5)

As such, the IHO did not have the benefit of a transcript and one was not needed. This decision is based on the IHO's copious personal notes and recollection of the testimony provided at the hearing. In rendering this decision, the IHO considered all the documents admitted into evidence, the testimony of the witnesses, the parties' closing arguments, the parties' suggested case law and statutes, as well as the IHO's own independent research. This decision was issued within ten days of the conclusion of the hearing as required by Illinois law.²⁶

ISSUES AND REQUESTED REMEDIES

The issues to be determined are as follows:

1. Whether the February 10, 2017 IEP was reasonably calculated to provide the Student with a FAPE related to the Student's placement because the IEP failed to provide for a residential placement?
2. Whether the Parents are entitled to retroactive reimbursement for their unilateral, residential placement of the Student at an ISBE-approved residential placement for the Student between February 7, 2017 and May 9, 2017?

The Parents' remedies are as follows:

1. Order the District to provide retroactive reimbursement to the Parents for the Student's placement at [REDACTED] School in the amount of \$19,282.74;

²⁶ 105 ILCS 5/14-8.02a(g55)(5)

2. Order the District to provide reimbursement of transportation expenses incurred by the Parents as a result of the Student's placement at [REDACTED] School;²⁷ and
3. Such other relief as this IHO deems appropriate and/or that becomes evident as the case progresses.

The District remedy is as follows:

1. Find that the Student was provided with a FAPE and the Parents are not entitled to reimbursement for the residential portion of the unilateral placement between February 7, 2017 and May 9, 2017.

BURDEN OF PROOF

The Parents must prove their case by the preponderance of the evidence.²⁸ The District also has a statutory duty under the Illinois School Code to present evidence that the District appropriately identified the Student's special education needs and proposed a special education program and related services to adequately and appropriately meet the Student's needs.²⁹

STIPULATION OF FACTS.

The parties stipulated to the following facts:

1. Student is currently eligible for special education and related services under the primary category of Autism with a secondary category of Speech-Language Impairment. His prior special education eligibility was under the Emotional Disability category, primary and Other Health

²⁷ Parents' Counsel withdrew this requested remedy. The District has provided reimbursement to the Parents for the transportation costs.

²⁸ Schaffer ex rel Schaffer v. Weast, 546 U.S. 49, 44 IDELR 150 (2005)

²⁹ 105 ILCS 5/14-8.02a(g-55).

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- Impairment and Speech and Language categories, secondary and before that, Other Health Impaired.³⁰
2. At the end of the 2012-2013 school year, Student's services and program was as noted in the April 17, 2013 IEP amendment, that contained in the December 13, 2012 IEP.³¹
 3. Parents withdrew Student from the District after the 2012-2013 school year, and he was homeschooled.³²
 4. The Parents first submitted re-enrollment paperwork to the District for Student on or about November 1, 2016.³³
 5. Parent's submitted an updated physical for Student on December 9, 2016.³⁴
 6. Parents, through counsel, confirmed their address within the District for enrollment purposes on December 17, 2016.³⁵
 7. Student currently resides within the boundaries of the District and has resided within the boundaries of the District at all relevant times subject to this due process complaint.³⁶
 8. On November 3, 2016, the District provided the family with three private therapeutic day school placement options for them to choose between for placement. Such therapeutic day school options were The [REDACTED] School of [REDACTED] ([REDACTED]), [REDACTED], and [REDACTED].³⁷
 9. Parents notified the District of Student's unilateral placement at [REDACTED]

³⁰ IHO Ex. 34.

³¹ IHO Ex. 34.

³² IHO Ex. 34.

³³ IHO Ex. 34.

³⁴ IHO Ex. 34.

³⁵ IHO Ex. 34.

³⁶ IHO Ex. 34.

³⁷ IHO Ex. 34.

Lake School (“GLS”) on January 18, 2017.³⁸

10. On January 23, 2017, the District indicated that it would not fund a residential placement until there was an IEP team determination of need for that type of placement. It reiterated its offer to fund a private therapeutic day school and requested an IEP meeting to review all “available, existing data on Student and determine the most appropriate placement for him.”³⁹
11. Student began attending GLS on February 7, 2017.⁴⁰
12. On or about February 7, 2017, the parties agreed that at Student’s February 10, 2017, IEP meeting the District would 1) agree to fund the educational private therapeutic day school component of Student’s placement at GLS beginning as of the date of his February 10, 2017, IEP meeting, and 2) conduct a comprehensive evaluation of Student, and if the IEP team determined that Student required a residential placement, the District would agree to fund the placement retroactive to February 10, 2017, so long as the ISBE approved funding for the placement retroactively.⁴¹
13. The parties also agreed to include speech, occupational therapy and social work minutes in Student’s IEP.⁴²
14. On February 10, 2017, the District held an IEP meeting for Student.⁴³
15. The February 10, 2017, IEP meeting was the first formal IEP meeting held for Student after his re-enrollment into the District.⁴⁴
16. At Student’s February 10, 2017, IEP meeting, Student’s IEP team

³⁸ IHO Ex. 34.

³⁹ IHO Ex. 34.

⁴⁰ IHO Ex. 34.

⁴¹ IHO Ex. 34.

⁴² IHO Ex. 34.

⁴³ IHO Ex. 34.

⁴⁴ IHO Ex. 34.

- determined that his placement was in a therapeutic day school and agreed to fund the educational portion/private day school portion of Student's placement at GLS prospectively.⁴⁵
17. GLS is an ISBE approved, non-public residential facility specializing in the instruction of students with Intellectual Disabilities, Specific Learning Disabilities, Speech-Language Impairment, Emotional Disabilities, Other Health Impairments, Multiple Disabilities, Autism, and Traumatic Brain Injuries.⁴⁶
 18. At Student's IEP meeting on May 9, 2017, his IEP team determined that a residential placement was appropriate to meet Student's needs. The District agreed to fund the educational and residential component of Student's placement at GLS prospectively.⁴⁷
 19. The amount paid for Student's residential placement at GLS not reimbursed to the Parents by the District is \$19,282.74.⁴⁸
 20. All documents contained in the Joint Document Book of the Parties shall automatically be admitted into evidence for the due process hearing.⁴⁹

FINDINGS OF FACT.

After considering all of the evidence as well as the arguments of the parties, the IHO's Findings of Fact are as follows:

A. STUDENT'S RETURN TO THE DISTRICT.

1. The Student was removed from the public school system in the District and homeschooled by the Parent for the 2013-2014, 2014-2015 and 2015-

⁴⁵ IHO Ex. 34.

⁴⁶ IHO Ex. 34.

⁴⁷ IHO Ex. 34.

⁴⁸ IHO Ex. 34.

⁴⁹ IHO Ex. 34.

- 2016 school years.⁵⁰ The Parent believed the District's program was not working and decided to try homeschooling.⁵¹ The District never requested the Parent to submit a signed form that the Student was being homeschooled.⁵²
2. There was no testimony or evidence provided that indicated the District was in contact with the Parents to have any evaluations completed or to schedule an IEP meeting while the Student was being homeschooled for approximately three years. The last IEP created for the Student while attending school in the District was on April 13, 2013. Based upon a settlement agreement, the December 13, 2012 IEP was amended on April 17, 2013 to indicate the December 13, 2012 educational services and programs would become effective on May 30, 2013.⁵³
 3. In October, 2016, the Parent elected to return the Student to the District. An online application was completed to re-enroll the Student in the District on October 31, 2016.⁵⁴ This application was received on November 1, 2016.⁵⁵
 4. The Superintendent required clarification of residency and the completion of a physical before the Student could be re-enrolled.⁵⁶ The results of the Student's physical were tendered to the District's Counsel on December 9, 2016.⁵⁷ Both addresses provided by the Parents to the Superintendent were within the boundaries of the District, however, the Superintendent wanted clarification for which address was the nighttime abode as required by the school code.⁵⁸

⁵⁰ Testimony of Superintendent and Parent.

⁵¹ Testimony of Parent.

⁵² Testimony of Parent.

⁵³ Testimony of Principal 1. J 4-1.

⁵⁴ J 7-1 – J 7-17. Testimony of Superintendent.

⁵⁵ J 8-1.

⁵⁶ Testimony of Superintendent. J 8-1.

⁵⁷ J 10-1 – J 10-4. See SOF #5.

⁵⁸ Testimony of Superintendent. See, SOF #7

5. The Superintendent did not request any consent to reevaluate the Student upon receiving the application to re-enroll the Student in the District nor request holding a domain meeting to discuss a reevaluation of the Student. Instead, the Superintendent asked the Parents to submit updated information concerning the Student's performance and to complete the release forms for three private therapeutic day schools – ██████████ Academy, ██████████ and ██████████ Therapeutic.⁵⁹ The recommended placements listed on the release forms are based on the last IEP the Student had in this District.⁶⁰
6. The release papers were not returned to the Superintendent.⁶¹ No follow-up letter was provided to the Parents.⁶² The Parent indicated she was not aware she had to sign the release papers because the forms were blank.⁶³ The forms provided to the Parent did not have any information checked on the forms: the forms only provided the names of the suggested placements. The Superintendent did not follow up since the Parents had obtained Counsel.⁶⁴
7. The Parent indicated some information was provided to her Counsel regarding the home school program which encompassed a syllabus and a booklet.⁶⁵ The Parent did not recall what other information was provided to her Counsel.⁶⁶ The Parent does not have any updated information concerning the Student's performance at home. ⁶⁷
8. The Parent visited the ██████████ placement provided in the release papers; however, the Parent does not recall the date of the visit.⁶⁸ The Parent found this placement was not appropriate for the Student due to

⁵⁹ J 8-1 – J 8-4.

⁶⁰ J 9-1, J 11-1

⁶¹ Testimony of Superintendent.

⁶² Testimony of Superintendent.

⁶³ Testimony of Parent.

⁶⁴ Testimony of Superintendent.

⁶⁵ Testimony of Parent.

⁶⁶ Testimony of Parent.

⁶⁷ Testimony of Parent.

⁶⁸ Testimony of Parent.

the training of the staff, however, the Parent never informed the District of her observations.⁶⁹

9. The Parent did not visit the suggested placement of [REDACTED].⁷⁰ [REDACTED] only accepts children with an intellectual disability and an IQ of 70 or below.⁷¹ There were also distance concerns with the provided placements. [REDACTED] is 45.8 miles away and the travel distance on Google Maps is 55 minutes without traffic.⁷² The Parent indicated the travel time was over one hour.⁷³ The travel distance to [REDACTED] is even further than [REDACTED]. The travel distance is 66.3 miles from the Student's home and the travel time without traffic is 1 hour and 10 minutes.⁷⁴ The District was notified via email from the Parents' Counsel that these placements were inappropriate based on the distance and admission criteria.⁷⁵ The Superintendent iterated there are not many therapeutic day schools in the vicinity of the District.⁷⁶

10. Even though the Student was due for a triennial reevaluation on April 10, 2016 and had not been evaluated since being homeschooled, the District on December 19, 2016 refused to conduct an evaluation or update the Student's IEP until the Student was placed in an educational setting, specifically a private day school.⁷⁷ Principal 2 indicated there was no obligation to evaluate the Student unless the Parents placed the Student in his placement.⁷⁸ The IEP in place before the Student withdrew from school was the placement for the Student: the last IEP in place required placement in a private day school.⁷⁹

⁶⁹ Testimony of Parent.

⁷⁰ Testimony of Parent.

⁷¹ Testimony of Parent.

⁷² R 1-1. Testimony of Parent.

⁷³ Testimony of Parent.

⁷⁴ R 1-2. Testimony of Parent.

⁷⁵ J 11-1.

⁷⁶ Testimony of Superintendent.

⁷⁷ J 12-2. P 6-1.

⁷⁸ Testimony of Principal 2.

⁷⁹ Testimony of Principal 2.

11. On December 20, 2016, the Parents indicated a domain meeting should be held if evaluations are necessary.⁸⁰ The District still did not schedule a domain meeting or an IEP meeting until after the Parents provided the ten day notification of unilateral placement to the District on January 18, 2017.⁸¹ Nine days later, a notification for an IEP meeting was provided to the Parents on January 27, 2017.⁸²

B. THE STUDENT'S UNILATERAL PLACEMENT.

1. On February 7, 2017, the Student was placed unilaterally at GLS, a residential placement.⁸³ Afterwards, on February 10, 2017 an IEP meeting occurred.⁸⁴ This meeting occurred after the Parent had provided notification to unilaterally place the Student in a residential placement and the Student had started classes at GLS.⁸⁵
2. Placement at the February 10, 2017 IEP meeting was determined to be a private day school or out of state public day school.⁸⁶ This placement was determined based upon the last IEP in place before the Student was removed to be homeschooled. The IEP team made this decision because of the lack of current information regarding the Student's educational needs and current functioning to support a residential placement.⁸⁷ The District did not conduct any testing of the Student prior to this IEP meeting in

⁸⁰ J 12-2.

⁸¹ See, SOF #9.

⁸² Testimony of Parent. J 16-1.

⁸³ See, SOF #9.

⁸⁴ See, SOF #15.

⁸⁵ J 5-1.

⁸⁶ J 5-12.

⁸⁷ J 5-15.

order to obtain updated information concerning the Student's current levels of academic functioning.

3. At this IEP meeting, the Parent provided her own estimates of the Student's current levels of functioning and reported the Student has had a few behavioral outbursts in the home school setting but nothing noteworthy.⁸⁸
4. The Parent provided the District with three outside reports - a School Focused Neuropsychological Evaluation dated April 26, 2016, a Social Work Report dated November 14, 2016 and a Central Auditory Evaluation and Treatment report dated February 26, 2016.⁸⁹ The Social Work report recommended placement in a structured residential program. ⁹⁰The Neuropsychological Evaluation recommended placement in a structured academic program.⁹¹
5. Based on the available information from the Parents, the last IEP in place and the reports received from the Parents, the IEP team determined a therapeutic day school was the appropriate placement in the least restrictive environment for the Student.⁹² One report recommended a residential placement, however, Principal 2 believed the same things could be provided in the therapeutic day school setting and explained there was not enough information available to recommend a residential placement.⁹³ Moreover, the Student had never been placed in a therapeutic day school as previously recommended by the IEP team.⁹⁴

⁸⁸ J 5-5.

⁸⁹ P 9-1 – P9-23.

⁹⁰ P 9-23.

⁹¹ P 9-12.

⁹² Testimony of Principal 2 J 5-12.

⁹³ Testimony of Principal 2.

⁹⁴ Testimony of Principal 2.

6. At this IEP meeting, the District determined the areas to reevaluate the Student in order to obtain current levels of functioning.⁹⁵ The District also obtained consent from the Parent for a reevaluation.⁹⁶
7. Subsequently, the District agreed to cover the expenses at the residential placement at GLS from May 9, 2017 and prospectively. After the District completed an evaluation of the Student, the District found a residential placement was in fact the appropriate for the Student.⁹⁷ This is the same residential placement where the Parents had unilaterally placed the Student on February 7, 2017.

CONCLUSIONS OF LAW AND DISCUSSION OF THE ISSUES

A. Whether the February 10, 2017 IEP was reasonably calculated to provide the Student with a FAPE related to the Student's placement because the IEP failed to provide for a residential placement?

Based upon the above Stipulations of Fact, Findings of Fact, the arguments and suggested legal authority provide by counsels, as well as the undersigned's own legal research, the undersigned's Conclusion of Law and Discussion of Issues is as follows:

A school district must provide children with disabilities with a free appropriate public education ("FAPE") and to the "maximum extent appropriate with nondisabled children."⁹⁸ Children with disabilities shall only be removed from the regular educational environment "when the nature or the severity of the disability is such that the education in regular classes with the use of

⁹⁵ Testimony of Principal 2.

⁹⁶ J 6-1.

⁹⁷ R 7-1. Testimony of Superintendent.

⁹⁸ *Beth B. v Van Clay*, 282 F.2d 493 (7th Cir.2002). See also, 20 U.S.C. {1412(a)(1) and 1412(a)(5)}

supplementary aids and services cannot be achieved satisfactorily.”⁹⁹ IDEA creates a strong preference in favor of mainstreaming handicapped children by educating them in the least restrictive environment.¹⁰⁰

A school district must provide a free education that is appropriate and tailored to their individual needs.¹⁰¹ A free and appropriate education is one specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.¹⁰² The Supreme Court in *Bd. of Education v. Rowley* provided a twofold test. The first determination is whether the State complied with the procedures set forth in the Act.¹⁰³ The second determination is whether the individualized educational program developed through the Act’s procedures is reasonably calculated to enable the child to receive educational benefits.¹⁰⁴ For a procedural violation, the violations must have impeded the child’s right to a FAPE, significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provisions of a FAPE to the child or caused a deprivation of educational benefits.¹⁰⁵

The Supreme Court in *Endrews v. Douglas County School District* further clarified the standard previously provided in the *Rowley* case, and requires the school district to “offer an IEP reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstances” in order to meet the substantive obligations under the IDEA.¹⁰⁶ The school district must also offer instruction that is “specially designed to meet the child’s unique needs through an individualized education program.¹⁰⁷ The IEP cannot be a form document but must be designed after considering the child’s present levels of “achievement,

⁹⁹ 20 U.S.C. § 1412(a)(5)

¹⁰⁰ *S. v. Reedsburg School District*, 302 F. Supp. 2d 959 (W.D. Wis. 2003)

¹⁰¹ *Florence County School District Four v. Carter*, 126 L.Ed.2d 284, 114 S.Ct. 361, 365 (1993), *Bd. of Education of Murphysboro Comm. Unit Sch. Dist. No. 186 v. ISBE*, 41 F.3d 1162, 1166 (7th Cir. 1994); *Dell v. Bd. of Educ. Tp. High Sch. Dist. 113*

¹⁰² *Murphysboro*, 41 F.3d at 1166 (quoting *Bd. of Educ. V. Rowley*, 458 U.S. 176, 188-89, 73 L.Ed.2d 690, 102 S.Ct. 3034 (1982)).

¹⁰³ *Bd. of Education v. Rowley*, 458 US 176, 206-207, See also, *Beth B. v Van Clay*, 282 F.2d 493 (7th Cir.2002)

¹⁰⁴ *Bd. of Education v. Rowley*, 458 US 176, 206-207, See also, *Beth B. v Van Clay*, 282 F.2d 493 (7th Cir.2002)

¹⁰⁵ 20 USC § 1415(f)(E)(ii)I-II)

¹⁰⁶ *Endrews v. Douglas County School District RE-1*, 580 U. S. ____ (2017)

¹⁰⁷ *Endrews v. Douglas County School District RE-1*, 580 U. S. ____ (2017)

disability and potential for growth.”¹⁰⁸ The Illinois Administrative Code (Illinois Code) requires the IEP to include benchmarks or short-term objectives developed in accordance with the child’s present levels of educational performance.¹⁰⁹ Moreover, the placement decision is to be based on the IEP and is to be determined annually.¹¹⁰

Under 34 CFR 300.303(b)(2), a reevaluation of a child “ must occur at least once every years unless the parent and the school district agree a reevaluation is not necessary.”¹¹¹ The school district is required to reevaluate a child every three years to assess the progress or regress of a child’s disability.¹¹² Residence and not enrollment triggers a school district’s FAPE obligations.¹¹³ The school district of residence is responsible for making a FAPE available to a child unless the parent expresses a clear intention to keep the child enrolled in a private school.¹¹⁴ Moreover, the school district would be required to develop an IEP and evaluate the child when the parent expresses an intention to return the child to a public school.

In the instant case, the District failed to timely evaluate the Student when the Parent informed the District the Student was returning to the District in November, 2016.¹¹⁵ The Parent’s intent to re-enroll the Student into the District triggered the District’s FAPE obligations to the Student. The District was requesting a confirmation of the Student’s residency; however, both addresses the Parent provided to the District were within the District’s boundaries.¹¹⁶ Moreover, the District was placing the burden on the Parents to provide any updated information they had concerning the Student’s present level of functioning instead of conducting its own evaluation.¹¹⁷ The District is responsible for conducting its own evaluation of the Student and not the Parents.

¹⁰⁸ *Endrews v. Douglas County School District RE-1*, 580 U. S. ____ (2017)

¹⁰⁹ 23 Ill. Adm. Code § 226.230(a)(1).

¹¹⁰ 34 C.F. R. § 300.116(b).

¹¹¹ 34 CFR 300.303(b)(2)

¹¹² *Patricia P. v. Bd. of Ed. Of Oak Park*, 203 F.3d 462 (7th Cir. 2000)

¹¹³ See, *Moorestown Township Bd. of Ed.*, 811 F. Supp.2d 1057 (N.Y. D.C., 2011), *James v. Upper Arlington School District*, 228 F.3d 764 (6th Cir. 2000), *cert’. den’d* 535 U. S. 995 (2001) and *Dist. Of Columbia v West* 699 F. Supp.2d 273 (D.D. C. 2010)..

¹¹⁴ See, 71 Fed. Reg. 46593 (Aug. 14, 2006).

¹¹⁵ See, SOF #4 and FOF #A .3.

¹¹⁶ See, SOF #7 and FOF #A 4.

¹¹⁷ See, FOF #A 4.

The District was requiring the Student to be placed in an educational setting based upon an IEP from three years ago before an evaluation would be initiated.¹¹⁸ The District could have commenced conducting its own evaluation by observing the Student in the home environment and administering testing to determine the Student's current level of performance.

When the February, 2017 IEP meeting was held, the District had still not timely evaluated the Student and had three months to do so.¹¹⁹ The placement decision was not based on any present levels of achievement as required under *Andrews v. Douglas County School District*. The Illinois Code requires benchmarks or short-term objectives developed in accordance with the Student's present levels of educational performance and here the record shows the District did not have this information at the time of the February 2017 IEP meeting.¹²⁰ Therefore, the IEP team could have not designed an IEP that was reasonably calculated to enable the child to make progress as required under *Andrews v. Douglas County School District* since the IEP did not have any information concerning the Student's present levels of educational performance. Thus, the failure to timely evaluate the Student denied the Student a FAPE. Since the IEP team did not timely evaluate the Student and have current information regarding the present levels of performance, the IEP could not determine at that time whether the residential placement or a private therapeutic day school was the least restrictive environment for the Student to make progress.

B. Whether the Parents are entitled to retroactive reimbursement for their unilateral, residential placement of the Student at an ISBE-approved residential placement for the Student between February 7, 2017 and May 9, 2017?

The District here did agree to fund the educational private therapeutic portion of the residential placement commencing on February 10, 2018.¹²¹ The

¹¹⁸ See, FOF #A 5 and #A 10.

¹¹⁹ See FOF #B 2 and SOF #12.

¹²⁰ See FOF #B 2 and #B 6.

¹²¹ SOF #12.

District, however, did not agree to fund the room and board portion of the residential placement at GLS from February 7, 2017 to May 9, 2017 which amounted to \$19,282.74.¹²² According to 34 CFR 300.104, if a residential program is necessary to provide a child with a special education, the program, including "non-medical care and room and board must be at no cost to the parents of the child."¹²³

There is a three part test to determine if a parent is entitled to reimbursement for the unilateral placement of a child in a residential placement. The first inquiry is whether the school district had failed to make a FAPE available to the child in a timely manner prior to that enrollment.¹²⁴ To determine if the school district has provided a FAPE to the child, the two prong test under *Rowley* must be applied here. The first determination under *Rowley* is whether the State complied with the procedures set forth in the Act.¹²⁵ The second determination under *Rowley* is whether the individualized educational program developed through the Act's procedures is reasonably calculated to enable the child to receive educational benefits.¹²⁶ For a procedural violation, the violations must have impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provisions of a FAPE to the child or caused a deprivation of educational benefits.¹²⁷

The second inquiry is whether the private placement was appropriate.¹²⁸ The private placement only has to meet the minimum standard of appropriateness under the IDEA.¹²⁹ In *Burlington School Committee v. Mass. Dept. of Ed.*, 471 U.S. 359, 556 IDELR 389 (1985), the Court held that school districts can be required to reimburse parents for their private special education

¹²² SOF #19. P 30-1.

¹²³ 34 CFR 300.104.

¹²⁴ 20 USC § 1412(a)(10)(C)ii). See also, 34 CFR 33.148(c). See also, *Jenna R. P v. City of Chicago School District No. 229*, 114 LRP 4 (Ill. 1st Dist. 2013)

¹²⁵ *Bd. of Education v. Rowley*, 458 US 176, 206-207, See also, *Beth B. v Van Clay*, 282 F.2d 493 (7th Cir.2002)

¹²⁶ *Bd. of Education v. Rowley*, 458 US 176, 206-207, See also, *Beth B. v Van Clay*, 282 F.2d 493 (7th Cir.2002)

¹²⁷ 20 USC § 1415(f)(E)(ii)I-II)

¹²⁸ 20 USC § 1412(a)(10)(C)ii). See also, 34 CFR 33.148(c). See also, *Jenna R. P v. City of Chicago School District No. 229*, 114 LRP 4 (Ill. 1st Dist. 2013)

¹²⁹ See, *Florence County School District. Four v. Carter*, 510 U.S. 7, 20 IDELR 532 (1993).

expenses if the unilateral placement rather than the IEP is proper under the IDEA.

The third inquiry is whether the amount of the reimbursement should be reduced or denied based upon the following criteria:

(1) If:

(i) At the most recent IEP team meeting that the parents attended

prior to the removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least (10) business days (including any holidays that occur on a business day prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) If prior to the parents' removal of the child from the public school, the public school, the public agency informed the parents, through the notice of

requirements described in 34 CFR 300.503(a)(a), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by

Parents.¹³⁰

In this case, the first inquiry is whether the Student was provided with a FAPE when the Student returned to the District in November, 2016. In Illinois,

¹³⁰ 34 CFR 300.148(d)

home schooling is equivalent to a private school where the child receives instruction commensurate with the standards prescribed for in the public schools.¹³¹ The school district is required to reevaluate a child every three years to assess the progress or regress of a child's disability.¹³² Residence and not enrollment triggers a school district's FAPE obligations.¹³³ The school district of residence is responsible for making a FAPE available to a child unless the parent expresses a clear intention to keep the child enrolled in a private school.¹³⁴ Moreover, the school district would be required to develop an IEP and evaluate the child when the parent expresses an intention to return the child to a public school.

When a child is seeking enrollment in Illinois after October 15, the school district should provide the parent with 30 days to present proof of the required health exam and immunization records.¹³⁵ Under 105 ILCS 5/27-8.2 (5), a child is not permitted to attend classes if the required proof of vaccinations is not submitted by October 15.¹³⁶

Here, the District delayed the enrollment of the Student due to residency and due to a current health report.¹³⁷ The DCFS and ISBE enrollment guidelines indicate the Student should have thirty days to provide this information and the Illinois law only provides the Student cannot attend class without the current physical being received by October 15. The law does not indicate the Student cannot be enrolled. Moreover, the case law indicates the District was required to provide the Student with a FAPE once the Parents informed the District the Student was returning to the District for schooling and not once the Student was re-enrolled. The District should have evaluated the Student at this time. The District did not request a domain meeting or consent for a reevaluation until February , 2017 which is approximately three months after receipt of the

¹³¹ See, *Scoma v. Chicago Board of Education*, 391 F. Supp. 452 (N.D. Ill. 1974); *People v. Levisen*, 404 Ill 574 (1950).

¹³² *Patricia P. v. Bd. of Ed. Of Oak Park*, 203 F.3d 462 (7th Cir. 2000)

¹³³ See, *Moorestown Township Bd. of Ed.*, 811 F. Supp.2d 1057 (N.Y. D.C., 2011), *James v. Upper Arlington School District*, 228 F.3d 764 (6th Cir. 2000), *cert. den'd* 535 U. S. 995 (2001) and *Dist. Of Columbia v West* 699 F. Supp.2d 273 (D.D. C. 2010)..

¹³⁴ See, 71 Fed. Reg. 46593 (Aug. 14, 2006).

¹³⁵ See, School Enrollment and Placement Guidelines for Children and Youth in DCFS Care by DCFS Children and Family Services and ISBE (Jan. 2014), p. 5

¹³⁶ 105 ILCS 5/27-8.2 (5).

¹³⁷FOF #A 4.

enrollment application.¹³⁸The Superintendent questioned the residency of the Student; however, residency should not have been an issue since the record shows both addresses provided by the Parent were located within the District.¹³⁹

Overall, the evidence here shows the District denied a FAPE to the Student upon his return to the District. The Student was not evaluated here until after the unilateral placement had occurred.¹⁴⁰ The District indicated an evaluation would not occur until the Student was placed in a private day school.¹⁴¹ The evaluation process could have been initiated by conducting observations of the Student in the homeschooled environment and conducting testing of the Student's current level of performance.

The next issue is whether placement at GLS is appropriate. The District argues the Parents did not provide any evidence to demonstrate the placement at GLS was appropriate. The Parents do not need to demonstrate the placement was appropriate here; the District established this placement was appropriate. Once the District finally completed its required evaluation, the District in fact found a residential placement was the appropriate placement for the Student and developed an IEP on May 9, 2017 for a residential placement.¹⁴² Furthermore, the District agreed to cover the expenses of GLS moving forward; this is the same residential placement where the Student was unilaterally placed.¹⁴³

The last issue is whether the reimbursement should be reduced or denied. The record shows the Parents did provide the District with the statutory 10 day business notice on January 18, 2017 prior to the Student's enrollment at GLS on February 7, 2017.¹⁴⁴ The Parent never failed to make the Student available for an evaluation. In fact, the record shows the District did not request to evaluate the Student until the Student was placed at GLS.¹⁴⁵ The record shows the Parents had indicated that a domain meeting should be opened if an evaluation is required.¹⁴⁶ The District had refused to evaluate the Student until the Student was placed at a

¹³⁸ SOF # 12, 14, and 15. FOF #A 5, 10, 11 and #B 6.

¹³⁹ SOF #7. FOF # A 4.

¹⁴⁰ FOF #A 6, 10, and #B. See also, SOF #12.

¹⁴¹ FOF #A 10.

¹⁴² SOF #18. FOF #B 7.

¹⁴³ SOF #18. FOF #B 7

¹⁴⁴ SOF #9 and #11.

¹⁴⁵ SOF #12. See also, FOF #A 5, #A 10, B 2, B 6 and B 10.

¹⁴⁶ FOF #A 10.

private day school.¹⁴⁷ When the District requested to evaluate the Student at the February 10, 2017 IEP meeting, the Parents did consent to the evaluation and the Student was subsequently evaluated.¹⁴⁸ Lastly, the Parents did not act unreasonably in this matter. The Parents did not sign the releases for the private day schools; however, these schools were from recommendations made prior to the Student being homeschooled.¹⁴⁹ The Parent had concerns about the suggested therapeutic day schools being recommended by the District and after the Student was finally evaluated the District in fact found these placements were not appropriate.¹⁵⁰ The record shows the reservations concerning the proposed placement options were provided to the District.¹⁵¹ The failure to sign the release forms for the therapeutic day schools did not hinder the District in conducting an evaluation. The District had requested updated information on the Student and the Parent indicated she did not have this information.¹⁵² Therefore, the amount of reimbursement should not be reduced or denied.

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

ORDER

1. The District is hereby ordered within 30 days of receipt of this order to reimburse the Parents in the amount of \$19,282.74 expended for room and board at GLS between February 7, 2017 to May 9, 2017.

¹⁴⁷ FOF #A 10.

¹⁴⁸ FOF #B 6 and B 7.

¹⁴⁹ FOF #A 5.

¹⁵⁰ FOF #A 8 and A 9.

¹⁵¹ FOF #A 9.

¹⁵² FOF #A 7.

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In accordance with 105 ILCS 5/14-8.02(h), within 30 school days of receipt of this Order, the school district must submit proof of compliance to:

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

NOTICE OF RIGHT TO REQUEST CLARIFICATION

Pursuant to 105 ILSC 5/14-8.02a(h), either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification must specify the portions of the decision for which clarification is sought. A copy of the request must be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

NOTICE OF RIGHT TO APPEAL

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

Dated: March 10, 2018

Leah Trinkala
Impartial Hearing Officer

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

APPENDIX A

Student [REDACTED] v. [REDACTED] [REDACTED]
ISBE Case No. 2018-0127

Child/Student	[REDACTED]
Location of the Hearing	[REDACTED] [REDACTED]
	[REDACTED]
	[REDACTED]
Child's Parents/Petitioners	[REDACTED]
Parent Testifying	[REDACTED]
Pre-k to 6 th Grade Principal (Principal 1)	[REDACTED]
Junior/Senior High School Principal (Principal 2)	[REDACTED]
Superintendent	[REDACTED]

Elementary School	██████████ Elementary School
High School	██████████ High School

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the Final Decision and Order was sent to the Parties through their respective counsel identified below and to ISBE by UPS (signature required) and electronic mail and a true and copy of the Final Decision and Order was mailed to the Parents by UPS (signature required) and directed to:

Debby Weiss, Esq.
Whitted, Takiff LLC
1200 Shermer Road, Suite 400
Highland Park, IL 60035
Electronic mail: dweiss27@whittedtakiff.com

and

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Caroline Roselli, Esq.
Robbins, Schwartz, Nicholas, Lifton & Taylor Ltd.
55 W. Monroe St, Suite 800
Chicago, IL 60602
Electronic Mail: croselli@rsnlt.com

Jeremy Duffy, Esq.
Robbins, Schwartz, Nicholas, Lifton & Taylor Ltd.
55 W. Monroe St, Suite 800
Chicago, IL 60602
Electronic Mail: jduffy@robbins-schwartz.com

and

John and Lisa Allseits
200 W. Walgren Road
Pearl City, IL 61062

and

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

On March 10, 2018

Leah M. Trinkala
Impartial Hearing Officer
300 N. Canal St, Suite 1005
Chicago, IL 60606
(312) 286-2882 (telephone)
ltrinkala.education@gmail.com

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