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**SPECIAL EDUCATION
SERVICES**

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

P.F., a minor, by and through
his Parents.

Petitioners,

- against -

Case No. 2018-0504

Jennifer A. Leisner
Hearing Officer

Respondent

FINAL DETERMINATION AND ORDER

JURISDICTION

This proceeding was invoked in accordance with the *Individuals with Disabilities Education Act ("IDEA")*, as amended in 2004, codified in 20 U.S.C. §§1400, *et seq.*, the *Illinois School Code ("School Code")* 105 ILCS 5/14-8.02a and their respective implementing regulations: 34 C.F.R. §§ 300.01 *et seq.*, and 23 Ill. Admin. Code §§226.600, *et seq.*

BRIEF PROCEDURAL BACKGROUND

1. Petitioners are the Parents of P.F. ("Student"), a seventeen year-old student who resides within the [REDACTED] ("School District") boundaries.¹
2. The Student is currently eligible for special education and related services pursuant to the *IDEA*, under the eligibility determination of Emotional Disability, Other Health Impairment, and Autism.²

¹Mother's Testimony.

² School District Exhibits ("SD") ##4-8, Parents' Exhibit ("P") #9, Mother's Testimony.

3. None of the pleadings or prior orders in this matter were entered into evidence at hearing, but are included in the administrative record, and cited as such herein.
4. On June 19, 2018 the Parents filed a due process complaint notice (“DPCN”) against the School District, seeking reimbursement to the Parents for the tuition and costs due to their unilateral placement at Daniel’s Academy (“DA”) (a residential setting) from the time of his enrollment in April 2017 to date; also, the Parents are seeking prospective placement at DA for the remainder of the 2018-2019 school. In the alternative, the Parents are seeking reimbursement for the costs and tuition at DA from the Student’s enrollment in April 2017 to date; and for prospective placement at Daniel’s academy for the remainder of the 2018-2019 school year as compensatory education.³
5. This Hearing Officer was appointed on June 26, 2018.⁴
6. On June 28, 2018, the School District filed its response. The School District is seeking an Order from this Hearing Officer denying all of the Parents’ requested relief in its entirety.⁵
7. A Prehearing Conference was held on July 17, 2018 and a Prehearing Report and Order was issued (as amended with parties’ input) on August 20, 2018. The issues as stated in the Prehearing Report and Order were certified for hearing.⁶
8. Throughout this due process, the parties requested and were granted extensions of the 45 day timelines in order to accommodate the attorney’s schedules and witness availability.⁷
9. The parties made timely five (5) day disclosures and presented the Hearing Officer with copies of all disclosed documents categorized as Parents’ Exhibits, and School District Exhibits.
10. A three-day hearing was held on September 6-7 and October 16, 2018, in Chicago Illinois. While a court reporter was present, this Hearing Officer

³ See, Parents’ DPCN dated June 19, 2018 and Prehearing Report and Order (as amended) dated August 20, 2018.

⁴ See, Correspondence from the Illinois State Board of Education dated June 26, 2018.

⁵ See, School District Response dated June 28, 2018 and Prehearing Report and Order, *supra*.

⁶ See, Prehearing Report and Order, *supra*.

⁷ See, Orders Granting Continuances dated July 17, 2018, August 21, 2018, August 24, 2018 August 28, 2018, August 31, 2018.

did not have access to transcripts while writing this opinion, and had to rely on her extensive notes. Exhibits were entered into evidence throughout the hearing and the Hearing Officer has maintained all exhibits properly entered into evidence as Parent Exhibits and School District Exhibits.⁸

11. The following witnesses testified at hearing: the Student's Mother and Father, Mr. B, Ms. C1, Ms. C2, Ms. H, Dr. K, Mr. M, Ms. M, Ms. N1, Ms. N2, Ms. R, Ms. W1, Ms. W2, Dr. W and Mr. W.⁹
12. The parties made closing arguments and submitted written authority and notes to the Hearing Officer on October 16, 2018.
13. The 45-day deadline ends on November 2, 2018.

ISSUES

The issues, requested relief, and defenses being presented for determination are as follows:

1. *Whether from June 19, 2016 to the present the Student was evaluated appropriately by the School District to identify autism as an area of suspected disability?*¹⁰

Relief. The Parents seek a ruling in their favor, and also ask the Hearing Officer to order the School District to reimburse them for private placement at Daniels Academy for the 2017-2018 school year, and to place the Student at Daniels Academy for the 2018-2019 school year. In the alternative, the Parents are seeking reimbursement for private placement at Daniel's Academy for the 2017-2018 school year; and, prospective placement for the 2018-2019 school year as compensatory damages.

The School District seeks a ruling in its favor, and asks the Hearing Officer deny all of the Parents' requested relief.

⁸ This Hearing Officer admitted into evidence; Parents' Exhibits 1-15, exclusive of Exhibit 14 which number was inadvertently skipped; and, School District Exhibits 1-16, inclusive. No parties raised objection to the admission of the other's exhibits or witnesses.

⁹ An Index with the full names of the witnesses appears at the end of this Final Determination and Order.

¹⁰ At the Prehearing Conference, the parties certified that the statute of limitations period for the first issue was from June 19, 2016 to the present. See, Prehearing Report and Order, *supra*. The parties were given the opportunity to suggest changes to the Prehearing Report and Order, and in fact suggested other changes; but did not suggest a change regarding the statute of limitations. See, Amended Prehearing Report and Order.

2. *Whether it was appropriate for the Parents to unilaterally place the Student at Daniels Academy during the 2017-2018 school year? Specifically, whether any of the ISBE approved residential schools offered by the School District appropriate for the Student; whether Daniel's Academy is an appropriate placement for the Student; and, whether the Parents are entitled to reimbursement for and prospective placement at Daniel's Academy?*

Relief. The Parents seek a ruling in their favor, and also ask the Hearing Officer to order the School District to reimburse them for private placement at Daniels Academy for the 2017-2018 school year, and to place the Student at Daniels Academy for the 2018-2019 school year. In the alternative, the Parents are seeking reimbursement for private placement at Daniel's Academy for the 2017-2018 school year; and, prospective placement for the 2018-2019 school year as compensatory damages.

The School District seeks a ruling in its favor, and asks the Hearing Officer deny all of the Parents' requested relief.

FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

A. *Timeline of Student's Unilateral Placement at Daniel's Academy and ASD Diagnosis.*

14. Currently, the Student has the following medical diagnosis: Disruptive Mood Dysregulation Disorder, Autism Spectrum Disorder (Level 1) ("ASD"), Attention Deficit/Hyperactivity Disorder (Combined Presentation) ("ADHD"), Specific Learning Disability Disorder (with Impairment in Reading Comprehension) ("SLD").¹¹
15. The Student had been in a therapeutic day setting from 7th grade through the end of the 2017-2018 school year, due to his behaviors which arise from his multiple disabilities. These behaviors include: classroom outbursts (yelling, bullying peers), paranoia, inability to consistently follow classroom instructions, inability to appropriately regulate his emotions, anxiety and performing below his academic ability.¹²

¹¹ P#9.

¹² SD ##4-8, P#9.

16. In 2018 ~ at 16 years of age ~ the Student was diagnosed with ASD and SLD for the first time.¹³
17. The School District has adopted the diagnosis of ASD, and in June 2018 added ASD as an eligibility to the Student's current IEP.¹⁴
18. The Student's previous IEP dated October 2017 placed him at the [REDACTED] Therapeutic Day School at [REDACTED] ("JCFS"), where he attended for the first half of the 2017-2018 school year (and where he had been enrolled at since 2016).¹⁵
19. The Student's teachers at JCFS testified that the program in which the Student was enrolled also serviced other students with diagnosis of ASD. Staff at JCFS are given on the job training to spot the "red flags" of ASD (in addition to other ASD training they had received as part of their education. And ~ like the program outlined in the Student's October 2017 IEP ~ ASD students at JCFS were given programs that provided 1:1 support, sensory breaks, access to a social worker in site, and individualized curriculum and related services.¹⁶
20. The Student's teachers at JCSF testified that although they were familiar with the symptoms of ASD (and were teaching other student's with ASD), they did not suspect that the Student had ASD, and thus never referred him for an evaluation to determine if he had ASD.¹⁷
21. The Student's teachers at JCFS testified that even if the Student had been identified with ASD, that eligibility diagnosis would not have materially impacted his program, as his October 2017 IEP as well as the program at JCFS was already designed to accommodate students with ASD.¹⁸
22. The Student's teachers at JCFS testified that while the Student was struggling with maintaining attention, class participation, and regulating his emotions (especially his anger), he was generally successful at JCFS,

¹³ Id.

¹⁴ SD## 4-8. The IEP Team did not add SLD to his eligibility. Id.

¹⁵ SD##4-5.

¹⁶ SD#4, Ms. C2 Testimony, Ms. N2 Testimony.

¹⁷ Id.

¹⁸ Id.

and made measureable progress on his IEP goals, and had friends at school.¹⁹

23. The Student's last triennial evaluation with the School District took place in October 2017.²⁰ The Student's October 2017 eligibility paperwork notes "two past behavior health hospitalizations and past diagnosis of ... Major Depressive Disorder, Recurrent, Severe, with mood-congruent psychotic features...Disruptive Mood Dysregulation Disorder...Attention Deficit/Hyperactivity Disorder, Combined presentation."²¹

24. The School District's psychologist, Ms. R, is familiar with the symptoms of ASD, and has previously suspected ~ and consequently referred for evaluation and evaluated ~ students with ASD.²²

25. As a part of the October 2017 re-evaluation, the school psychologist, Ms. R. administered the following evaluation assessments (in addition to reviewing school records, interviewing the Student and classroom teachers, and conducting a classroom observation):

i. Reviewed Woodcock-Johnson IV scores administered by classroom teachers;

ii. Administered the Behavior Assessment Scale for Children (BASC-III) ~ both to the Student and to the classroom teacher.²³

26. The results of the triennial evaluation in October 2017 indicated that the Student was in the At Risk Range for Anxiety and Depression, Anger Control, Bullying, Executive Functioning, and Negative Emotionality. The Student scored in the Clinically Significant Range for Emotional Control.²⁴

27. As part of the self-report in the BASC-III, the Student reported hearing voices.²⁵

¹⁹ Id.

²⁰ SD#6, Ms. R Testimony.

²¹ SD#5.

²² Ms. R Testimony.

²³ Id.

²⁴ Id.

²⁵ Id. The Student's therapist at DA testified that the Student is on medication for hallucinations. Ms. N Testimony.

28. As part of the classroom observation, the school psychologist noted that the Student was appropriate and engaged most of the time.²⁶
29. At the time the School Psychologist administered the triennial evaluation, none of the teachers at JCFS suspected the Student as having autism; and the school psychologist (even after a classroom observation and personal interview of the Student) did not suspect that the Student had ASD.²⁷
30. The School Psychologist testified at hearing that she is familiar with the traditional behaviors that indicate a need to evaluate for ASD, and that the Student's other health issues were co-morbid with a diagnosis of ASD (with which she ultimately agreed).²⁸
31. There was no evidence at hearing that the Parents were specifically alleging that the School District denied the Student a FAPE by placing him in a therapeutic day setting, or by considering his transition to a general education setting; although, the Parents' testified that they were worried about his progress at JCFS and his potential transfer back to a general education setting.²⁹
32. The Parents unilaterally enrolled the Student at Pacific Quest ("PQ"), an outdoor wilderness program located in Hawaii in February 2018. The Parents notified the School District that he would be taking a "leave of absence" in order to participate in the wilderness program.³⁰
33. The Parents' each testified that the Student's continued aggressive behaviors at home, including an emotional "shut down" by the Student when the IEP team was considering his re-entry into a general education setting, motivated them to consider PQ (on the advice of a private consultant).³¹

²⁶ Id.

²⁷ Ms. R. Testimony.

²⁸ Id. The School Psychologist did not agree with the finding by Dr. K that the Student had a Specific Learning Disability, and the IEP in October of 2017 did not list a Specific Learning Disability as an eligibility category. Ms. R Testimony. As there is no allegation that the failure to add a Specific Learning Disability to the Student's IEP denied him a FAPE, the Hearing Officer will not address that issue.

²⁹ Mother's Testimony, Father's Testimony.

³⁰ SD #9, Father's Testimony, Mother's Testimony.

³¹ Id.

34. The Student appeared to make progress in his emotional regulation while at PQ.³²
35. While the Student was at PQ, the Parents' private evaluator, Dr. K, administered a neuropsychological evaluation. In addition to his other disabilities, Dr. K diagnosed him with ASD and SLD for the first time.³³
36. In her evaluation report, Dr. K recommended that upon completion of his time at PQ, the Student immediately attend a residential school, and not return to a "traditional school setting."³⁴
37. The Parents' consultant gave the Parents some recommendations for residential programs, and the Parents chose [REDACTED] ("DA") in [REDACTED].³⁵
38. The Parent's unilaterally enrolled the Student at DA in late April 2018 and have paid tuition when it was due from that time forward to the present, at the rate of \$12,200.00/month.³⁶
39. The Student's Father testified that he had already paid the October tuition bill of \$12,200. The invoice had not been disclosed because it was not incurred at the start of hearing.³⁷
40. The Student's Mother and Father had many conversations with the School District at the time they placed the Student at DA.³⁸
41. In an email dated May 3, 2018 the Student's Mother informed the School District of the fact that the Student was attending DA, and the Parent's reasons for placement; but, did not make a request at that time for the School District to place the Student at DA at public expense.³⁹
42. In the May 3, 2018 email, the Student's Mother acknowledged that the Parents' had gone "against the grain" and placed the Student at DA

³² Mother's Testimony, Father's Testimony, SD #9, P #9.

³³ SD. #9, P ##8-9.

³⁴ P #9, Dr. K Testimony, Father's Testimony.

³⁵ P#13, Mother's Testimony, Father's Testimony.

³⁶ P#2. Father's Testimony, Dr. W Testimony.

³⁷ Id.

³⁸ Mother's Testimony, Father's Testimony, Ms. M Testimony.

³⁹ P#13.

(which the Student's Mother admitted she know was not state-approved) without following the School District's "protocol" for residential placement.⁴⁰

43. The Parent's informed the School District that they intended to seek public funding for DA at a June 7, 2018 IEP Meeting.⁴¹ This was confirmed via a letter from their attorney to the School District.⁴²
44. By letter of June 12, 2018 the School District informed the Parents that it was not going to publically fund the Student's placement at DA because DA was not a state-approved school, and confirmed that the Parents had been informed of this at the June 7, 2018 IEP meeting.⁴³
45. The Student is currently enrolled and attending School at DA for the 2018-2019 school year.⁴⁴
46. The Parents are not seeking reimbursement of the tuition costs of PQ or Dr. K's evaluation and report.⁴⁵

B. Dr. K's Evaluation Report ~ the Autism Diagnosis

47. In February 2018 the Student was evaluated by Dr. K, a Neuropsychologist, licensed in both Hawaii and California. Dr. K has a Psy. D from the Wright Institute in Berkeley, California. ⁴⁶
48. Dr. K was formerly a Primary Therapist at PQ.⁴⁷
49. As part of her evaluation, Dr. K gathered information from the Parents, including a phone interview, conducted a clinical interview/mental status exam with the Student, interviewed the Student's Therapist at PQ and the Parents' educational consultant, Reviewed Records obtained from the Parent, and administered the following assessments:

⁴⁰ Id.

⁴¹ SD#3.

⁴² SD#2.

⁴³ SD #3.

⁴⁴ Mother's Testimony, Father's Testimony, Dr. W Testimony, Mr. M Testimony, Mr. W Testimony

⁴⁵ See, Parents' DPCN and Prehearing Report and Order, *supra*.

⁴⁶ P##8-9, Dr. K Testimony, Mother's Testimony, Father's Testimony.

⁴⁷ P#8, Dr. K Testimony.

- i. Wechsler Adult Intelligence Scale, 4th Edition (WAIS-IV);
- ii. Woodcock-Johnson Tests of Academic Achievement, 4th Edition (WJ-IV);
- iii. Autism Diagnostic Observation Schedule (ADOS);
- iv. Rorschach Inkblot Test (Rorschach);
- v. Minnesota Multiphasic Personality Inventory, Adolescent Edition (MMPI-A);
- vi. Millon Adolescent Clinical Interview (MACI);
- vii. Teenage Sentence Completion (TASC); and,
- viii. Substance Abuse Subtle Screening Inventory, Adolescent, 2nd Edition (SASSI-A2).⁴⁸

50. Additionally, Dr. K asked the Parents to individually complete The Social Communication Questionnaire (SCQ).⁴⁹

51. The SCQ requires a cut-off score of 15 in order to consider clinically an ASD diagnosis, and the Student's Parents endorsed 14 items toward a consideration of ASD.⁵⁰

52. Dr. K included the 14 questions/answers from the SCQ that prompted her to administer the ADOS in her evaluation report. The Parents indicted that they could not have a "to and fro conversation" that involved taking turns and building on what was said; that the Student had some special interests that were "unusual in their intensity"; that the Student "had injured himself deliberately".⁵¹

53. The remaining eleven answers from the SCQ from the Parents all involved aberrant behaviors by the Student "when he was 4 to 5" years of age.⁵²

⁴⁸ P#9, Dr. K Testimony.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ P#9.

⁵² Id.

54. Based upon these responses, Dr. K administered the ADOS to the Student.⁵³ The ADOS is considered a definitive test to determine whether a person has ASD.⁵⁴
55. After administering the ADOS, Dr. K noted that the Student had elevated scores in the areas of “reciprocal social interaction and communication + social interaction”.⁵⁵
56. Dr. K’s evaluation report states that while the Student “demonstrates numerous symptoms associated with ASD, this information needs to be considered in the context of the larger clinical picture before firm conclusions can be drawn.”⁵⁶
57. Dr. K’s evaluation report also states: “ADOS Summary: [The Student’s] performance on the ADOS was variable; while his conversational abilities are adequate as long as he is driving the conversation, he demonstrated a limited ability to engage in a back-and-forth conversation. His eye contact is often poorly modulated, though can become better as his comfort increases. While his affect is somewhat restricted, his use of gestures was good, and though he has a limited ability to communicate about his own feelings, he is able to recognize affective states in others based on expression. [The Student] demonstrates little insight into or responsibility for his behavior. As stated above, this information needs to be considered in light of the larger clinical picture.”⁵⁷
58. Dr. K walked through the diagnostic criteria for ASD in her evaluation report, and concluded that the Student met the criteria. However she noted: “symptoms [are] most apparent in the early developmental period with learning and compensation continuing through the course of this lifelong condition and, while [the Student] was not identified as being on the spectrum when he was young, he has clearly benefitted from therapeutic intervention, thus his symptoms may not be as pronounced at present as they were in the early developmental period. Furthermore, though characteristics of ASD have been present from the time [the Student] was young, [the Student’s] ASD features are relatively mild, and

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id.

thus he should be considered 'high functioning' in terms of his neurodevelopmental differences."⁵⁸

59. Dr. K recommended that the Student be enrolled in a residential and therapeutic setting to provide him with "immediate, in-the-moment support" and reinforcement. She further noted that while "this is generally best found in schools with an understanding of working with students on the spectrum, it is anticipated that [the Student] would benefit from attending a school with a mixed population, as his ASD is relatively mild and he would benefit from practicing his newly learned skills with a neurotypical population."⁵⁹
60. Dr. K neither mentioned in her evaluation report nor testified at hearing, that in her opinion the Student should have been evaluated as having ASD earlier than he was.⁶⁰
61. Dr. K did not interview or speak with any School District personnel, obtain any of the Student's records from the School District as part of her evaluation or attempt to observe him in his former JCFS setting.⁶¹
62. Dr. K did not make any specific recommendations for residential/therapeutic programs by name, and was unfamiliar with DA or other programs that are Illinois state-approved.⁶²
63. The Student's Parents both testified that the ASD diagnosis, especially when given while the Student was in high school was a surprise and a "devastating" shock.⁶³

C. The June 2018 IEP Meeting.

64. In April 2018, the Student's Parents sent the outgoing School District's Residential Manager an email outlining the history of the Student's educational journey from JCFS, to PQ and then to DA, which that administrator forwarded on to his successor, Ms. M.⁶⁴

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ P#9, Dr. K Testimony.

⁶¹ Id.

⁶² Id.

⁶³ Mother's Testimony, Father's Testimony.

⁶⁴ SD#9.

65. As a result of the April 2018 email, Ms. M convened a meeting in May, 2018 to discuss the Student's status with the Parents as well as the next steps.⁶⁵
66. At the May 2018 meeting the Parents updated Ms. M on the Student's status and shared Dr. K's report.⁶⁶
67. At that time, Ms. M told the Parents that the Student's IEP team would need to convene to consider Dr. K's report and to update the IEP Team accordingly.⁶⁷
68. Ms. M also testified that at the May 2018 meeting it was her understanding that the Student would be leaving PQ and that the Parents intended to enroll him at DA. Ms. M testified that she told the Parents that DA was not a state-approved school.⁶⁸
69. Ms. M told the Parents in May 2018 that the Student's IEP Team could not make a decision as to the particular school the Student would be attending ~ that would be Ms. M's responsibility. Ms. M told the Parents that she would investigate DA as well as attempt to locate other appropriate state-approved residential programs.⁶⁹
70. Ms. M testified that she had told the Parents in May 2018 that finding an appropriate residential location for the Student could take upwards of "a few weeks to a few months" depending on the availability of programs.⁷⁰
71. The Student's father testified at hearing that Ms. M told him at the May 2018 meeting that they should work with a consultant to see if DA could become state-approved, and that they might want to consider obtaining legal counsel in case they needed to file for due process.⁷¹

⁶⁵ Ms. M Testimony, Father's Testimony, Mother's Testimony.

⁶⁶ Id.

⁶⁷ Ms. M Testimony

⁶⁸ Ms. M Testimony. Ms. M also told the Parents in May 2018 that all Utah programs would be removed from the state-approved list for the 2018-2019 school year. Id.

⁶⁹ Id.

⁷⁰ P#15, Ms. M Testimony.

⁷¹ P#12, Father's Testimony.

72. On May 16, 2018 Ms. M forwarded the Parents contact information for a consultant to help the family work with DA to become state approved.⁷²
73. On May 29, 2018 Ms. M sent the Student's Parents an email with attachments giving them written notice of a June 7, 2018 IEP meeting, informing them that she had contacted a representative at DA and linked them up with someone from the Illinois Board of Education in order to facilitate the process of DA becoming state-approved, requesting an updated status of the Student's experiences at DA, and sending the Parents an excel spreadsheet of all state-approved residential facilities that support students with ASD a list of over 120 schools.⁷³
74. In April, May and June 2018 DA was not on the state-approved list for residential placement, and has never been added to the list in the interim.⁷⁴
75. On June 7, 2018 the Student's IEP Team met and conducted an IEP meeting to consider Dr. K's report and update the Student's IEP in light of his enrollment at DA.⁷⁵
76. Neither the eligibility portion of the June 7, 2018 IEP nor the rest of the IEP contains any comment section. However, the June 7, 2018 IEP adds the eligibility designation of ASD, and (without changing goals or objectives) changes the location of the Student's placement to a "residential program." No further descriptors of the type of residential program or the type of environment necessary to provide FAPE to the Student are present to give any specific information on what type of residential placement is going to be provide to the Student.⁷⁶
77. The June 7, 2018 IEP does not contain a location of services for the residential program. It does not mention any residential school by name, and the School District has not reconvened an additional meeting to either discuss the status of finding a location of services or recommending a location for residential placement, up to an including the present.⁷⁷

⁷² Id.

⁷³ SD#10.

⁷⁴ Ms. M Testimony.

⁷⁵ SD# #7-8, Ms. R Testimony, Ms. M Testimony, Father's Testimony.

⁷⁶ Id.

⁷⁷ SD#8.

78. At the June 7, 2018 IEP meeting the Parents requested that the School District fund the Student's attendance at DA. Ms. M tells the Parents that the School District will not pay for DA as it is not a state-approved school; but, that she will begin investigating appropriate state-approved residential programs and inform the Parents.⁷⁸
79. The Parent's followed up with a written request that the School District fund the Student's attendance at DA with a letter from their attorney dated June 2, 2018 (which letter expressly references the fact that the Parents made the request at the June 7, 2018 meeting).⁷⁹
80. The School District responded with a letter refusing to fund DA as the Student's residential placement, also stating that this refusal was communicated to the Parents at the June 7, 2018 IEP.⁸⁰

D. The School District's Actions to Locate a State-Approved Residential Program After the June 2018 IEP Meeting.

81. A little more than a week after the June 7, 2018 IEP meeting, the School District began investigating state-approved residential schools for the Student, and sent the Student's information to them (without receiving written permission from the Parents to do so).⁸¹
82. Only one of the schools contacted by the School District in June ([REDACTED] School) responded promptly, advising the School District that it would not accept the Student due to his behaviors. The rejection email from [REDACTED] School was sent on June 19, 2018.⁸²
83. In late August 2018, after the Prehearing Conference on this matter had been scheduled and weeks before this hearing was set to begin, the School District, for the first time, followed up with the individual schools it had contacted in June to ascertain the status of the Student's possible acceptance.⁸³

⁷⁸ Father's Testimony, Ms. M Testimony, SD # #2, 3.

⁷⁹ SD#2.

⁸⁰ SD#3.

⁸¹ SD1, 11, 14, 15, Ms. M Testimony.

⁸² P#11, Mother's Testimony.

⁸³ SD#1, 11, 14, 15. Ms. M Testimony.

84. The School District did not make any additional contact with the state-approved residential schools they had contacted in June 2018 until late August 2018 when they inquired as to the status of the Student's acceptance, a period of nine weeks.⁸⁴

85. None of the remaining residential schools contacted by the School District in June 2018 had completed the process of determining whether or not the Student would be accepted. During bearing, representatives of the state-sponsored residential programs testified that they have not completed the process of determining whether the Student will be accepted.⁸⁵

86. Also in late August 2018, the School District sent the Student's information (again without obtaining permission from the Parents) to yet another state-approved residential school, which at the time of hearing did not finish its process for determining whether or not it would accept the Student.⁸⁶

87. All of the state-approved residential schools contacted by the School District are approved for students with ASD.⁸⁷

88. Some of the state-approved residential schools contacted by the School District attempted to make contact with the Parents or to request additional information from the Parents (or the School District). The Parents did not respond to any of those requests, in a manner that would have helped those programs make a final decision as to the Student's eligibility.⁸⁸

⁸⁴ Id.

⁸⁵ Id., Mr. B Testimony, Ms. W2 Testimony, Ms. H Testimony, Ms. W2 Testimony. One of the private schools, [REDACTED] provided a witness who testified that although he had no specific recollection of the Student coming to the campus to tour it, he believes the Student did in fact visit campus. He testified that the Student's parents never submitted an application, and that he had room available. Mr. B Testimony. However, there was no evidence to corroborate his unsure recollection, and no writing to demonstrate that the Student had been found to be a good fit, and the IEP was not amended to name [REDACTED] as the location where the Student's services would be provided. Id. This Hearing Officer finds Mr. B's testimony as to the Student's tour inconsistent with the Parents' testimony, and concludes that his recollection as to that point is not credible, and that the Student was not accepted at [REDACTED].

⁸⁶ SD#1, Ms. W1 Testimony, Mother's Testimony.

⁸⁷ Ms. M Testimony.

⁸⁸ SD#1, 11, 14, 15. Ms. M Testimony, Mr. B Testimony, Ms. W1 Testimony, Ms. W2 Testimony, ⁸⁸ SD#1, 11, 14, 15. Ms. M Testimony, Ms. C1.

89. The School District learned of the inability of those state-approved schools to procure information from the Parents in late-August 2018 when it inquired for the first time as to the status of the Student's acceptance.⁸⁹

90. Even when the School District learned that there was information the state-approved residential programs needed from the Parents, it took no action to facilitate communication between those schools and the Parents in order to ascertain whether the Student would be accepted into these programs, or whether additional programs needed to be identified, up to and including the present.⁹⁰

E. D [REDACTED] A [REDACTED]

91. DA is a residential program that services students with ASD, and is located in [REDACTED], and is not an Illinois state-approved school.⁹¹

92. The Student has been enrolled at DA from April 2018 continuously throughout the present.⁹²

93. DA is an accredited school in the State of [REDACTED].⁹³

94. DA uses a naturalistic, neurobehavioral teaching strategy, and the typical DA student will have a primary diagnosis of ASD (Level I) and no intellectual impairment.⁹⁴

95. DA works on developing the executive functioning skills of its students, as well as meeting their academic, social, emotional and functional needs in both the school program as well as the residential program.⁹⁵

96. The classrooms at DA are small in size with a teacher/student ratio of 3:1.⁹⁶

⁸⁹ Ms. M Testimony.

⁹⁰ Mother's Testimony, Father's Testimony.

⁹¹ Dr. W Testimony.

⁹² P#2, 4, 6, 7, Dr. W Testimony, Mr. M Testimony, Mr. W Testimony, Ms. N Testimony, Father's Testimony, Mother's Testimony.

⁹³ Dr. W Testimony.

⁹⁴ Mr. M Testimony.

⁹⁵ Id.

⁹⁶ Id.

97. Students at DA receive individual and group therapy, with group therapy provided twice a week. In therapy the students are taught dialectical behavior therapy to help teach them how to resolve emotional problems, emotional regulation as well as learning self-advocacy.⁹⁷
98. The staff at DA whether teachers, related services providers or personal/residential aide are trained to interact with students with ASD.⁹⁸ The Student receives academic/social/emotional/functional support in both his school program and in his residential program.⁹⁹
99. The Student receives individualized therapy, group therapy and family therapy with his Parents via telephone on a regular basis.¹⁰⁰
100. While at DA, the Student has earned credits toward graduation (he is presently considered a Junior and will earn enough credits to be considered a Senior this academic year). The Student's academic achievement is consistent between his tenure at JCFS and DA.¹⁰¹
101. DA does not follow IEPs, however the staff have created written goals for the Student in the areas of General Skills, Written Expression, Reading, and Math.¹⁰²
102. DA staff create monthly written progress reports for their students. The Student's monthly written progress reports indicate that he is steadily making progress in regulating his emotions, developing his executive functioning skills, and is passing most of his classes. In classes where he was reported as not passing, he had outstanding homework to turn in. The Student's most recent written progress report (for the period ending August 15, 2018) indicates that he is passing all of his classes and making progress in his emotional and social skills.¹⁰³

⁹⁷ Id.

⁹⁸ Mr. W Testimony.

⁹⁹ Id.

¹⁰⁰ Ms. N Testimony.

¹⁰¹ P#7, Mr. W Testimony.

¹⁰² P#6, Mr. W Testimony.

¹⁰³ P#4, Mr. M Testimony.

103. All of the witnesses at DA, as well as his Parents, testified that the Student is successful at DA, that he is engaged in the program, and that he has made meaningful progress in managing his emotional regulation skills and social skills.¹⁰⁴

CONCLUSIONS OF LAW

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

The purpose of the *IDEA* is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs."¹⁰⁵ The Congressional purpose of providing access to a FAPE stems from the requirement that the education provided through the IEP confer some benefit to the child.¹⁰⁶

In deciding whether the School District provided a FAPE to the Student, the inquiry is limited to (a) whether the School District complied with the procedures set forth in the *IDEA*; and, (b) whether the Student's IEP is reasonably calculated to enable the Student to receive an educational benefit.¹⁰⁷ Under the latter substantive prong, the School District need not maximize the potential of the Student; the School District has met its burden under the *IDEA* if it provides a meaningful educational (i.e. non-trivial) opportunity.¹⁰⁸

Regarding the allegations of a procedural violation of the *IDEA*, this Hearing Officer may find a violation of FAPE only if the alleged procedural inadequacies (a) impeded the Student's right to a FAPE, (b) significantly impeded the Parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or (c) caused the Student a deprivation of an educational benefit.¹⁰⁹ In short, this Hearing Officer would have to conclude that the procedural violations affected the Student's substantive rights under the *IDEA*.¹¹⁰

¹⁰⁴ Mother's Testimony, Father's Testimony, Dr. W Testimony, Mr. M Testimony, Mr. W Testimony, Ms. N Testimony.

¹⁰⁵ *Bd. of Education v Rowley*, 458 U.S. 176-179-71 (1982); *Hinson v Merritt Educ. Ctr.*, 579 F.Supp.2d 89, 98 (2008), citing 20 U.S.C. §1400(d)(1)(A).

¹⁰⁶ *Rowley*, 458 U.S. at 200; *Hinson*, 579 F.Supp.2d at 98.

¹⁰⁷ *Rowley*, 458 U.S. at 206-07.

¹⁰⁸ *P. v Newington Bd. of Educ.* 546 F.3d 111 (2nd Cir. 2008).

¹⁰⁹ 34 C.F.R. §300.513(a)(2).

¹¹⁰ *Lesene v District of Columbia*, 447 F.3d 828, 834.

DISCUSSION

A. The School District did not deny the Student a FAPE from June 19, 2016 to the present when it did not evaluate him for Autism Spectrum Disorder.

Under the *IDEA*, the School District had an affirmative obligation to perform a full and individual evaluation of the Student in all suspected areas of disability before the initial provision of special education and related services.¹¹¹ This obligation is triggered when the LEA has reason to suspect a disability and reason to suspect that special education services are warranted to address that disability.¹¹²

A School District also has an obligation to re-evaluate the Student if it determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation.¹¹³ An evaluation is defined as the procedures used to determine whether a child has a disability, and the nature and extent of special education and related services the child needs.¹¹⁴

“School districts are not required to classify a student into a particular category, or affix that student with a particular label. Instead, *IDEA* only requires that the school district provide an appropriate education.”¹¹⁵

At issue with the Student is whether prior to his eventual diagnosis with ASD by Dr. K (but no earlier than June 16, 2016), the School District had any reason to suspect that he had ASD; and if they did suspect he had ASD, whether the Student’s ASD warranted providing special education and related services to him.

This Hearing Officer finds that the School District (and by extension the staff at JCFS) had no basis from June 19, 2016 to the present to suspect that the Student had ASD prior to his eventual diagnosis by Dr. K.

Dr. K’s own evaluation report states clearly the basis for her choice to even administer the ADOS ~ the actual assessment that produced the ASD (Level I)

¹¹¹ 20 U.S.C. §1414(a)(1)(A); 34 C.F.R. §300.111(a), (c)(1).

¹¹² *Lauren C. v. Lewisville Ind. Sch. Dist.*, 70 IDELR 63 (E.D. Tex. 2017).

¹¹³ 34 C.F.R. §300.303.

¹¹⁴ 34 C.F.R. §300.15.

¹¹⁵ *Heather v State of Wisconsin*, 125 F.3d 1045, 1055 (7th Cir. 1997), *Lauren C. v Lewisville Ind. Sch. Dist.*, 70 IDELR 63 (E.D. Tex. 2017),

diagnosis.¹¹⁶ Dr. K first administered the SCQ to the Parents which identified 14 of the 15 criteria that warranted giving the ADOS.¹¹⁷ Of those 14 criteria, 11 of them had to do with the Student's development "between 4 and 5 years of age".¹¹⁸

The other Parent responses on the SCQ that did not refer to his earlier childhood indicated that they could not have a "to and fro' conversation with him that involves taking turns or building upon what you said," that the Student had "special interests that were unusual in their intensity, but otherwise appropriate for his age and peer group," and that he had "injured himself deliberately such as biting his arm or banging his head."¹¹⁹

The Parents have alleged that from June 19, 2019 to the present the School District (including the staff from JCFS) should have suspected that the Student had ASD; and yet, were unable to produce any information from that time period that would have given rise to that suspicion. It appears that the Parents are arguing that because ASD is a life-long condition, and because the School District ultimately accepted it as an eligibility designation, it should follow that the School District violated a FAPE by not suspecting ASD earlier.

Most of the Parents' responses on the SCQ (the questionnaire that prompted Dr. K to give the ADOS) involved the Student's earlier childhood history, a period not at issue in this hearing; and, outside the practical day-to-day experience of the School District while the Student was attending JCFS. This Hearing Officer concludes that the School District can only be held accountable for suspecting whether the Student had a disability ~ and thus be accountable for evaluating the Student to determine whether he actually had the disability ~ based upon their real time experiences with the Student, not from behaviors he may or may have not had in his early childhood.

Therefore, the germane question is: from June 19, 2016 to the present, did the Student exhibit behaviors that the School District staff, and the staff at JCFS should have recognized as possibly being autistic, thus creating a duty for the School District to evaluate him for ASD?

There is no evidence in the October 2017 eligibility paperwork or the Student's October 2017 IEP or any other evidence or testimony that anyone from the School District or the staff at JCFS, including the Parents brought up observations or concerns regarding the following: that they could not have a "to and fro' conversation with him that involves taking turns or building upon what you said," that the Student had "special interests that were unusual in their intensity, but otherwise appropriate for his age and peer group," and that he had "injured himself deliberately such as biting his arm or

¹¹⁶ ¶¶52-58, *supra*.

¹¹⁷ ¶¶50-53, *supra*.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

banging his head.”¹²⁰ These were the only present day responses on the SCQ that could have been potentially observable to School District or JCFS staff.

The features that stood out most to the School District’s psychologist and the staff at JCFS concerned his emotional disabilities and ADHD: his inability to remain focused, his inability to regulate his emotions (especially his anger), his hallucinations, etc.¹²¹ All of these observations by School District and JCFS personnel were confirmed by Dr. K, who expressed her own concern that ASD needed to be seen in the context of the Student’s emotional disabilities, rather than as a stand-alone diagnosis.¹²²

The Parents themselves testified that they were surprised and devastated at the ASD diagnosis.¹²³ They admit that the ASD diagnosis came about when the Student was enrolled at PQ, a wilderness camp that was unlike a typical classroom environment, including JCFS.¹²⁴ The Parents did not admit any contemporaneous evidence from June 2016 to the present (especially while the Student was attending JCFS) to indicate that *at that time* there was reason to suspect ASD. In fact, the Parents offer evidence to the contrary.

The Parents’ own expert, Dr. K admits in her evaluation report that she came to the ASD diagnosis in a careful and nuanced manner. Firstly, she administered the SCQ to the Parents, and based upon their scores (which did not meet the threshold for administering the ADOS), chose to administer the ADOS anyway.¹²⁵ After administering the ADOS, Dr. K was careful in her report to note that the Student’s other mental health issues ~ especially is mood dysregulation disorder and his pronounced ADHD ~ needed to be carefully considered when reaching a diagnosis of ASD.¹²⁶

Even after taking these comorbid factors into account, Dr. K made two very important conclusions: the Student’s ASD is mild; and, the Student’s lengthy history in a therapeutic day program mitigated the adverse effect of that disability.¹²⁷

Nothing in evidence points to any indicator that (a) School District staff (including JCFS, who are trained to provide services to students with ASD) had any basis in fact to

¹²⁰ ¶118, 23, 26-30, *supra*.

¹²¹ *Id.*

¹²² ¶156-59, *supra*.

¹²³ ¶62, *supra*.

¹²⁴ ¶35, *supra*.

¹²⁵ ¶152-58, *supra*.

¹²⁶ ¶154-58, *supra*.

¹²⁷ *Id.*

evaluate him for ASD; and (b) that even if they had identified the Student with ASD, he was already in a placement that was designed for ASD students. ¹²⁸

This is reconfirmed by the note in the Student's October 2017 eligibility paperwork regarding the Student's previous hospitalizations.¹²⁹ The doctors at the hospital re-evaluated the Student and did not diagnose the Student with ASD.¹³⁰ The hospital staff confirmed the School District's and JCFS staff's conclusions that the Student's emotional disability (his mood dysregulation disorder, his ADHD, and his hallucinations) were the Student's primary disabilities.¹³¹

This Hearing Officer concludes that there is no evidence in the record to indicate that the School District or JCFS should have suspected the Student needed to be evaluated for ASD while he was attending JCFS. Moreover, this Hearing Officer concludes that even if she found that the School District failed to suspect that (and therefore evaluate) the Student had ASD while attending JCFS, there is ample evidence that his program at JCFS was designed for students with ASD, and that he did not need material changes to his IEP in order to receive a FAPE.

Therefore, this Hearing Officer concludes that the School District did not deny the Student a FAPE when they failed to evaluate the Student for ASD from June 2016 to the present.

Ruling: For the School District.

B. The Parents are entitled to reimbursement for D [REDACTED] A [REDACTED] from June 2018 through the present, and D [REDACTED] A [REDACTED] is an appropriate placement for the remainder of the 2018-2019 School Year.

Under the *IDEA*, parents of eligible students may unilaterally place their child in another educational program or facility and seek reimbursement from the LEA for the cost of that placement.¹³² Section 300.148 of the *IDEA*'s implementing regulations states:

"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

¹²⁸ ¶¶19-30, *supra*.

¹²⁹ ¶23, *supra*.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Burlington Sch. Comm. v Dep't of Educ.*, 556 IDELR 389 (1985).

private school, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child **in a timely manner** prior to the enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by SEA and LEAs”¹³³

However there are limitations on parents’ ability to seek reimbursement. Reimbursement may be reduced or denied if:

- (1) At the most recent IEP Team meeting 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, stating their concerns and their intent to enroll their child in a private school at public expense; or,
- (2) At least ten (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.¹³⁴

In addition, reimbursement can be reduced or denied if prior to the removal of the child from the public school, the school district properly informed the parents of its intent to evaluate the child, but the parents did not make the child available for an evaluation; or, upon a judicial finding of unreasonableness with respect to actions taken by the parents.¹³⁵

In addition, Section 1414(d)(1)(i)(VII) of the *IDEA*, sets for the required elements of an IEP. An IEP is defined as a ‘written statement for each child with a disability that is reviewed, and revised...and that includes...the projected date for the beginning of services and modifications...and the anticipated frequency, location, and duration of those services and modifications.’¹³⁶

Neither the *IDEA* nor its implementing regulations defines what constitutes a “location.” At a minimum it requires a descriptor of a “type of environment that is the appropriate place for provision of a special education service.”¹³⁷ Courts have ruled that

¹³³ 34 C.F.R. §300.148(c). (Emphasis supplied)

¹³⁴ 34 C.F.R. §300.148(d)(1), *Florence County Sch. Dist. Four v Carter*, 20 IDELR 532 (1993), *Forest Grove Sch. Dist. v T.A.*, 129 S.Ct.2484 (2009).

¹³⁵ 34 C.F.R. §300.148(d)(2),(3). *Letter to Chamberlain*, 60 IDELR 77 (OSEP 2012).

¹³⁶ 20 U.S.C. §1414(d)(1)(i)(VII).

¹³⁷ *Rachel H. v Department of Ed.*, 70 IDELR 169 (9th Cir. 2017), *Anchorage School Dist. v M.G.*, 72 IDELR 124 (D. Ala. 2018).

in order to meet the requirements for naming a location, a specific school may have to be named, especially when “failing to identify a school could result in a denial of FAPE...because of a particular special education need caused by the disability.”¹³⁸

- 1. The School District denied the Student a FAPE when, in the June 2018 IEP it failed to state a location where services were to be delivered, when it failed to correct the IEP for months to add a location, and when it sent personally identifiable student information to private schools without the Parents’ consent.**

Addressing the first prong of the analysis, this Hearing Officer must determine if the School District denied the Student a FAPE. As stated above, this Hearing Officer has already found that the fact that the School District had not previously identified the Student as having ASD was not a denial of FAPE.

However, this Hearing Officer finds that the June 2018 IEP denied the Student a FAPE when it failed to offer any specific descriptor of the location where services were to be delivered, in violation of Section 1414(d)(1)(i)(VII).

As noted above, the June 2018 IEP made very limited changes: it added ASD as an eligibility, and it changed his placement to a “residential program.”¹³⁹ The June 2018 IEP did not give any descriptors at all to help the Parents ascertain whether any eventually proffered school/facility would be appropriate. Moreover, the evidence in this case demonstrates that this Student has multiple and complex disabilities that require very specific special education interventions. Giving either the names of potential schools to be investigated by the school-based members of the IEP team and the parent or a specific description (other than that the school/program meets approved state criteria) is necessary in order to determine whether the IEP provides FAPE on its face. The School District was required to provide a location on the June IEP, and if it could not recommend a specific school, it should have at least provided specific information on the type of program/facility where the services outlined in the IEP would be provided.

The failure of the June 2018 IEP to provide any location whatsoever could have been avoided or mitigated. The School District was aware over 4 weeks prior to the June 2018 IEP that the Student was attending DA, and it had investigated that school enough to learn that it was not on the state-approved list, and had recommended a private consultant to facilitate getting DA Illinois state-approved.¹⁴⁰ In the month

¹³⁸ *Rachel H. v Department of Ed.*, 70 IDELR 169 (9th Cir. 2017), *A.K. v Alexandria City School Board*, 47 IDELR 245 (4th Cir. 2007); *Anchorage School Dist. v M.G.*, 72 IDELR 124 (D. Ala. 2018).

¹³⁹ ¶76, *supra*.

¹⁴⁰ ¶¶64-73, *supra*.

leading up to the June 2018 IEP the School District could have investigated state-approved schools to provide the IEP team with a core group of the types of schools that would be potentially appropriate for the Student, but it did not do so.¹⁴¹ Even if, as Ms. M testified it could take several weeks or even months to find an appropriate program with an opening for the Student, the School District had the time and information to make identify an appropriate location for services even if it could not name a school.

The School District compounded this denial of FAPE by never correcting it. Even after it sent the Student's information packets to the first few identified programs the School District waited almost 9 weeks (during which time this litigation was progressing) in order to ascertain the Student's acceptance at any of the schools/facilities to which it had sent information. Further, even in August 2018 when it realized that none of the schools it had sent packets to had accepted the Student, the School District failed to take any action at all in an attempt to either procure needed information for the residential programs (including Parent participation) or to identify other schools.¹⁴²

At hearing, Parents' counsel made repeated complaints that the School District violated the Student's privacy rights by failing to secure the permission of the Parents before sending Student information to private schools. If a child is enrolled or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between the school district and the private school.¹⁴³

The School District did not obtain either Parent's consent to send personally identifiable information to any of the state-approved private schools it identified.¹⁴⁴ This Hearing Officer concludes that the failure to secure the Parents' consent before sending the packets out constituted a procedural violation of the *IDEA*. Further, this Hearing Officer finds that this procedural violation significantly impeded the Parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the Student.¹⁴⁵

This Hearing Officer concludes that the June 2018 IEP failed to provide FAPE because it failed to contain a statement of the location where services were to be provided, and did not perform the necessary diligence to cure that error. Therefore the Hearing Officer concludes that the School District denied the Student a FAPE from the June 2018 IEP onward, thus not providing FAPE to the Student in a timely manner.

¹⁴¹ ¶73.

¹⁴² ¶¶77, 81-90, *supra*.

¹⁴³ 34 C.F.R. §300.622.

¹⁴⁴ ¶¶81, 86.

¹⁴⁵ 34 C.F.R. §513(a)(2).

The Hearing Officer also concludes that the School District significantly impeded the Parents' ability to participate in the decision-making process for the Student, when it sent personally identifiable information to private schools without either Parents' consent.

Ruling: For the Parents

- 2. The Parent's gave legal notice of their intention to place the Student at D [REDACTED] A [REDACTED] at public expense at the June 2018 IEP Meeting.***

Having found that the School District denied the Student a FAPE from June 2018 onward, the next step is to ascertain whether the Parents' complied with their obligation to provide notice of their intent to seek public funding of DA. *This Hearing Officer finds they did so when they notified the School District of their intent to seek private funding of DA at the June 2018 IEP meeting.*

As this Hearing Officer did not find a denial of FAPE prior to the June 2018 IEP meeting, the issue of whether the Parents' communications in April and May 2018 could have met the notification requirements. However, this Hearing Officer concludes that even if the denial of FAPE preceded the June 2018 IEP, the Parents emails in April 2018 and May 2018 did not meet the notification requirements as they never asked the School District to fund DA explicitly.¹⁴⁶ The Parents own email of May 3, 2018 admitted that the Parents were knew they were not following the proper process to place their child in a residential setting, and were doing it ahead of any opportunity of the School District to provide a FAPE. As such, this Hearing Officer concludes that the Parents did not fulfill their notification requirements with the May 3, 2018 email.

Also, given that there was no finding of a denial of FAPE prior to the June 2018 IEP meeting, this Hearing Officer finds the issue of compensatory education moot as it relates to reimbursing the Parents for tuition paid to DA from the time the Student was enrolled to June, 2018. Simply put, there is no denial of FAPE for which to compensate the Student.

Ruling: For the Parent's in part, for the School District in part.

- 3. D [REDACTED] A [REDACTED] is an appropriate placement for the remainder of the 2018-2019 school year.***

Ample evidence was provided at hearing to demonstrate that the Student is receiving an appropriate education at DA. The Student's Parents, the DA staff and therapist all agree that the Student is making progress on his academic,

¹⁴⁶ ¶¶41, 42, *supra*.

social/emotional and functional goals, and that he is on track to graduate.¹⁴⁷ The Student is receiving appropriate academic services, he is being schooled with other student's at or near his intelligence level, he is receiving appropriate therapeutic support both in his school and residential experiences, and he is invested in the program.¹⁴⁸

For purposes of awarding reimbursement it may be relevant ~ but not determinative ~ that the private school is not state approved, is not a special education school per se, or does not offer the child the least restrictive environment, or even whether the child had previously received special education and related services.¹⁴⁹ While mindful of the fact that DA is not Illinois state-approved or accredited, and that it does not follow IEPs, this Hearing Officer found the testimony of the Student's Parents and the DA staff as well as his therapist credible in their uniform agreement that the Student is learning and making meaningful progress towards his goals.

This Hearing Officer finds that the Student is receiving a FAPE at DA, and that he should remain there through the remainder of the 2018-2019 school year at public expense.

Ruling: For the Parents.

ORDER

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

1. The School District is to reimburse the Parents \$60,000.00 for tuition at DA from June, 2018 through October, 2018 (contingent upon proof of Parents' payment of this amount to DA).
2. The Student is to remain at DA for the remainder of the 2018-2019 school year (including the summer of 2019) at public expense.

In accordance with 105 ILCS 5/14-8.02a(h), within 90 school days of receipt of this Order, the school district must submit proof of compliance to:

Illinois State Board of Education
Program Compliance Division
100 North First Street
Springfield, IL 62777-0001

¹⁴⁷ ¶¶91-103.

¹⁴⁸ Id.

¹⁴⁹ *Burlington v. Department of Ed. Of Mass.*, 471 U.S. 359 (1985); *Florence County School Dist. Four v Carter*, 510 U.S. 7 (1993); *Forest Grove School District v. T.A.*, 557 U.S. 230 (2009); *Murphysboro v District 186*, 41 F.3d 1162 (7th Cir. 1994).

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: November 2, 2018

Jennifer Leisenr.
Impartial Due Process Hearing Officer



APPENDIX A

P.F. v. [REDACTED]
Case No: 2018-0504

| | |
|--------------------------------|--|
| Child: | [REDACTED] |
| Attending School | D [REDACTED] A [REDACTED] |
| [REDACTED] / [REDACTED] | Student's Mother/Student's Father |
| [REDACTED] Dr. K [REDACTED] | Mr. B Ms. C1 Ms. C2 Ms. H Dr. K Mr. M Ms. M Ms. N1 Ms. N2 Ms. R Ms. W1 Ms. W2 Dr. W Mr. W |

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

P.F., a minor, by and through
his Parents.

Petitioners,

- against -

Case No. 2018-0504

[REDACTED],

Jennifer A. Leisner
Hearing Officer

Respondent

CERTIFICATE OF SERVICE

I, JENNIFER A. LEISNER, certify that on November 2, 2018, copies of the Final Determination and Order were served upon the following persons in the manner indicated:

Sent via email and Certified Mail, Return Receipt Requested

Ms. Micki Moran, Esq.

Ms. Katie Ilijic, Esq.

[REDACTED]

[REDACTED]

Sent Electronically via Email and Certified Mail, Return Receipt Requested

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

Wanda Schoneweis
wschonew@isbe.net

Dated: November 2, 2018

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

[REDACTED]