

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

Student, a minor, by and through his
Parents¹,

Petitioners,

v.

██████████ Community Unit School District ██████████; and
the Illinois State Board of Education,

Respondents.

Case No. 2022-DP-0038

Janet Maxwell-Wickett
Impartial Due Process Hearing Officer

FINAL DETERMINATION AND ORDER

JURISDICTION

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

BACKGROUND

The Student is a 16-year-old male whose parents reside within the geographical boundaries of the District and who is enrolled in the District. He is eligible for special education under the Individuals with Disabilities Education Act (IDEA) categories of Emotional Disability (ED) and Other Health Impairment (OHI).

On September 20, 2021, the Parents filed an Expedited Due Process Hearing Request against ██████████ Community Unit School District ██████████ (the District), ██████████ (NIO), and the Illinois State Board of Education (ISBE). In their complaint, the Parents alleged that the

¹ Personal identification information is provided in Appendix A.

Student was about to be discharged from NIO, the current serving school/location of his residential placement, and that no other appropriate educational placements were available for the Student. Parents further alleged that such a change of the Student's placement would result in a complete absence of educational programming and thus, a denial of the Student's right to a free and appropriate public education (FAPE). (IHO Exhibit #2.)

The Parents also filed an emergency motion in federal court on September 20, 2021 to address the immediate need for the Student's stay-put placement to be maintained at the NIO/ [REDACTED] (SHS) location. On September 21, 2021, and over the objection of NIO, Judge Charles P. Kocoras issued an order granting the Parents' emergency motion and ordering NIO to maintain the Student's residential placement at the NIO location. (IHO Exhibit #1, 4.)

From the time they became aware that the Student would not be able to remain at NIO long-term, the District and the Parents have conducted exhaustive searches of ISBE-approved placements and determined that there were no facilities that were available for the Student. The Parents also conducted an extensive search of non-ISBE-approved residential programs. The only program they were able to locate that is both programmatically appropriate and willing and able to offer the Student admission is [REDACTED] (OA), a private residential treatment program in [REDACTED], Utah that specializes in treatment for adolescent/teenage boys with sexual behavior problems. (IHO Exhibit #2, 10.)

On September 28, 2021, at the direction of this Hearing Officer due to her determination that there was no basis for an "expedited" hearing request under applicable federal and State law, the Parents submitted an Amended Due Process Hearing Request. The Parents maintain the following: (1) The District and ISBE have denied the Student a FAPE by failing to fulfill their obligations under the IDEA to provide the Student with an appropriate educational placement; (2)

The Student requires a residential treatment program designed to meet the needs of a student with sexually problematic behaviors; (3) No ISBE-approved residential placement exists that is currently available or willing to admit the Student; and (4) The District and/or ISBE are required to place the Student at OA, which is the only available program that can address the Student's needs. (IHO Exhibit #10.)

On September 29, 2021, this Hearing Officer issued an Order Granting Stay-Put Placement requiring NIO/SHS to continue the Student's enrollment at the serving school/location of the residential placement called for in his IEP for the duration of the proceedings in this matter. In response to the issuance of the Hearing Officer's stay-put Order, the case in federal court was dismissed without prejudice on October 5, 2021. (IHO Exhibit #11.)

The District timely filed its Response to the Parents' Amended Due Process Hearing Request on October 8, 2021. In its Response, the District (1) acknowledged that the Student requires a residential placement; (2) maintained that it has made exhaustive efforts to explore all placement options included on the ISBE-approved list for students of the Student's age and disability classifications but was unable to secure an approved placement option that could or would accept the Student for enrollment; and (3) requested that ISBE be held accountable for its failure to ensure that there was an approved option available for the Student's residential placement by being ordered to either (i) approve OA on an individual basis for the Student or (ii) reimburse the District for the Student's placement at OA (i.e., tuition, room and board, and transportation) on the same basis and at the same rates as would apply if he were attending an approved placement. (IHO Exhibit #13.)

On October 4, 2021, the Parents submitted a Notice of Unilateral Placement letter to the District and ISBE indicating that they would be placing the Student at OA due to the lack of any

other placement options being identified by the District or ISBE. The Student began attending OA on October 26, 2021. (SF #11.)

On October 26, 2021, NIO filed a Motion to Terminate Order Granting Stay-Put Placement as the Student was not longer enrolled or attending NIO/SHS. Said Motion was granted by this Hearing Officer pursuant to her Order dated October 28, 2021. (IHO Exhibit #16, 20.)

The Parents and District waived the resolution session and the 45-day hearing timeline commenced on October 13, 2021. The decision due date in this matter is December 1, 2021, and the 45-day timeline expires on November 27, 2021. (IHO Exhibit #15.) The parties provided a Joint Motion to Continue at the conclusion of the due process hearing which was granted pursuant to this Hearing Officer's Order Granting Continuance dated November 26, 2021 to reset the 45-day timeline to December 1, 2021. (IHO Exhibit #37.)

The Parents opted for a closed hearing. The Due Process Hearing was held on November 16, 2021. Mr. Brad Dembs and Mr. Matthew Cohen of Matt Cohen and Associates represented the Parents. Ms. Teri Engler of Engler Callaway Baasten & Sraga, LLC represented the District. Ms. Colette McCarty and Ms. Shanell Bowden of ISBE represented ISBE. The District presented two witnesses and ISBE presented one witness. The Parents and District presented the following Joint Exhibits (JE): #1-20 which were admitted into evidence². The District presented the following Exhibits (SD): #1-3 which were admitted into evidence. ISBE presented the following Exhibits (IE): #1-3 which were admitted into evidence. Parents did not present any witnesses or exhibits. This matter proceeded as a largely stipulated matter. The Parents and District presented Parents' and District's Joint

² ISBE objected to JE #1-4. Same were admitted into evidence over ISBE's objection.

Stipulations of Fact document which was admitted into evidence.³ ISBE presented Stipulated Facts Regarding Testimony of [REDACTED] which was admitted into evidence.⁴ The Hearing Officer's Exhibits were: IHO Exhibits # 1-37. Parents, District and ISBE submitted oral closing statements, a written outline thereof, and provided citations and copies of the case law relied upon.

ISSUES

Parents and District agree and stipulate that the appropriate placement for this Student is a residential facility. Therefore, the issue is what is the appropriate location or site for implementation of the Student's IEP and residential placement specifically as follows:

(1) Is an appropriate ISBE approved site available which can provide the Student with a FAPE?

(2) Whether the Parents' unilateral placement of the Student at OA an identified non-ISBE approved residential facility, provides educational instruction specially designed to meet the unique needs of the Student, supported by such services as are necessary to permit the Student to benefit from the instruction and receive a FAPE.

The Parents and District agree and stipulate that the unilateral placement at OA 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 the instruction and receive a FAPE and same is the only available site at which the Student's IEP and placement can be implemented at this time.

The Parents and District agree and stipulate that the balancing of the equities is not at issue in this matter.

Parents request the following relief:

- a. Placement of the Student at OA, a non-ISBE approved facility, with appropriate transportation for the 2021-2022 school year.

District requests the following relief:

- a. Order requiring ISBE to either (i) approve OA on an individual basis for the Student in light of the lack of approved placement options; or (ii) reimburse the District for

³ ISBE did not join in this stipulation document and objected to paragraphs 6-13, 15, 22 contained therein.

⁴ Parents and District did not join in this stipulation document but did not object to any of the information contained therein. BM appeared and testified at hearing. That hearing testimony was considered by this Hearing Officer in writing her decision to the extent it differed from the stipulated facts document.

the Student's placement at OA on the same basis as would apply were the Student attending an approved placement.

It is the position of ISBE that the Student must be placed at an ISBE approved residential facility. Further, ISBE asserts that, the Illinois Administrative Code at 23 Ill. Admin. Code §226.330(c) prohibits the District from placing the Student in a non-approved facility, pursuant to 23 Ill. Admin. Code Part 401, and if the Student is so placed, ISBE, per Part 401, is not required to reimburse the District for same.

STIPULATED FACTS BY PARENTS AND DISTRICT

1. The Student is a 16-year-old male whose parents reside within the geographical boundaries of the District and who is enrolled in the District. He is eligible for special education under the Individuals with Disabilities Education Act (IDEA) categories of Emotional Disability (ED) and Other Health Impairment (OHI). (SF #1; JE #5-6.)

2. The Student was adopted by the Parents from Russia at the age of 14 months. He has a long history of serious mental health and behavioral disorders, including diagnoses of Depressive Disorder, Disruptive Mood Dysregulation Disorder, ADHD, Adjustment Disorder, and possible Fetal Alcohol Spectrum Disorder. He presents with anxiety, self-harm, elopement, maladaptive sexual behaviors, and deficits in impulse control, self-regulation, and problem-solving skills. (SF #2; JE 5-6.)

3. In late 2018 and early 2019, the Student sexually abused his younger sister. In April 2019 he was arrested at his special education therapeutic day school when he assaulted a school resource officer. The Student was subsequently convicted in the Circuit Court, Juvenile Division, for the sexual assault of his sister and is now a registered juvenile sex offender. As a result of his conviction, on September 21, 2020 he was jointly placed by the District and the Illinois Department of Juvenile Justice (IDJJ) at NIO/SHS, a residential treatment program specializing in students with sexually problematic behaviors. The Student's IEP was updated by the District in February 2021 to indicate placement in a residential treatment program. (SF #3; JE #5-6.)

4. In May 2021, IDJJ notified the Parents, the District, and NIO that the Student had completed his statutorily mandated Juvenile Court sentence and would be released from IDJJ custody on September 21, 2021. Notwithstanding the fact that the Student's IEP, developed with NIO representatives, called for residential placement with NIO/SHS as the serving school/location, NIO then advised the Parents and the District that the Student would be discharged from their facility on the same day. (SF #4; Testimony of MG⁵, Dr. H⁶; JE #7.)

5. From that time through the present, the District has made extensive efforts to identify and contact all residential programs on the ISBE-approved list that could potentially have been appropriate to meet the Student's needs. The District has made inquiries to 54 residential facilities on ISBE's approved list, sent referrals to 42 of those facilities, and has regularly monitored ISBE's approved list for changes or additions that might yield an appropriate and available approved residential program. (SF #5; Testimony of MG, Dr. H; JE #7.)

6. All of the programs contacted by the District responded that they would not accept the Student due to his status as a registered juvenile sex offender, his history of behavior issues including aggression and elopement, or because they did not have any openings. (SF #6; Testimony of MG, Dr. H; JE #7.)

7. The District also communicated with multiple ISBE representatives to seek assistance with the placement search and the difficulties the District was experiencing. Despite having been made fully aware of the District's extensive unsuccessful efforts to secure an appropriate and available program for the Student, ISBE offered no assistance or support and took

⁵ MG is the District Program Administrator in private day programming. This is his second year with the District in that capacity. He is licensed in the State of Illinois by ISBE. (Testimony of MG; SD #2-3.)

⁶ Dr. H is the District Executive Director of Special Education. She has been so employed for the past two years. She is a licensed school psychologist and is licensed in the State of Illinois by ISBE. (Testimony of Dr. H; SD# 1.)

no action to ensure the provision of FAPE to the Student. (SF #7; Testimony of MG, Dr. H, BM⁷; JE #7.)

8. At a Due Process Hearing in ISBE Case No. 2021-DP-0044, on November 9, 2021, ISBE's Director of Special Education, BM, testified that ISBE is aware of the overall crisis in the lack of appropriate, available, and approved residential placements and has, inter alia, actively and affirmatively reached out to non-approved residential programs across the country to encourage them to seek approval to serve Illinois students with disabilities. However, upon information and belief, ISBE has not reached out to OA to encourage or facilitate the program's resumption of its prior approval status or to inquire as to any impediments to OA doing so and to seek to remove such impediments. (SF#8; Testimony BM.)

9. The Parents have also spent months investigating and applying to all residential programs, whether ISBE-approved or not, that they believed could possibly meet the Student's needs. The Parents applied to approximately 50 residential programs. All those programs, other than OA, told the Parents they could not accept the Student due to his behavior, a lack of programming for juvenile sexual offenders, a lack of availability, or some combination of these factors. A few of the programs contacted failed to respond to the Parents inquiries at all. (SF #9; Testimony of MG, Dr. H; JE#7, 12.)

10. The Parents also spoke directly with an ISBE Principal Consultant, HK, multiple times in September 2021 to describe the lack of ISBE-approved residential placement options for the Student and to request assistance in finding an approved placement or a waiver to allow the Student to attend a non-approved program. ISBE did not provide any assistance or support to the

⁷ BM is the Director of the Special Education Department for the Illinois State Board of Education (ISBE). She has been employed in that capacity for the past three years. (Testimony of BM; ISBE Stipulated Facts Regarding the Testimony of BM.)

Parents in identifying an available approved placement and simply responded that the Parents' situation was unfortunate but there was nothing ISBE could do to provide a waiver or to expedite the approval of a residential program. (SF #10.)

11. In total, 100 programs were contacted by the District and the Parents. Of all those programs, no ISBE-approved residential programs were willing or able to enroll the Student. OA is the only residential program that has been willing to and, as of October 26, 2021, has enrolled the Student. (SF #11; JE #7, 9, 11-12, 14, 17-20.)

12. The Student requires placement in a residential treatment program designed to meet the needs of a student with sexually problematic behaviors. OA is a residential program designed to meet these needs of the Student. (SF #12; Testimony of MG, Dr. H; JE #5-6.)

13. OA's programming is specifically designed to provide treatment for male juvenile sexual offenders aged 13-17. Significantly for the Student, OA also has significant experience treating young adults who struggle with anxiety, depression, and adoption issues. OA has affirmed its ability to meet the Student's needs as set forth in his IEP by evaluating the Student's application for admission and accepting him into the program. (SF #13; Testimony of MG; JE# 19-20.)

14. OA's educational programs are accredited and meet all Utah State Office of Education requirements. OA is further accredited by the International Institute for Trauma and Addiction Professionals, the Northwest Accreditation Commission, the Joint Commission, and Cognia. It is a Gold Member of the National Association of Therapeutic Schools and Programs. (SF #14; Testimony of MG.)

15. OA was ISBE-approved until 2018 and currently meets all requirements as set forth by ISBE to be an approved program. (SF #15; Testimony of MG, BM; JE#12, 19-20.)

16. The only current impediment to the District's placing the Student at OA is the fact that it is not currently an ISBE-approved program and the ISBE rules at 23 Ill. Admin. Code §226.330(c)(1) prohibit the District from placing the Student in any program that is not approved by ISBE. However, there are no ISBE-approved programs available for the Student. (SF# 16; Testimony of MG, Dr. H, BM.)

17. On October 4, 2021, the Parents submitted a Notice of Unilateral Placement letter to the District and ISBE indicating that they would be placing the Student at OA due to the lack of any other placement options being identified by the District or ISBE. The Student began attending OA on October 26, 2021. (SF # 17; JE #14.)

18. Since starting at OA, the Student has not had any aggressive behavior towards peers or staff and has not made any attempts at elopement. He is settling into the program well. (SF #18.)

19. On October 22, 2021, the Parents submitted payment to OA in the amount of \$35,240.00 as a deposit for the Student's enrollment. This amount will be applied to the total annual tuition and room and board costs of the program, approximately \$200,000.00. (SF # 19; JE #17.)

20. In transporting the Student to OA, the Parents incurred \$1,731.80 in total travel costs, including flights, rental car, parking, meals, and lodging. (SF #20; JE #18.)

21. The District will also be responsible for providing transportation to/from OA for the Student pursuant to 23 Ill. Admin. Code Section 226.750 and may also be responsible for providing transportation to/from OA for the Parents to visit the Student or to supervise his travel to/from the program. (SF #21.)

22. The District and the Parents have urged ISBE to either approve OA on an individual basis solely for the Student given the unique circumstances of this case, or to commit to reimbursing the District for the Student's placement at OA at the usual and customary rate of an approved program (i.e., for tuition, room and board, and transportation) regardless of its approval status. ISBE has indicated that is unwilling or unable to honor either of these requests. (SF #22; Testimony of MG, Dr. H, BM.)

23. Even if OA were to apply for ISBE approval under Part 401 of the ISBE rules, ISBE's process to review and approve OA's application cannot be expedited and would most likely take several months to complete. Moreover, there is no guarantee that the ISBE would necessarily approve OA upon review of its application. The Student requires placement in a residential treatment program immediately to receive a FAPE. (SF #23; Testimony of MG, Dr. H, BM; JE #5-6.)

CONCLUSIONS OF LAW

Based on the above Stipulated Facts, testimony and documentary evidence introduced into evidence at hearing, the Conclusions of Law of this Hearing Officer are as follows:

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). The provision of FAPE includes residential placement at no cost to the Parents if such placement is necessary to provide a child with a disability with special education and related services designed to meet such child's unique needs. 34 C.F.R. § 300.104. In the present case, there is no disagreement between the Parents and the District that residential placement is necessary for the Student to receive a FAPE. The District has been and remains ready and willing to meet its substantive obligation to provide the Student with a FAPE; but for ISBE's failure to have any

residential program on its approved list that will accept the Student for enrollment, the District would be able to meet its substantive obligation. However, ISBE has failed to meet its substantive obligation to ensure that the District can provide the Student with a FAPE by failing to have sufficient available and appropriate placement options on its approved list of nonpublic special education facilities for this Student or to provide a mechanism for off-list placements in emergencies like this case. (SF #5-12, 16.)

A public school district can be held liable for the costs associated with a parent's unilateral placement in a private program that is not state approved if the school district's placement denied the student a FAPE and the private placement is appropriate. *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993). In this case, there is no dispute among the parties that the District has been unable to provide the Student with an ISBE-approved placement and that OA is appropriate for the Student. (SF #5-15.)

The District argues that it is in an untenable position as a result of (a) its inability to place the Student in a non-approved facility due to the express directive of 23 Ill. Admin. Code § 226.330(c)(1) and (b) ISBE's failure to approve a sufficient number or type of programs so that an approved program would be available for the Student. The District further maintains that ISBE must be held responsible for the denial of FAPE to the Student and requests that this Hearing Officer find same.

In support of this position, the District and Parents maintain: It has long been established in federal case law that State Educational Agencies (SEAs), such as ISBE, have an independent obligation to ensure that every eligible child in their respective states receive FAPE. The Court in *Corey H. v. Bd. of Educ. of City of Chicago* succinctly explained:

Congress enacted the IDEA and its predecessor statutes "to assure that all children with disabilities have available to them ... a free appropriate public education"

20 U.S.C. § 1400(c). To effectuate this goal, Congress placed the ultimate responsibility of compliance with the state educational agency ("SEA"), declaring that in order for the State to receive federal IDEA funds, the SEA "shall be responsible for assuring that the requirements of this [Act] are carried out" 20 U.S.C. § 1412(6).

995 F. Supp. 900, 904 (N.D. Ill. 1998). *See also, Casey K. ex rel. Norman K. v. St. Anne CHSD No. 302*, 400 F.3d 508, 512 (7th Cir. 2005) (Because the IDEA places the responsibility of compliance on the SEA, the state's administrative structure cannot undermine a student's right to a FAPE); *Todd D. by Roert D. v. Andrews*, 933 F.2d 1576, 1583 (11th Cir. 1991) (no doubt that the SEA retains the ultimate responsibility for FAPE when the LEA is unable or unwilling to do so); *Charlene R. v. Solomon Charter Sch.*, 63 F. Supp. 3d 510, 516 (E.D. Pa. 2014) (SEA must step in where an LEA cannot or will not provide FAPE).

The District and Parents jointly request that this Hearing Officer enter an order allowing the District to immediately place the Student at OA, a non-ISBE approved residential facility as the District has denied the Student a FAPE as it has been unable to provide an appropriate ISBE approved facility that will accept the Student and implement his IEP. Based upon the stipulated facts of the District and Parents, as well as the hearing testimony of MG, Dr. H and BM, and the documentary evidence introduced at hearing, it is undisputed that the Student requires placement in a residential facility to meet his unique educational needs. (SF #3-12.) It is further stipulated and undisputed that the District and Parents have undertaken an exhaustive search for an appropriate ISBE approved residential facility. However, none exists at this time which will accept the Student and implement his IEP. (SF #3-12.) Further, it is stipulated and undisputed that OA is an appropriate residential facility which can meet the Student's unique needs and implement his IEP. (SF #12-18.) Therefore, as of October 26, 2021⁸, the District is hereby ordered to assume

⁸ This is the date on which Parents' unilaterally placed and the Student began attending OA. (SF #17.)

full financial responsibility for all expenses associated with this placement, i.e., tuition, related services expenses associated with the Student's current IEP if billed separately, room and board, and transportation. *See Florence County School District Four v. Carter*, 510 U.S. 7 (1993).

Next the District and Parents invite this Hearing Officer to order ISBE to immediately approve OA on an individual basis for this Student or to order ISBE to reimburse the District for the Student's placement at OA at the usual and customary rate of an approved program (i.e., for tuition, room and board, and transportation) and in the amounts called for in 105 ILCS 5/14-7.02 for state reimbursement of approved district placements. With respect to this Hearing Officer's ability to order ISBE to immediately approve a residential facility on an individual basis for this Student, none of the parties has provided this Hearing Officer with any authority, nor is she aware of the existence of same, which would allow her to do so. Therefore, the request to order ISBE to immediately approve OA on an individual basis for this Student is hereby denied as this Hearing Officer lacks the requisite jurisdiction to order same.

District and Parents next invite this Hearing Officer to order ISBE to reimburse the District for the Student's placement at OA at the usual and customary rate of an approved program (i.e., for tuition, room and board, and transportation) and in the amounts called for in 105 ILCS 5/14-7.02 for state reimbursement of approved district placements. In support of this position the parties cite to the IDEA and abundant case law⁹ which holds that the SEA bears ultimate responsibility for the State's compliance with the requirements of the IDEA. 34 C.F.R. § 300.600. However, this Hearing Officer finds the case law provided to be distinguishable as follows: (1) none of it stems from IDEA due process hearing officer decisions; (2) it speaks to the SEA's obligation to ensure compliance with the IDEA and to step in where the LEA is

⁹ See case law provided by all parties cited in their respective closing arguments and included in the Administrative Record. (IHO Exhibit #34-36.)

unable or unwilling to provide a FAPE; and (3) none of it directly addresses the issue in this matter.

This is a tuition reimbursement case and this Hearing Officer is being asked to decide which agency, the District or ISBE, is ultimately responsible for payment of the Student's residential facility placement. The question of which agency is responsible for payment for a student's residential placement is not an issue that can be subject to a due process hearing under IDEA. The purpose of due process under IDEA is to provide a forum where there is a dispute between a parent and a school district over FAPE; it is not designed or intended to resolve financial disputes between public agencies. *See Los Angeles Unified Sch. Dist.*, 111 LRP 51715 (SEA CA. 2011); *Parma City Sch. Dist.*, 107 LRP 63094 (SEA Ohio 2007); *Williams Bay Sch. Dist.*, 102 LRP 25627 (SEA Wisconsin 2000.); *Stockton Unified Sch. Dist.*, 102 LRP 13255 (SEA CA 2002); *Interboro Sch. Dist.*, 29 EHLR 838 (SEA CA 1998); *In re Lisa T.*, EHLR 502:282 (SEA Mass. 1981); *Letter to Loeffler*, EHLR 211:275 (OSEP 1981). Further, the State of Illinois does not confer any statutory authority to the contrary. While this Hearing Officer recognizes that the District may have a valid claim that Illinois law is rendering it unable to provide FAPE to this Student, the Student's right to a FAPE cannot be held in abeyance while the District uses the administrative hearing process to advance its agenda to challenge Illinois law. Despite the merits of the District's argument, IDEA also anticipates that the student should not suffer while agencies work out who is financially responsible.

It is the finding of this Hearing Officer that the IDEA, the Illinois School Code and the case law is clear on this issue. Therefore, the request to order ISBE to reimburse the District for the Student's placement at OA at the usual and customary rate of an approved program (i.e., for tuition, room and board, and transportation) and in the amounts called for in 105 ILCS 5/14-7.02

for state reimbursement of approved district placements is hereby denied as this Hearing Officer lacks the requisite jurisdiction to order same.

CONCLUSION

Based on the above Stipulated Facts, hearing testimony and documentary evidence admitted into evidence, and Conclusions of Law, the Student is currently being denied a FAPE due to the absence of any ISBE-approved residential placement where he can receive an education. The on-going denial of FAPE is to be resolved by the District paying for the Student's placement at OA, the only program that is currently available and appropriate to meet the Student's needs and implement his IEP, with the District to provide reimbursement for said placement including tuition, room and board, and transportation. The requests for this Hearing Officer to order ISBE to approve said residential facility on an individual basis for this Student or to order ISBE to reimburse the District for the Student's placement at OA are denied based upon this Hearing Officer's lack of jurisdiction to order same.

ORDER

Based on the above Stipulated Facts and Conclusions of Law, the Parents are hereby **granted** the following relief:

- a. The District shall immediately, as of October 26, 2021, assume full financial responsibility for all expenses associated with the Student's placement at OA, i.e., tuition, related services expenses associated with the Student's current IEP if billed separately, room and board, and transportation. Said expenses to be paid by the District on a monthly basis¹⁰ within 30 calendar days of receipt of same or by the stated due date of invoices of providers.
- b. The District shall reimburse the Parents for their out-of-pocket costs, in unilaterally placing the Student at OA, i.e., out-of-pockets costs for the Student's tuition, related services expenses associated with the Student's current IEP if billed separately, room and board, and transportation with 30 calendar days of receipt of proof of Parents' payment for same. The tuition and room and board Parents paid to OA in the amount of \$35,240.00 and travel

¹⁰ Monthly payments are ordered in the event that something unforeseen occurs and the Student is unable to remain at OA.

costs of \$1,731.80 shall be reimbursed within 30 calendar days of mailing of this Final Determination & Order.

The following requested relief is hereby **denied**:

- a. The request to order ISBE to immediately approve OA on an individual basis for this Student is hereby denied due to lack of Hearing Officer jurisdiction to order same;
- b. The request to order ISBE to reimburse the District for the Student's placement at OA at the usual and customary rate of an approved program (i.e., for tuition, room and board, and transportation) and in the amounts called for in 105 ILCS 5/14-7.02 for state reimbursement of approved district placements is hereby denied due to lack of Hearing Officer jurisdiction to order same.

In accordance with 105 ILCS 5/14-8.02a(h), within **30** 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

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 30, 2021

/s/: Janet K. Maxwell-Wickett _____
Janet K. Maxwell-Wickett,
Impartial Hearing Officer

[REDACTED]

