

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

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STUDENT<sup>1</sup>,

Student,

Case No: 2019-DP-0143

v.

Janet K. Maxwell-Wickett,  
Impartial Hearing Officer

██████████ HSD ██████,

School District.

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**FINAL DETERMINATION AND ORDER**

**JURISDICTION**

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

**BACKGROUND**

The Student is a 17-year-old, male who is an 11th grade student at a private residential facility. He qualifies for special education services under the disability category of emotional disturbance (ED) pursuant to an eligibility and IEP meeting held on July 6, 2018. In April 2018, the Student was diagnosed with the following: Major Depressive Disorder, Recurrent, Moderate; ADHD; Parent-Child Relational Problems; Sibling Relational Problems; Cannabis Use Disorder, Severe; and Xanax Use Disorder, Severe. He struggles with social anxiety, anger management, and difficulty coping with stress and frustration. He has a history of abusing medication

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

including Xanax and marijuana. The Student's academic performance and test scores reflect average to above average performance in reading/English and above average performance in math. As a result of the eligibility and IEP meeting held on July 6, 2018, the Student's emotional disability was found to impact all areas of academic, functional and social/emotional skills and a residential placement was recommended by the IEP team.

On January 29, 2018, after a behavioral incident at school and on-going substance abuse concerns, Parent admitted the Student to WTC and had him transported there. The Student was unable to remain at WTC due to ongoing disruptive behaviors that compromised the safety of the Student, peers and staff. The Student was discharged from WTC on March 1, 2018 and was transported to WWTC, another wilderness therapy program. After the conclusion of the WWTC wilderness program, Parent unilaterally placed the Student in a private non-ISBE approved residential facility and provided notice of same to the District on June 27, 2018. The Student was enrolled at said facility on July 5, 2018. Parent and the District agree that a residential facility is the least restrictive environment in which the Student's individual needs can be met and in which he can make adequate educational progress. Parent maintains the following: 1.) The District did not timely identify the Student as a child with a disability thus denying him FAPE. 2.) At the July 6, 2018 eligibility and IEP meeting, the District did not provide an IEP with the requisite goals to allow the Student to make educational progress and did not provide a residential placement to meet the Student's needs. (IHO Exhibit #1.)

The Parent filed a due process hearing request on November 19, 2018. (IHO Exhibit #1.) The District timely filed its response to same on November 29, 2018. (IHO Exhibit #3.) The parties participated in mediation on December 19, 2018. However, they were unable to resolve the outstanding issues. (IHO Exhibit #8.)

The Parties jointly requested a continuance of the 45-day deadline on December 21, 2018, to continue the prehearing conference in order to accommodate the parties' schedules and agreed upon due process hearing dates and on April 11, 2019, to provide ten (10) days for issuance of this IHO's Final Determination and Order. The December 21, 2018 continuance was granted for good cause shown pursuant to this Hearing Officer's order dated January 2, 2019. (IHO Exhibits #7, 32.) The Prehearing Conference was completed on February 28<sup>th</sup> and the Due Process Hearing dates were set by agreement for April 8-10, 2019. Those dates were subsequently altered by agreement of the parties to April 9-11, 2019. The decision due date is set for April 24, 2019. (IHO Exhibit #7, 8, 10.)

The Parent opted for a closed hearing. The Due Process Hearing was held on April 9-11, 2019. Ms. [REDACTED] of [REDACTED] represented the Parent. Ms. [REDACTED] & Ms. [REDACTED] of [REDACTED] P.C. represented the District. The parties presented their individual witnesses and several joint witnesses.<sup>2</sup> The Parent presented the following Exhibits (PE): #1-8, 11-16, 18-35, 37-40, 44-45, 48-60, 66, 71-86, 88-90, 92-102, 104, 107-108, 111-112 which were admitted into evidence. The District presented the following Exhibits (SD): #1-3, 7, 10-14, 18, 22 which were admitted into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-32. Both parties submitted oral closing statements, a written outline thereof, and any electronically provided any case law relied upon.

### **ISSUES**

- (a) Whether the District timely identified and evaluated the Student as a child with a disability pursuant to its Child Find obligation.
- (b) Whether the District's July 6, 2018 IEP provided the Student with a placement and IEP reasonably calculated to enable the Student to receive educational benefit.

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

(c) Whether a procedural violation occurred at the July 6, 2018 IEP meeting, that rises to the level of a FAPE denial, as school personnel who had knowledge of the Student were not present, a residential placement was not named, and a representative from the proposed residential placement was not present at the IEP meeting.

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

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

Parent maintains the District failed to timely identify and evaluate the child as a child with a disability when it did not identify him as such during Fall of 2017-2018 school year due to multiple hospitalizations and parent and teacher related concerns thus denying him FAPE. The District maintains that it attempted to evaluate the child in Fall 2017, however Parent refused. Ultimately, eligibility was determined on July 6, 2018.

The Parent maintains that the District failed to timely evaluate the Student and therefore Parent presented her psychological evaluation which was relied upon by the District. Therefore Parent is entitled to reimbursement for same. The District maintains that it timely evaluated the Student, given that Parent removed him from school and placed him initially in a Wilderness Program, so Parent is not entitled to reimbursement.

The District maintains that it timely identified and evaluated the child and found him to be a child with a disability. The District further maintains that the July 6, 2018 IEP and proposed residential placement provide the Student with an appropriate IEP and placement reasonably calculated to enable the Student to receive educational benefit.

Parent maintains that the District's proposed IEP and educational placement were inappropriate. Parent further maintains that the unilateral placement provides educational instruction specifically designed to meet the unique needs of the Student, supported by such services as are necessary to permit the Student to benefit from instruction. Further, the balancing of the equities favors the Parent therefore entitling Parent to the requested relief of tuition reimbursement, prospective payment of tuition at a non-ISBE approved residential placement facility and extended school year services from July 5, 2018 through the date of discharge, approximately August 2019.

Parent requests the following relief:

- a. Reimbursement for the unreimbursed costs related to placement at the [REDACTED] [REDACTED] (WTC) on January 29, 2018 through March 1, 2018, approximately \$1,095.70;
- b. Reimbursement for unreimbursed costs related to placement at [REDACTED] [REDACTED] (WWTC) on March 1, 2018 through July 5, 2018, approximately \$69,475.00;
- c. Reimbursement for unreimbursed costs related to placement at [REDACTED] [REDACTED] ([REDACTED]) from July 5, 2018 through present, approximately \$121,303.75 and prospective placement and corresponding funding through the date of discharge;
- d. Reimbursement and prospective costs related to Parent's transportation to and from [REDACTED] as needed for Parent to participate in the Student's treatment plan, approximately \$2,950.28;
- e. Reimbursement and prospective costs related to Student's transportation to and from [REDACTED] as needed for Student to make progress in his treatment plan;
- f. Reimbursement for the psychological evaluation of Dr. [REDACTED] in the amount of \$2,800.00.
- g. Reimbursement for the costs of escorted transportation to and from the [REDACTED] and [REDACTED] by [REDACTED] [REDACTED] in the approximate amount of \$11,408.48.

### **FINDINGS OF FACT**

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

#### **Child Find**

1. The Student is a 17-year old male who is currently an 11<sup>th</sup> grade student at a private residential facility, [REDACTED]. He qualifies for special education services under the disability category of emotional disturbance (ED) due to the Student's Major Depressive Disorder, Recurrent, Moderate; ADHD; Parent-Child Relational Problems; Sibling Relational Problems;

Cannabis Use Disorder, Severe; and Xanax Use Disorder, Severe. He struggles with social anxiety, anger management, and difficulty coping with stress and frustration. He has a history of abusing medication including Xanax and marijuana. (Testimony of Mother, Dr. C<sup>3</sup>; PE #1, SD #22.)

2. The Student was enrolled in the District commencing in the 2016-2017 school year, his Freshman year of high school. (Testimony of Mother, Dr. W; PE #89.) The Student had previously attended parochial school through the end of 8<sup>th</sup> grade. (Testimony of Mother; Dr. W.)

3. During his Freshman year, the Student was enrolled in primarily in honors level courses and received A and B grades. He received one “C” grade in Honors Plane Geometry first semester and one “D” grade after he transferred into Honors Biology second semester. The Student passed all of his classes and earned credit toward graduation requirements accordingly. (Testimony of SC<sup>4</sup>, Mother; PE #8, SD#18.)

4. The Student had two minor behavioral incidents at school during his Freshman year for harassment of a classmate and sexual harassment. The sexual harassment offense resulted in a two (2) day in-school suspension. These two offenses were within the range of normal conduct for a male Freshman student. (Testimony of Mother, SC, JB<sup>5</sup>; PE#90.)

5. The Student was psychiatrically hospitalized after the conclusion of his Freshman year in June 2017 and again at the beginning of August 2017. The incidents which led to the Student’s

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<sup>3</sup> Dr. C holds a Ph.D. in Clinical Child Psychology and is licensed to practice in Utah, Idaho, Vermont, Hawaii and Connecticut. (Testimony of Dr. C; PE #107.)

<sup>4</sup> SC is the Student’s school counselor. He holds a Master’s Degree in School Counseling, a Type 75 license with a counselor endorsement, and a LCPC certification. He has been employed as a school counselor with the District for five (5) years.

<sup>5</sup> JB is a Dean of Students at the District high school the Student attended. The Student was assigned to her caseload for his Freshman and Sophomore high school years. JB holds a Bachelor’s Degree in secondary education and a Master’s Degree in school leadership. She has been employed by the District since 2000 and has been Dean of Students for the past three (3) years.

June and August 2017 hospitalizations occurred at the Student's home. The Student was hospitalized in June 2017 after being very out of control and agitated at home and throwing things. Mother called police as she was afraid that the Student would hurt her or himself. The Student was again hospitalized in early August 2017 after threatening harm to himself or others. (Testimony of Mother.)

6. On August 22, 2017, Mother requested a meeting with SC and JB. A meeting was held on or about September 1, 2017. At said meeting, Mother advised that the Student had been in treatment over the summer without providing much detail. Mother relayed concerns about a friendship the Student had severed with another student who parent considered to be a bad influence and the negative backlash that resulted from same. SC and JB believed that the Student may have been receiving substance abuse treatment and may have been hospitalized. However, Mother did not share any details relating to the Student's possible hospitalization or treatment. SC and JB knew the Student had been close friends with another student who died by suicide over the summer. Social work services and supports were offered and SC and JB collaborated with SW to ensure that the Student was provided with social work support as he was grieving the loss of his friend. (Testimony of SC, JB, SW, Mother; PE #23-24, 88.)

7. The Student was again hospitalized in mid-October 2017. The District learned of this from Mother and via a notice from the hospital. SC and JB believed that the primary concern was substance abuse related and SC knew that Mother was seeking a residential substance abuse treatment center for the Student after the conclusion of his hospitalization. (Testimony of Mother, SC, JB; PE #93-94.)

8. A re-entry meeting was held upon the Student's return to school on November 2, 2017. Shortly thereafter referrals were made for the Student to receive additional social work supports and support for substance abuse. (Testimony of SC, SW, JB; PE #29-30, 88.)
9. During the first semester of his Sophomore year, the Student continued to be enrolled in honors courses. While his grades declined somewhat, he maintained passing grades and passed all of his classes. (Testimony of SC; PE #8, SD#18.)
10. Mother did not provide any documentation to the District regarding the Student's hospitalizations, specific mental health concerns, or any documentation from private providers during either the Student's freshman year or the first semester of his sophomore year. (Testimony of SC, SW, JB, Mother.)
11. After the Student's return to the District high school, from mid-November 2017 through mid-December 2017, several teachers expressed concerns about the Student's behaviors including inattentiveness in class, distractibility, rude behavior to teachers, an odd incident involving the Student's removal of a teacher's staple gun from her classroom, and dishonesty to teachers. (Testimony of JB, SC, Mother; PE #28, 31, 32, 34, 35.) The Student was also caught in possession of a marijuana vaping device at school in December 2017 and received a one (1) day suspension. (Testimony of JB; PE # 33.)
12. On January 23, 2018, the Student was involved in a behavioral incident at school in which he stole another student's wallet and hid it in a toilet paper dispenser in the restroom. Subsequent to that incident, the Student created a video in which he threatened another student and JB, the Dean of Students. In said video, the Student exhibited disturbing, out of control, threatening behavior. The Student received a five (5) day out-of-school suspension for said behavior. (Testimony of Mother, JB, SC; PE #37, 90, 111.)

13. During the period from October 2017 through January 2018, the pupil student services team<sup>6</sup> met several times to discuss the Student and how they could provide additional supports via social work and substance abuse services. Members of the pupil student services team believed the Student was dealing with grief, associated with the loss of his close friend, and substance abuse issues. Mother shared very minimal information with the District related to the Student's hospitalizations. (Testimony of JB, SC, SW; PE#92.)

14. After the January 23, 2018 incident the pupil student services team sought the input and advice of Dr. W in order to move forward with a special education screening of the Student. Dr. W, SC, and JB immediately reached out to Mother by phone. The purpose of the call was to discuss the incident with Mother and share information about the special education process. Dr. W indicated the District's willingness to move forward with special education screening and evaluation as soon as possible. During the conversation, Mother indicated that she had medical documentation she would share with the District. After Dr. W did not receive same, she personally followed up with Mother a week later, in the evening regarding the documentation. SC also followed up with Mother via email on January 20, 2018. (Testimony of Dr. W<sup>7</sup>, SC, JB; PE #38-40.)

15. In late January 2018, Mother advised Dr. W that the Student was in a treatment facility and that she did not want to proceed with a special education screening and assessment at that time. She further advised that the Student was not available for a special education case study evaluation. (Testimony of Dr. W, JB, SC; PE#38.)

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<sup>6</sup> The pupil student services team consisted of JB, SC, SW, and one additional individual.

<sup>7</sup> Dr. W is the District Director of Special Education and has held that position since 2013. She holds the following educational credentials: Bachelor of Science Degree – [REDACTED]; Master's Degree in School Psychology – [REDACTED]; Master's Degree in Educational Leadership – [REDACTED]; Computer Science Certificate (Master's Degree) – [REDACTED]; Ph.D. in School Psychology – [REDACTED].

16. On February 27, 2018, Mother advised the District, via email to SC, that she wished to proceed with the special education screening. (Testimony of Mother, SC; PE #38.)
17. The District provided notice of its intent to evaluate the Student for special education services and provided the Procedural Safeguards to Mother on March 9, 2018. (PE# 5.)
18. The school psychologist communicated with Mother in mid-March regarding obtaining the required consents for the Student's past and current treating therapists to provide information to the District for purposes of a special education screening. (Testimony of Dr. W, SC; PE #39-40.) Mother provided consent for an initial evaluation on March 22, 2018. At the time of Mother's consent, there were less than 60 pupil attendance days remaining in the 2017-2018 school year. (SD #14; PE# 108.)
19. The District and Mother exchanged email communication on May 30, 2018 regarding an evaluation of the Student. The District inquired whether the Student could be made available for a special education evaluation as he was at an out-of-state treatment facility. Mother responded that she had obtained a psychological evaluation of the Student and would make it available to the District. (Testimony of Mother, Dr. W, SC; PE #44-45.)
20. Mother provided the psychological evaluation of Dr. ██████ C ██████ to the District for purposes of the eligibility and IEP meeting. On the basis of Dr. C ██████'s April 24, 2018 evaluation report, the Student was found eligible for special education services under the disability category of Emotional Disturbance (ED). (Testimony of Mother, Dr. W; PE #1.)
21. Prior to receipt of Dr. C ██████'s psychological report and evaluation, the District had no basis to believe that the Student was a student with a disability. No evidence was presented at hearing to show that the District had any information to assist it with identifying ED criteria occurring "over a long period of time and to a marked degree", or evidence of any other

disability, and there was no evidence to indicate any adverse impact on the Student's educational performance. (Testimony of JB, SC, SW, Dr. W.)

22. An Eligibility and IEP meeting was held for the Student on July 6, 2018. (Testimony of Dr. W, SC, JB, Mother; PE #7, SD#22.)

### **WTC**

23. As a result of the January 23, 2018 behavioral incident and on-going concerns regarding the Student's substance abuse, Mother admitted him to WTC and paid for transport to that location in Utah. (Testimony of Mother; PE# 82-83.)

24. Mother paid unreimbursed expenses of \$1,045.62 for the Student's treatment at WTC. (Testimony of Mother; PE# 83.) The costs to transport the Student to WTC were unreimbursed by insurance and were \$4,222.73. (Testimony of Mother; PE# 82.)

25. The Student attended WTC from January 29, 2018 through March 1, 2018. WTC is a substance abuse treatment facility. WTC utilized a twelve step program for substance abuse treatment and did not provide therapy for any mental health related issues. The Student was not successful at WTC. He engaged in behaviors that were disruptive and compromised the safety of the patient, his peers, and staff. He was verbally aggressive, distractive during therapy, and stole and hid a butter knife from the cafeteria and alluded to the fact that he had a weapon. The Student was discharged from WTC on March 1, 2018. (Testimony of ML<sup>8</sup>; PE #2.)

26. Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that WTC did not provide any mental health support or counseling, did not provide any educational or special education services to the Student and did not meet even his substance abuse treatment needs. The Student was unable to benefit from the substance abuse treatment

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<sup>8</sup> ML holds a Master's Degree in Social Work from [REDACTED]. He is a licensed addiction counselor in Montana and is a nationally certified Master Addiction Counselor. He has been employed by WTC for 20 years and is its Clinical Director.

due to his on-going behaviors. This Hearing Officer found the testimony of ML to be credible and persuasive. This credibility finding is based upon ML's educational background, addiction counseling experience, and consistent, undisputed testimony at hearing.

27. After his discharge from WTC, the Student was admitted to WWTC. (Testimony of Mother, ML, SH.)

### WWTC

28. The Student was transferred to WWTC on March 1, 2018 and remained there until July 5, 2018. WWTC is a wilderness treatment program that "evaluates, triages, and stabilizes" adolescents and young adults who have substance abuse, behavioral and emotional difficulties. The program for each student is highly individualized with a minimum of three (3) hours per week of therapy including individual, group and family therapy. During the Student's stay at WWTC, there was a constant process of evaluation of the Student and his needs by SH and his treatment team. (Testimony of SH<sup>9</sup>; PE #4.)

29. While at WWTC, the Student received no school related work or demands, no family involvement, and no contact with the opposite sex. (Testimony of SH; PE #4.)

30. At the conclusion of the WWTC program the Student received the following diagnosis: Oppositional Defiance, Marijuana abuse (in early remission); ADHD (predominantly hyperactive/impulsive type). (Testimony of SH; PE #4.)

31. The Student's needs after WWTC were identified to be as follows: 1.) Fifteen (15) hours of therapeutic interventions per week including individual, group, and family therapy. The therapy would address how the Student engages with his social environment, his attitude and relationship with drugs and how they solve problems for him in a destructive manner, his

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<sup>9</sup> SH is a primary therapist and ownership partner at WWTC. He holds a Bachelor's Degree in psychology with a minor in child and family studies and a Master's Degree in marriage and family therapy. He has been so employed since 2008.

difficulty with focus and following rules, and his difficulty with healthy relationships with his family. 2.) Substance abuse treatment using an alternative model to a 12-step model as said model was not successful for him during his time at WTC. 3.) The Student should receive the above in a small program setting with a higher staff to student ratio in order for staff to recognize and intervene on an immediate basis. Further, in a larger setting the Student would find more ways to be disruptive and to create problems in the community. The program should have a “home” type feel where he would be required to be an integral part of the community with daily chores and responsibilities to address his negative views of family and home environments. The Student also needs exercise and recreational activities as part of his daily life as he had difficulty staying focused and engaged if not given an outlet for his energy and active nature. (Testimony of SH, Dr. C; PE #4.)

32. Mother paid unreimbursed expenses of \$7,185.75 to [REDACTED] to have the Student transported from WTC to WWTC on March 1, 2018. (Testimony of Mother; PE# 82.)

33. Mother paid unreimbursed expenses of \$69,475.00 for the Student’s placement at WWTC from March 1, 2018 through July 5, 2018. (Testimony of Mother; PE #80, 84.)

34. While the Student was at WWTC, Mother engaged the services of Dr. C to conduct a psychological assessment of the Student. (Testimony of Mother; Dr. C; Dr. W; PE# 1; SD# 22.)

35. Dr. C’s assessment was provided to Dr. W and the school psychologist by Mother. It was adopted by the District in the school psychologist’s assessment and formed the basis for the District’s July 6, 2018 IEP. (PE #1; SD# 22.)

36. Dr. C diagnosed the Student with the following: Major Depressive Disorder, Recurrent, Moderate; ADHD; Parent-Child Relational Problems; Sibling Relational Problems; Cannabis

Use Disorder, Severe; and Xanax Use Disorder, Severe. The Student struggles with social anxiety, anger management, and difficulty coping with stress and frustration. He has a history of abusing medication including Xanax and marijuana. Dr. C ruled out a Bipolar Disorder diagnosis at this time due to the Student's known substance abuse. He was not able to determine that the Student's symptoms were caused by Bipolar Disorder rather than drug use as the symptoms for both in teens are similar. (Testimony of Dr. C; PE# 1; SD# 22.)

37. Dr. C recommended that after WWTC, the Student be placed at a longer-term residential therapeutic school that can address his poor coping skills, depression, severe emotional dysregulation, family issues, and an increasingly severe drug problem. The program should provide substance abuse-specific counseling, psychiatric support and monitoring and a focus on development and internalization of healthy coping skills. Individual, group and family therapy are all important components of said program. (Testimony of Dr. C; PE #1.)

38. Mother paid unreimbursed costs of \$2,800.00 for Dr. C's psychological evaluation. (Testimony of Mother; PE# 81.)

39. Mother provided written notice to the District of intent to place a child with a disability in a non-public facility on June 27, 2018. (Testimony of Mother; PE# 48.)

40. At the July 6, 2018 IEP meeting the following were present: Mother, Dr. W, District Program Chair, District Counselor, School Social Worker, School Psychologist, Student Intervention Director, Special Education Administrator. JB, SW, SC were not present. None of the Student's general education teachers were present. (Testimony of Mother; PE#7, SD# 22.)

41. Both parties were represented by legal counsel at the July 6, 2018 IEP meeting. (Testimony of Mother, Dr. W; PE# 7, SD# 22.)

42. At the time of the July 6<sup>th</sup> meeting, an IEP document had not been drafted for the Student. (Testimony of Mother, Dr. W.)
43. At the time of the July 6<sup>th</sup> meeting, goals and service minutes for the Student had not been determined. (Testimony of Mother, Dr. W.)
44. The School Psychologist adopted the testing, test results, diagnoses, and recommendations of Dr. C. Dr. C's evaluation informed the Student's needs, goals, and related services and service minutes for purposes of the development of his July 2018 IEP. (SD# 22, PE# 1, 7.)
45. At the July 6, 2018 IEP meeting, it was agreed that the Student required at private residential facility, out-of-state. (Testimony of Mother, Dr. W; SD# 22.)
46. A physical site for delivery of educational programming and related services was not named by the District at the July 6, 2018 eligibility and IEP meeting. (Testimony of Mother, Dr. W.)
47. After the IEP meeting, a District social worker drafted IEP goals for the Student. The IEP document, including proposed goals, was forwarded to Mother and her legal counsel, through the District's legal counsel, on July 9, 2018. Attorneys for both parties negotiated the goals and other terms of the IEP. (Testimony of Mother; Dr. W; PE# 53-60.)
48. After the IEP meeting, the BASC information provided by Mother was scored and later incorporated into the Student's IEP. (Testimony of Mother; Dr. W.)
49. After the IEP meeting, service minutes were established. The Student is to receive 2000 minutes per week of residential therapeutic courses including 300 minutes per week of group counseling, 50 minutes per week of counseling services, and 50 minutes per week of parent counseling. (SD# 22; PE# 7.)

50. The parties agreed to finalize the IEP on July 31, 2018. (Testimony of Mother; Dr. W.)
51. A representative from ██████████ RTC was not present at the Student's July 6, 2018 eligibility and IEP meeting. No one from ██████████ appeared to testify at hearing. (Testimony of Mother, Dr. W.)
52. General information was provided at hearing by Mother and Dr. W about ██████████. However, no information was presented regarding the specific programming provided by ██████████ and how said programming would apply to and meet the identified needs of this Student. (Testimony of Mother and Dr. W.)
53. ██████████ had space available for the Student at the time of the July 6, 2018 IEP meeting. (Testimony of Dr. W.)
54. A representative from ██████████ RTC was not present at the Student's July 6, 2018 eligibility and IEP meeting. No one from ██████████ appeared to testify at hearing. (Testimony of Mother, Dr. W.)
55. Very limited information was presented at hearing regarding ██████████'s programming and no evidence was presented related to the specifics of ██████████'s programming or how said programming would meet the identified needs of this Student. (Testimony of Mother; Dr. W.)
56. No evidence was presented at hearing related to ██████████'s ability to provide a space, programming and services to the Student on or about July 6, 2018. (Testimony of Mother; Dr. W.)
57. A representative from ██████████ RTC was not present at the Student's July 6, 2018 eligibility and IEP meeting. (Testimony of Mother, Dr. W.)
58. ██████████ had space available for the Student as of September 10, 2018 and accepted the Student. (Testimony of Mother, Dr. W; PE# 66.)

59. ██████████ is an ISBE approved out-of-state residential facility. ██████████ provides therapeutic programming for students with mental health and substance abuse issues. All clinical staff are licensed psychiatrists, LCSWs, LPCs, LMWs or are provisionally licensed therapists. There is an opportunity for experiential learning at ██████████. The programming is highly individualized and is based upon the needs of the individual student. (Testimony of RD<sup>10</sup>; PE #104.)

60. No testimony was presented at hearing to illustrate that the mental health, behavioral, and substance abuse programming provided at ██████████ RTC would meet the needs of this Student. (Testimony of RD, Mother, Dr. W.)

61. ██████████ is a small residential treatment facility for young men ages 14-18 years of age. It is certified by the National Association of Therapeutic Schools. It provides substance abuse and mental health treatment for its patient population. The Student has been attending ██████████ since July 5, 2018. (Testimony of SS<sup>11</sup>, Mother, Dr. W.)

62. At ██████████, the Student resides in a home with up to 23 other students. There are 2-4 students per bedroom with a shared bathroom. The Student is supervised at all times, other than during his employment, by ██████████ staff referred to as “mentors”. The Student receives weekly therapy as follows: 1.5 hours per week of individual therapy, 1-1.5 hours per week of family therapy, 4 hours of group therapy per week with a licensed therapist present. Two days per week, the Student engages in recreational therapy, under the supervision of a mentor, for 30

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<sup>10</sup> RD is the Admissions Coordinator at ██████████ RTC. She has been so employed for three (3) years. In her capacity as Admissions Coordinator, she obtains applicant information, medical information, demographic information, and sources of funding information. (Testimony of RD.)

<sup>11</sup> SS is one of the Student’s treating therapists at ██████████. SS holds a Bachelor’s Degree in Family Studies and a Master’s Degree in Marriage and Family Therapy. He currently practices under an associate license under the supervision of Adam Hall, a licensed therapist. He expects to receive his clinical license at the end of May 2019. SS has been trained in the Seven Challenges program.

minutes to 1.5 hours each day. Recreation is used as a coping mechanism to assist the Student in working through frustrations in a healthy manner. (Testimony of SS.)

63. There are four treating therapists at [REDACTED]. All therapists are licensed therapists or LCSWs. (Testimony of SS.)

64. [REDACTED] uses the Seven Challenges model for substance abuse treatment. This method utilizes journaling and challenge questions for students to work through individually and in groups. Its goals are to enable students to reflect upon and talk about their substance abuse and its effects; to enable students to take responsibility for their use and actions; to provide support in responding to pressures for abstinence; and to develop effective responses to pressure and increase motivation to change. The Student has been working through the challenges since his arrival at [REDACTED] and is currently working on Challenge #6. (Testimony of SS; P#112.)

65. [REDACTED] utilizes a Phase program as part of its mental health therapy and substance abuse treatment. The Student is currently working on the Challenge Phase. The Student has to demonstrate skills such as trustworthiness, accountability, respect for boundaries, recognition of difficulties in order to earn privileges and progress through the program's phases. The Student finds value in progressing from phase to phase and earning privileges. (Testimony of SS; P#100-101.)

66. The Student has an individual treatment program and he is making progress toward same. He is currently working on life decisions and how to make decisions about substance abuse specific to his cannabis use. He is developing coping skills, skills to regulate his emotions and behavior, and skills to regulate and discontinue his substance use and abuse. He is working on how to validate and accept anxiety and avoid the negative behaviors associated therewith. The

Student is making progress toward all of the seven (7) goals in his treatment plan. (Testimony of Mother; SS; P# 99.)

67. There are academic expectations for the Student at [REDACTED]. Some academic classes are on-line. English classes are face-to-face with a teacher. There is also independent study for students. The Student is progressing academically in his classes and is achieving passing grades in all of his classes. (Testimony of Mother; SS; P#11-13.)

68. The Student is also employed at a local restaurant as part of his [REDACTED] experience. As he demonstrated honesty and trustworthiness, he was able to obtain employment and works approximately twenty hours per week. He is not supervised by [REDACTED] staff during his employment although [REDACTED] staff accompany him to and from his place of employment. (Testimony of SS.)

69. [REDACTED] charges a per diem rate of \$350.00. (Testimony of Mother; PE#85.)

70. From July 5, 2018 through May 31, 2019, Mother incurred unreimbursed charges of \$121,303.75 related to the Student's enrollment at [REDACTED] RTC. (Testimony of Mother; PE# 80, 85.)

71. Mother incurred unreimbursed costs of \$539.89 to fly the Student home for a scheduled visit as part of his treatment. (Testimony of Mother; PE# 86.)

72. The Illinois State Board of Education (ISBE) has a list of approved residential facilities. Any private facility can apply to ISBE for approval. ISBE approval means that the facility is approved by the State Board of Education of the state in which the facility operates and that it is approved with respect to health, safety, and cleanliness by the state equivalent of the Illinois Department of Children and Family Services. None of the residential facility in the State of Utah are approved as the Utah State Board of Education does not oversee such facilities and Utah does

not have an equivalent of the Illinois Department of Children and Family Services. (Testimony of HC<sup>12</sup>.)

### **CONCLUSIONS OF LAW**

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

#### **Child Find Obligation**

The Individuals with Disabilities Education Act (“IDEA”) guarantees children with disabilities the right to a free, appropriate, public education (“FAPE”). 20 U.S.C. §1412(a)(1). IDEA defines a child with a disability as a child having a specific physical, mental, or emotional condition who, because of the disability, needs special education and related services. 34 C.F.R. §300.8. To be eligible for special education, the student must fit the statutory definition of a “child with a disability.” 20 U.S.C. §1401(a)(1)(A); 34 C.F.R. §300.8. Specific evaluation procedures must be used for determining whether a child fits the statutory definition of a “child with disabilities.” See 34 C.F.R. 300.8(a)(1), 300.304-300.311. In addition, all of the statutory definitions require that the disability “adversely affect the child’s educational performance.” See 34 C.F.R. 300.7(b)(1-13); *Mary P ex rel. Michael P. v. Illinois State Bd. of Educ.*, 919 F. Supp. 1173 (N.D. Ill. 1996.) If the student is deemed eligible, then the IEP team determines precisely what services are appropriate. These decisions are outlined in an Individualized Education Program (“IEP”). See 34 C.F.R. §§300.340-300.350; 23 Ill. Admin Code §226.5, 226.562.

In Illinois, each school district shall be responsible for seeking out and identifying all children from birth through age twenty-one who may be eligible for special education and related

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<sup>12</sup> HC is employed by the Illinois State Board of Education as its Executive Director of Special Education Services.

services. 34 C.F.R. §300.111(a)(1)(i). Procedures have been developed so that school districts can fulfill the child find responsibilities. 23 Ill. Admin Code §226.100.

Parent maintains in her Due Process Complaint Notice that the District failed to timely identify the Student as a “child with a disability” alleging that the District should have found him eligible at some time during the Fall of the 2017-2018 school year. This Hearing Officer finds Parent’s contention to be without merit. The testimony and documentary evidence presented at hearing reveal the following.

During his Freshman year of high school, the Student was enrolled primarily in honors level courses receiving mostly A and B grades. At the conclusion of his Freshman year, the Student passed all of his primarily honors level courses and earned credit toward graduation requirements accordingly. There were two minor behavioral incidents involving the Student during his 9<sup>th</sup> grade year but nothing beyond what was considered normal for a Freshman boy. (FF #2-4.) While the Student was psychiatrically hospitalized in June 2017 and again in August 2017, the incidents which precipitated the hospitalizations occurred at home and Mother shared little information with the District staff. JB, SW, and SC believed that the Student may have had substance abuse issues and they knew that he was grieving the loss of a close friend at the beginning of his Sophomore year. (FF #5-7.) After a third hospitalization in October 2017, the District offered additional social work supports, beyond grief counseling, and referred the Student to another social worker who dealt with substance abuse issues. (FF#8.) During the first semester of sophomore year, the Student continued to be enrolled in primarily honors level courses. While his grades had declined, he continued to pass all of his courses. (FF #9.) At hearing, much was made of an allegedly disturbing journal entry the Student wrote in his first semester Sophomore year English class. While his English teacher, JH, appeared to testify at

hearing, he was not a very cooperative witness and the journal entry was never testified to in detail or introduced into evidence at hearing. While JH testified that he reported the disturbing journal entry to SW, she was unable to recall or substantiate this claim. An email exchange between JH and another teacher, along with JH's limited testimony, reflect a concern, but not a concern which this Hearing Officer finds would provide District personnel with reason to believe the Student had a disability, or specifically, an emotional disability. Therefore, this evidence was given little weight by this Hearing Officer.

From November – December 2017, behavioral concerns began to arise. However, the most serious behavioral concerns occurred in December 2017 when the Student was caught with a marijuana vaping device at school (FF#11) and on January 23, 2018 when the Student was suspended from school for theft and threats to a student and dean. (FF #12.) During that period, District staff were convening as a team to attempt to find ways in which support the Student based upon the little information they had and a belief that the Student's difficulties were substance abuse related. (FF#13). After the January 23, 2018 incident the pupil student services team and Dr. W immediately reached out to Mother to begin the process of screening for special education services. (FF# 14.)

It is undisputed that Students with substance abuse difficulties alone are not classified as children with disabilities under the IDEA because they do not meet the specific criteria for one of the 13 disability categories. 34 C.F.R. 300.8(c). *See e.g. Springer v. Fairfax County Sch. Bd.*, 27 IDELR 367 (4<sup>th</sup> Cir. 1998). When a student's behavior is solely the result of drug and alcohol abuse and not a disability, the student is not eligible for IDEA services. *P.K. v. Bedford Cent. Sch. Dist.*, 50 IDELR 251 (S.D.N.Y. 2008) and *E.K. v. Warwick Sch. Dist.*, 62 IDELR 289 (E.D. Pa. 2014). During the time period in question, the District had no basis to suspect that the

Student may be a student with a disability as he was meeting academic expectations in school and not exhibiting problematic behaviors until the January 23, 2018 incident. Although the Student was hospitalized on three occasions, two occurred over the summer months while the Student was not attending school. Further, Mother provided limited information, all of which was related to substance abuse concerns, and did not share with the District any medical documentation she may have possessed related to mental health issues. (FF# 6-10.)

In instances of emotional disturbances, there is a greater expectation that parents and others will assist school officials in identifying children in need of special education services. *See Huntsville City Bd. of Educ.*, 22 IDELR 931 (SEA AL 1995); and *Matanuska-Susitna Borough Sch. Dist.*, 51 IDELR 56 (SEA AK 2008). The Student in this matter was found eligible for special education services under the disability category of emotional disturbance (ED). While the above cited case law is not binding on this Hearing Officer, it is persuasive and reflective of the criteria required for identification of a Student with an emotional disturbance disability. Pursuant to 34 C.F.R. 300.8(c)(4)(i), the criteria for emotional disturbance requires that the Student exhibit certain characteristics “over a long period of time and to a marked degree that adversely affects a child’s educational performance”. In the instant matter, the Student’s behavioral incidents were minor, prior to the January 23, 2018 incident, and the District was not provided with any information from Mother to assist with identifying ED criteria occurring “over a long period of time and to a marked degree” and there was no evidence to indicate an adverse impact on the Student’s educational performance. (FF# 3-11.) Prior to the January 23, 2018 incident, the District had no basis to suspect that the Student had a disability. After that incident, the District reached out to Mother on several occasions to attempt to obtain additional information. In late January 2018, Mother advised the District that she did not wish to pursue

special education services at that time. On February 27, 2018, she again contacted the District to move forward with special education screening. On March 9, 2018, the District provided Mother with notice of its intent to evaluate the Student and received Mother's consent to same on March 22, 2018 (FF# 14-18.) Based upon the testimony and documentary evidence introduced at hearing, this Hearing Officer finds that the District met its Child Find obligation pursuant to 34 CFR §300.131; 23 Ill. Admin §226.100 when it concluded that an evaluation of the Student was warranted after the January 23, 2018 incident.

The Illinois School Code provides that "the determination of eligibility shall be made and the IEP meeting shall be completed within 60 school days from the date of written parental consent." In the event that fewer than 60 pupil attendance days remain at the time parental consent is obtained, the eligibility determination shall be made and the IEP meeting shall be completed prior to the first day of the following school year. 105 ILCS 5/14-8.02(b). As parental consent was obtained on March 22, 2018, with less than 60 pupil attendance days remaining in the school year, the District timely made the eligibility determination and held the IEP meeting on July 6, 2018. This timeline was undisputed at hearing.

### **Tuition Reimbursement for Parent's Unilateral Placement**

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

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private . . . elementary school or secondary school without the consent of or referral by the public agency, a court or hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency has not made a free appropriate public education (FAPE) available to the child in a timely manner and that the private placement is appropriate. 34 C.F.R. §300.148(c); *Burlington v. Department of Education of Massachusetts*, 471 U.S. 359 (1985); *Florence County School District Four v. Carter*, 510 U.S. 7 (1993).

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

### **Evaluation**

The District has the burden of proof for the appropriateness of its evaluations. 105 ILCS 5/14-8.02(b); *Board of Education of Murphysboro Community Unit School District No. 186 v. Illinois State Board of Education*, 41 F.3d 1162, 1167, 1169 (7<sup>th</sup> Cir. 1994). An appropriate evaluation is one which complies with the pertinent federal and state regulations. *Krista P. v. Manhattan School District*, 255 F. Supp. 2d873, 887 (N.D. Ill. 2003). In this matter, the District’s psychological evaluation of the Student relied considerably on the private psychological evaluation of Dr. C. Dr. C’s testing, results, diagnoses, and recommendations were incorporated by the school psychologist into her evaluation. Subsequently, this information informed the development of the Student’s IEP regarding eventual IEP goals, related services, and related service minutes. (FF#35-37, 44.) The District did not dispute any of Dr. C’s findings or recommendations. As Mother provided the private psychological evaluation upon which the District relied for its eligibility determination and the Student’s IEP, this Hearing Officer finds that fundamental fairness dictates that Mother is entitled to reimbursement for same. Therefore, Mother is entitled to reimbursement for the private psychological evaluation of Dr. C.

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

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

In matters alleging a procedural violation, the hearing officer may find that a student did not receive a FAPE only if the procedural inadequacy impeded the student’s right to a FAPE, significantly impeded the parent’s opportunity to participate in the decisions-making process regarding the provision of a FAPE to the parent’s child or caused a deprivation of educational benefit. 20 U.S.C. §1415(f)(3)(E); 34 C.F.R. §300.513(a); *Rowley* at 206-207. In the instant case, Parent alleges the following procedural violations of the IDEA: 1.) School personnel who had knowledge of the Student were not present at the IEP meeting; 2.) A physical site for delivery of the Student’s educational programming and related services was not named and a

representative from the proposed residential placement was not present at the July 6, 2018 IEP meeting. The testimony and documentary evidence presented at hearing reflects the following.

At the July 6, 2018 eligibility and IEP meeting, a general education teacher was not present at the meeting nor were the school counselor, dean, or social worker who had worked with the Student. (FF# 40.) The IEP team must include “not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment). *See 34 CFR §300.321.* In this case, the Student had been participating in the general education environment prior to the January 23, 2018 incident and his unilateral placement by Mother. (FF# 2-9.) Based upon the testimony and documentary evidence presented at hearing this Hearing Officer finds that the District violated 34 C.F.R. §300.321.

Mother next alleges that a physical site for delivery of the Student’s educational programming and related services was not named and a representative from the proposed residential placement was not present at the July 6, 2018 IEP meeting. “[B]efore a public agency places a child with a disability at a private school or facility, the public agency must initiate and conduct a meeting to develop an IEP for the child and the agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation including individual or conference telephone calls.” *See 34 C.F.R. §300.325.* At hearing, three potential residential placement sites were discussed. It is undisputed that no representative was present from any of the proposed residential facilities at the July 6, 2018 IEP meeting. (FF# 51, 54, 57.) It is undisputed that an IEP document was not prepared and presented at the July 6, 2018 meeting. (FF# 42.)

The District argues that it was not required to have representatives of the private facilities present at the July 6, 2018 IEP meeting as eligibility was not determined until that meeting, the District had not proposed a private placement until that meeting, and signed consents had not yet been obtained allowing the District to invite such representatives. The District further argues that Mother did not object to the lack of any representatives being present at the time of the meeting.

Based upon the testimony presented at hearing, this Hearing Officer finds that the District recommended an private out-of-state residential facility for the Student at the July 6, 2018 IEP meeting. (FF# 45.) However, a specific facility was not named. (FF# 46.) This Hearing Officer finds, based upon the above, that a procedural violation of IDEA did occur in this case. Before determining whether the procedural violations in this matter rose to the level of a denial of FAPE to the Student or caused a deprivation of educational benefit, this Hearing Officer believes that an examination of the District's substantive obligations is necessary.

In this matter, this Hearing Officer finds the District's procedural violations to be inextricably intertwined with its substantive obligations to provide the Student a FAPE. Therefore, the inquiry turns to the District's substantive obligations. "An IEP is not a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth. See *Andrew F.*, 137 S. Ct. 988, 999. The child's circumstances are described by such information and drive the educational planning.

The IDEA provides a specific framework for Individualized Education Programs (IEPs), composition of the IEP team, and development of the IEP among other things. See 34 C.F.R. §§300.320-300.325. Under IDEA, an IEP must include "(1) a statement of the child's present levels of academic and functional performance, including how the child's disability affects the

child's involvement and progress in the general education curriculum" and "(2)(i) [a] statement of measurable annual goals, including academic and functional goals designed to (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum." 34 C.F.R. 300.320(a). "[A]n IEP is reasonably calculated to confer educational benefit when it is 'likely to produce progress, not regression or trivial educational advancement.'" *Alex R. ex rel. Beth R. v. Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 615 (7<sup>th</sup> Cir. 2004.) [T]he progress contemplated by the IEP must be appropriate in light of the child's circumstances. . . . The instruction offered must be 'specially designed' to meet a child's 'unique needs' through an *individualized* education program." *Andrew F.*, 137 S.Ct. 988. The IEP is to provide a statement of the "special education and related services and supplementary aids and services . . . to be provided to the child." 34 C.F.R. 300.320(a)(4).

The testimony and documentary evidence presented at hearing illustrate that the District circumvented the entire Individualized Education Program process established by IDEA. First, the District added an additional layer for evaluation of a student, a special education "screening," as a part of its identification process and prior to evaluating the Student for special education and related services. (FF# 14.) IDEA does not provide for an additional layer such as this "screening" prior to evaluation of a student. Second, the IEP team must consist of specific individuals including "at least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment)." A regular education teacher familiar with the Student was not present at the July 6, 2018 IEP team meeting. There is no evidence that said individual was excused by all parties. This is undisputed. (FF# 40.) Third, an IEP must include certain information: present levels of performance; measurable annual goals, including

academic and functional goals; the goals must meet the child's needs and allow him to progress; it must confer educational benefit; the progress contemplated must be appropriate in light of the child's circumstances. At the July 6, 2018 IEP meeting, an IEP document did not exist. An IEP document was not created during the meeting. This is undisputed. (FF# 42-43.) The IEP goals were not drafted by an IEP team. The goals were drafted by a school social worker after the IEP meeting and were provided to counsel for both parties who engaged in negotiations thereafter. (FF#47.) Mother's BASC information was not scored and included in the IEP until after the meeting. (FF# 48.) Related services and appropriate service minutes were not discussed and included in the IEP until after the meeting. (FF# 49.) The IEP document was not finalized until July 31, 2018. (FF# 50.) The above process, evident in this case, is not the carefully considered analysis of the child's present levels of achievement, disability, and potential for growth which results in the development of an individualized educational program as envisioned by *Andrew F.* and required by IDEA.

This Hearing Officer finds that the creation of the Student's IEP in this matter was relegated to a school social worker and the attorneys for both parties. "The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the IDEA to state and local educational agencies in cooperation with the parents or guardians of the child." *Rowley* at 207. Educators "have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents." *Lachman v. Illinois State Bd. Of Educ.*, 852 F.2d 290, 297 (7<sup>th</sup> Cir. 1988); *Williams v. Milwaukee Public Schools* (E.D. Wis. 2012). Most of these individuals are not educators. These individuals are not all members of the IEP team and one school social worker, working with the special education director, is not an IEP team. This

is not the IEP process contemplated or required by in IDEA. While District personnel appeared to have the best of intentions and were attempting to move quickly, the actions were a clear circumvention of the process required by IDEA and resulted in a denial of FAPE to this Student.

Testimony at hearing illustrates that after finding the Student eligible for special education services under Emotional Disturbance, Dr. W made a motion to move toward placement and a private residential facility, out-of-state was agreed upon. (FF# 45.) While the after-the-fact IEP notes that the continuum of placements was considered at arriving at this determination, there is simply no evidence in the record to support this statement and the testimony at hearing indicates otherwise. The IDEA contemplates that “an appropriate education is one that occurs in the least restrictive environment.” 20 U.S.C. §1412(a)(5); *Beth B. v. Van Clay*, 282 F.3d 493, 498 (7<sup>th</sup> Cir. 2002); *see Alex R. v. Forrestville Valley Comm. Unit Sch. Dist. #221*, 375 F.3d 603, 618 (7<sup>th</sup> Cir. 2004.) No evidence was presented at hearing to indicate that other, less restrictive placements were contemplated.

As indicated above, with respect to procedural violations, specific physical sites for delivery of special education services and supports were not presented by the District at the July 6, 2018 meeting and no representatives from any residential treatment centers were present. (FF# 46, 51, 54, 57.)

Based upon the above procedural and substantive violations which occurred in this matter, this Hearing Officer finds that the totality of the circumstances resulted in a denial of FAPE to the Student and a deprivation of educational benefit. This Student was denied the benefit of an IEP team comprised of a regular education teacher who was familiar with him, his educational performance, and his behavioral struggles in the classroom. Further, he was denied the process of the IEP team’s careful consideration and discussion of his present levels of

performance and how that information impacted his educational programming. He was denied the IEP team's careful consideration and creation of measurable goals to meet his unique needs. He was denied the IEP team's careful consideration and creation of an IEP calculated to confer educational benefit and likely to produce progress including related services and appropriate service minutes. He was denied the IEP team's discussion of the continuum of placement options and careful consideration of the least restrictive placement that would meet his unique needs. He was denied considered recommendations by the IEP team regarding which physical site would deliver his educational programming and related services.

After the July 6, 2018 meeting, the names of three private residential facilities were provided to Mother. Those facilities were [REDACTED], [REDACTED], and [REDACTED]. However, no evidence was presented at hearing to indicate that any of those physical sites were appropriate or would be able to implement the Student's IEP. No one appeared at hearing from either [REDACTED] or [REDACTED]. While Mother and Dr. W provided general information regarding their respective understandings of the programming at those facilities, no evidence was presented to illustrate that the specific needs of this Student could be met and his IEP implemented at either of those two facilities. [REDACTED] appeared to have space available for the Student on July 6<sup>th</sup>. However, he would not have been accepted at that facility at that time as referrals had not yet been sent by the District. (FF# 51-56.)

While [REDACTED] is an ISBE approved facility that provides therapeutic programming for students with mental health and substance abuse issues, the testimony at hearing did not specify whether the programming provided at [REDACTED] would meet the needs of this Student or whether it could implement his IEP. (FF#57-60.) Further, [REDACTED] was unable to accommodate the Student until September 10, 2018, more than two months after the IEP

meeting. (FF# 58.) Therefore, it is the determination of this Hearing Officer that the District was unable to provide an appropriate residential placement that could meet this Student's needs and implement his IEP, thus denying him a FAPE.

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

As this Hearing Officer has determined that the District did not make a FAPE available to this Student after it found him eligible for special education services and supports on July 6, 2018, the inquiry turns to the second prong of the *Burlington-Carter* inquiry and the appropriateness of Parent's unilateral placement.

The second prong of the *Burlington-Carter* inquiry requires the Parent's unilateral placement to be appropriate. In determining whether a unilateral placement is appropriate, the relevant inquiry is "whether it is reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, No. 15-827, 137 S.Ct. 988 (U.S. Mar. 22, 2017.) More specifically, based on a totality of factors, "[a] unilateral private placement is only appropriate if it provides 'educational instruction *specifically* designed to meet the *unique* needs of . . . the child [with a disability].'" *Bd. of Educ. V. Risen*, 61 IDELR ¶130 (N.D. Ill. 2013); *Jenna R.P. v. City of Chicago Sch. Dist. No. 229*, 3 N.E.3d 927 (Ill. Ct. App. 2013)(both citing the *Rowley* quotation in *Frank G. v. Bd. of Educ.*, 459 F.3d 356, 365 (2d Cir. 2006)). "A unilateral private placement cannot be regarded as 'proper under the [IDEA]' when it does not, at a minimum provide some element of special education services in which the public school placement was deficient." *Jenna R.P.* at 941. The testimony and documentary evidence presented at hearing illustrate the following.

## WTC

As the Student was not identified as a student with a disability entitled to special education services and supports at the time he was enrolled at WTC, whether this placement is appropriate is not an issue and Mother is not entitled to reimbursement for costs associated with the Student's placement at and transportation to and from this facility. However, assuming *arguendo*, that the Student was eligible for special education services and supports at the time he was enrolled at WTC, this Hearing Officer finds WTC was not an appropriate placement for this Student. WTC is a substance abuse treatment facility that does not provide therapy for mental health related issues and does not provide any educational programming. Further, WTC employed a 12-step model for substance abuse treatment that was not appropriate for this Student. The Student was unable to make progress at WTC and was discharged by the facility. (FF# 23-26.) As WTC is not an appropriate placement for this Student, Mother is not entitled to reimbursement for costs associated with the Student's enrollment there and is not entitled to reimbursement for transportation costs for the Student to and from this facility.

## WWTC

As the Student was not identified as a student with a disability entitled to special education services and supports at the time he was enrolled at WWTC, whether this placement is appropriate is not an issue and Mother is not entitled to reimbursement for costs associated with the Student's placement at and transportation to and from this facility. However, assuming *arguendo*, that the Student was eligible for special education services and supports at the time he was enrolled at WWTC, this Hearing Officer finds WWTC was an appropriate placement for this Student. While WWTC did not provide any academic demands on the Student, it did provide therapeutic interventions related to the Student's mental health and substance abuse difficulties.

It provided highly individualized therapy for a minimum of three (3) hours per week including individual, group, and family therapy. WWTC was a short term placement designed to stabilize the Student behaviorally and emotionally. (FF# 28-31.) Again, as the Student was not yet eligible for special education services at the time he was enrolled at WWTC, Mother is not entitled to reimbursement for the costs associated with the Student's enrollment there and for transportation for the Student to and from said facility.

### **Residential Treatment Center**

Per Dr. C's psychological evaluation and the Student's IEP, the Student required residential therapeutic courses for 2000 minutes per week with 300 minutes per week of group counseling, 50 minutes per week of individual counseling services and 50 minutes per week of parent counseling per week. (FF# 35-37, 49.) His IEP contained functional goals related to development of healthy coping skills when experiencing the urge to engage in risky behaviors and a social emotional goal related to responsible decision making and the effect on positive peer relationships. The IEP contained an academic goal to pass all of his classes to prepare for attending college after completion of high school. The fourth goal was a transition goal related to obtaining employment in the field of his interest. (FF# 47-50.) At [REDACTED], the Student receives individual, family, group and recreational therapy. He receives substance abuse related treatment and therapy. There are academic expectations for the Student and he is also employed outside of the facility. (FF#61-68.) Evidence was presented at hearing to illustrate that the Student is making progress in therapy, substance abuse treatment, and academically. (FF#64-67.) There is a specific treatment plan for this Student with goals that are reviewed periodically with his therapist and the therapeutic interventions provided are specifically designed to meet the

needs of this Student. The Student is making progress academically and therapeutically given his unique circumstances. (FF# 66.)

The District argues that [REDACTED] is not an appropriate placement for the Student as it is not approved by the Illinois State Board of Education (ISBE). However, residential facilities are only approved by ISBE if (1) the facility seeks ISBE approval and (2) the facility receives oversight from the State Board of Education in which it is located and receives oversight from the state equivalent to Illinois' Department of Children and Family Services (DCFS). Facilities located in Utah do not meet ISBE's requirement as the state board of education does not provide oversight and there is no DCFS equivalent. (FF# 72.) However, IDEA does not require that a residential facility meet individual state standards in order to be considered appropriate. Therefore, the District's argument is without merit.

Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that Mother's unilateral placement at [REDACTED] is appropriate. Therefore, Mother is entitled to reimbursement for costs incurred at [REDACTED] from July 6, 2018 to date; costs associated with prospective placement of the Student at [REDACTED] until the date of discharge; transportation costs required for the Student's to return home as part of his treatment program and at the time of discharge from [REDACTED]; and transportation costs associated with Mother's travel to and from the treatment facility in order to participate in required therapy.

### **Balancing of the Equities**

In a tuition reimbursement case, the final consideration is the balance of the equities. The Hearing Officer must consider the actions of the parents and school district including (1) whether Parent provided the District with timely notice of rejection of the proposed placement, including Parent's concerns and intent to enroll the Student in a private residential facility at public

expense; (2) whether, prior to the removal, the Parent made the Student available to the District for evaluation; (3) whether the Parent's actions were unreasonable; (4) whether the cost of the private placement is unreasonable; and (5) whether there was a lack of parental cooperation with the District. *See 34 C.F.R. 300.148(d), Florence County Sch. Dist. Four v. Carter*, 510 U.S. at 16.

With respect to whether Parent provided the District with timely notice of rejection of the proposed placement, including Parent's concerns and intent to enroll the Student in a private residential facility at public expense, at the July 6, 2018 eligibility and IEP meeting, the District did not have a specific site for the Student's placement identified. (FF#46.) Mother provided her notice of intent to enroll the Student in a private facility at public expense on June 27, 2018 in anticipation of the Student's enrollment at [REDACTED] on July 13<sup>th</sup>. (FF# 39.) At hearing Mother provided testimony regarding information she obtained related to [REDACTED] and [REDACTED]. Mother visited [REDACTED] and provided her thoughts on the Student's placement at that facility. However, at the time of the July 2018 IEP meeting, [REDACTED] was unable to accommodate the Student as it did not have space available. (FF# 58.) As indicated above, no testimony or documentary evidence was presented at hearing regarding the appropriateness of any of the residential facilities proposed by the District after the July 2018 IEP meeting. (FF# 51-60.) While the Student was not available for purposes of the school psychologist's evaluation, Mother provided the psychological evaluation report of Dr. C to the District. (FF#44.) There was no evidence introduced at hearing indicating that Mother acted unreasonably, that the cost of the private placement is unreasonable, or that there was a lack of parental cooperation with the District regarding the Student's educational programming. Testimony and documentary evidence of Mother's lack of cooperation related to her reluctance to share information with the

District with respect to the Child Find issue. (FF#13.) Once the District provided notice of its intent to evaluate the Student and Mother signed the consent for evaluation, there is no evidence to indicate a lack of cooperation by Mother. (FF# 18-19.)

This Hearing Officer finds that the balancing of the equities favors Mother and therefore no reduction or denial of her reimbursement award is necessary as it relates to the Student's placement at [REDACTED].

### **CONCLUSION**

Based upon the Findings of Fact and Conclusions of Law, the District timely identified the Student as a Student with a disability and thus met its Child Find obligation. However, the District denied the Student a free and appropriate public education (FAPE) in the least restrictive environment when it held an eligibility and IEP meeting and failed to convene an appropriate IEP team and failed to provide an IEP which included the Student's present levels of performance, measureable annual goals related to the Student's identified needs, related services and appropriate service minutes, and an appropriate physical residential facility site that could implement the Student's IEP and enable him to make educational progress in light of his unique educational needs.

Further, Mother's unilateral placement at [REDACTED] Residential Treatment Center was appropriate and the balancing of the equities favors Mother.

### **ORDER**

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

Parent is hereby granted the following relief:

- a. Reimbursement for unreimbursed costs related to placement at [REDACTED] Residential Treatment Center ([REDACTED]) from July 5, 2018 through present,

- approximately \$121,303.75 and prospective placement and corresponding funding through the date of discharge;
- b. Reimbursement and prospective costs related to Parent's transportation to and from [REDACTED] Residential Treatment Center as needed for Parent to participate in the Student's treatment plan, approximately \$2,950.28;
  - c. Reimbursement and prospective costs related to Student's transportation to and from [REDACTED] Residential Treatment Center as needed for Student to make progress in his treatment plan and for Student's return home after discharge;
  - d. Reimbursement for the psychological evaluation of Dr. [REDACTED] C [REDACTED] in the amount of \$2,800.00.

District shall reimburse Mother, or pay directly, the above ordered costs within 30 days of receipt of proof of same (i.e. statement for services or invoice from provider, facility or transportation provider).

Parent's requested relief is denied as to reimbursement for the costs associated with placement of the Student at W [REDACTED] T [REDACTED] C [REDACTED] and W [REDACTED] W [REDACTED] T [REDACTED] C [REDACTED] and the costs of escorted transportation to and from those facilities by [REDACTED] [REDACTED].

#### **NOTICE OF RIGHT TO REQUEST CLARIFICATION**

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

**NOTICE OF RIGHT TO APPEAL**

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: April 24, 2019

/s/ Janet K. Maxwell-Wickett  
Janet K. Maxwell-Wickett,  
Impartial Hearing Officer  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**APPENDIX A**

[REDACTED] v. [REDACTED]  
Case No: 2019-DP-0143

Child	[REDACTED]
Attending School	[REDACTED]
District High School	[REDACTED]
Child's Parent(s)/Petitioner	[REDACTED] (Mother)
<b>Parent Witnesses:</b>	
Private Psychologist	[REDACTED] (Dr. C)
W [REDACTED] W [REDACTED] Therapist	[REDACTED] (SH)
Clinical Director – W [REDACTED] T [REDACTED] C [REDACTED]	[REDACTED] (ML)
Clinical Director/Therapist – [REDACTED]	[REDACTED] (SS)
[REDACTED] Gen Ed English Teacher	[REDACTED] (JH)
<b>Joint Witnesses:</b>	
Director of Special Education Dist. [REDACTED]	[REDACTED] (Dr. W)
Dean District [REDACTED]	[REDACTED] (JB)
School Counsel District [REDACTED]	[REDACTED] (SC)
School Social Worker District [REDACTED]	[REDACTED] (SW)
<b>District Witnesses:</b>	
ISBE Executive Director, Special Ed Services	[REDACTED] (HC)
[REDACTED], Admissions Coordinator	[REDACTED] (RD)
<b>Schools:</b>	
[REDACTED] Residential Treatment Center	Unilateral Residential Facility ([REDACTED])
<b>Treating Facilities:</b>	
[REDACTED]	WWTC
[REDACTED]	WTC