

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

Student, by and through Parents and
Legal Guardians,¹

Petitioners,

v.

Case No. 2022-DP-0044

Janet Maxwell-Wickett
Impartial Due Process Hearing Officer

██████████ High School District ██████████
and the Illinois State Board of Education,

Respondents.

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 19-year-old male whose parents and legal guardians 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 Autism and Intellectual Disability.

On October 1, 2021, the Parents filed an Expedited Due Process Hearing Request against ██████████ High School District ██████████ (the District) and the Illinois State Board of Education (ISBE). In their Complaint, the Parents maintain the following: (1) The District and ISBE have

¹ Personal identification information is provided in Appendix A.

denied the Student a free and appropriate public education (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 an adult student with Autism, Intellectual Disability, and severe and dangerous behavior; (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 [REDACTED] (SOIS), which is the only available program that can address the Student's needs. (IHO Exhibit #1.)

The District timely filed its Response to the Parents' Expedited Due Process Hearing Request on October 12, 2021.² In its Response, the District (1) acknowledged that the Student requires a residential placement; (2) maintained that it has made efforts to explore 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 SOIS on an individual basis for the Student or (ii) reimburse the District for the Student's placement at SOIS (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 #4.)

At the initial status conference in this matter on October 13, 2021, (1) the District asserted, and the Hearing Officer agreed that there was no basis for an "expedited" due process hearing request under applicable federal and State law, and (2) the Hearing Officer indicated her

² ISBE did not file a Response to Parents' Expedited Due Process Hearing Request.

willingness to entertain the entry of an Agreed Order regarding the Student's placement if jointly proposed by the Parents and the District. (IHO Exhibit #5.)

A Prehearing Conference was held on October 29, 2021, at which time the parties discussed and agreed to bifurcate the hearing as needed to address the issues raised in the Parents' Hearing Request. Specifically, the Parents' compensatory education request requires different and additional evidence that will not be available to the parties by the dates currently set for this hearing. A discussion was held regarding addressing the compensatory education remedy at a later date to be determined by the parties and this Hearing Officer. (IHO Exhibit #12.)

The Parents and District waived the resolution session and the 45-day hearing timeline commenced on October 20, 2021. The decision due date in this matter is November 24, 2021, and the 45-day timeline expires on December 3, 2021. (IHO Exhibit #12.)

The Parents opted for a closed hearing. The Due Process Hearing was held on November 8-9, 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): #1-14 which were admitted into evidence. The District presented the following Exhibits (SD): #1-4 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 Stipulations of Fact document which was admitted into evidence.³ ISBE presented

³ ISBE did not join in this stipulation document and objected to paragraphs 8, 10, 14, 16-19 contained therein.

Stipulated Facts Regarding Testimony of Barbara Moore which was admitted into evidence.⁴

The Hearing Officer's Exhibits were: IHO Exhibits # 1-27. 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 [REDACTED] (SOIS) an identified non-ISBE approved residential facility, can provide 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 SOIS placement can provide 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.

(3) Whether there was a denial of FAPE from approximately May 28, 2021, through November 30, 2021, that would entitle the Student to compensatory education and if so, what the appropriate compensatory education award should be.

Parents maintain that by failing to provide an appropriate residential facility site during the period in question, the District denied the Student a FAPE which would give rise to a compensatory education award.

The District maintains that the Student was hospitalized during the period in question and he was provided with FAPE during same. Therefore, a compensatory education award would not be appropriate.

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

⁴ Parents and District did not join in this stipulation document and both objected to paragraph 35 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.

Parents request the following relief:

- a. Placement of the Student at SOIS, a non-ISBE approved facility, with appropriate transportation for the 2021-2022 school year.
- b. Compensatory education covering the approximate period of May 28, 2021, to November 30, 2021.

District requests the following relief:

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

Due to the urgent need to identify a residential facility site at which to place the Student which can implement his IEP and provide him with a FAPE, the parties agreed to bifurcate these proceedings. Therefore, this matter proceeded to hearing on issues of the site of the residential placement on November 8th and 9th. The issue of compensatory education, and the alleged FAPE denial giving rise thereto, will be scheduled for hearing at a future date. (IHO Exhibit #12.)

STIPULATED FACTS BY PARENTS AND DISTRICT

1. The Student is a 19-year-old male whose parents/legal guardians 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 Autism and Intellectual Disability. (See also JE #1, 5.)

2. As a result of his disabilities, the Student often exhibits severe behaviors including being physically aggressive towards others, self-injurious behavior, property destruction, and elopement. As an element of his disabilities, he also has difficulty knowing right from wrong, understanding the consequences of his behavior, or controlling his violent impulses. These

behaviors have resulted in the Student needing to be hospitalized on multiple occasions over the years. (See also Testimony of JS⁵; JE #1, 5.)

3. On May 28, 2021, the Student was hospitalized at LGH on an emergency basis after violently attacking his mother in an automobile during the family's return from a vacation. While in the hospital, he assaulted his mother and a hospital worker and had to be restrained by hospital security staff. The District was advised of these events on June 1, 2021. (See also Testimony of JS; JE #1.)

4. On June 11, 2021, the District held an IEP meeting for the Student and the IEP team determined at that time that he needed residential placement. (See also JE #1.)

5. The District immediately began searching for an ISBE-approved residential placement that was appropriate to meet the Student's needs and willing to accept the Student for placement. The District contacted more than a dozen residential placement locations approved by the ISBE to serve students with the Student's eligibility and needs. The District carefully monitored the status of each referral, responded to facility requests for additional information, and timely reported all results of its efforts to the Parents. None of the placement locations were willing or able to accept the Student. (See also testimony of JS; JE #2,3.)

6. The Student remained hospitalized until August 30, 2021. On that date, the Student was transferred to KDS, an ISBE-approved residential treatment program in Columbia, Tennessee for students with Autism. KDS was not suggested by the District but discovered as an option by the Parents. When the Parents presented this option, the District promptly contacted KDS and arranged to enroll the Student in the program. (See also testimony of JS; JE #2-3.)

⁵ JS is the Private Placement Coordinator for the District. She has been so employed for the past 13 years. She is licensed in the State of Illinois by ISBE. (Testimony of JS; SD #1-2.)

7. On September 22, 2021, KDS discharged the Student due to a series of elopements and particularly intense episodes of aggression in which he attacked his teacher and aides. Other than the three-week period when he was placed at KDS, the Student has not received any educational services since at least May 2021, including during his hospitalizations at ALG and LFH. (See also Testimony of JS; JE #3-6.)

8. Immediately upon the Student's discharge from KDS, the District began its search for another placement location for the Student. The District worked with an ISBE Principal Consultant for Special Education Nonpublic Facilities to ensure that it was working off of the most up to date and comprehensive list of residential facilities approved for the Student's eligibility and needs. The ISBE Principal Consultant provided the District with a spreadsheet list of approved residential facilities to use in its continued search for a placement for the Student. The District sent referral packets to all of the programs on the spreadsheet list provided by ISBE, including re-sending referral packets to programs previously contacted. The District diligently followed up with all placements on the list, promptly provided any requested information, continued to correspond with ISBE to confirm that it had in fact contacted all approved locations, and closely monitored the status of all referrals. Again, none of the programs on the ISBE-approved list was willing or able to accept the Student. (See also Testimony of JS; JE #5-11.)

9. The Parents have also worked diligently to find an appropriate placement for the Student, exploring both ISBE-approved and non-approved options. However, due to his age and history of aggression it is especially difficult to find an appropriate placement to meet his needs that will accept him for enrollment. (See also Testimony of JS; JE #5-11.)

10. Between June 2021 and the present, the Parents contacted or applied to approximately 60 programs. All those programs, other than SOIS, told the Parents that they could

not accept the Student due to his age, aggressive behavior, elopement, a lack of availability, or some combination of these factors. SOIS is the only program that is available, willing to accept the Student, and have indicated that they are equipped to meet his needs as set forth in his IEP. (See also Testimony of JS; JE #5-11.)

11. After being discharged from KDS, and because of the absence of ISBE-approved and available residential programs in which the District could place the Student, he had no program or placement to meet his severe needs. The Parents had no choice but to bring the Student home despite the significant and immediate risk of danger he posed to himself, the Parents, the rest of his family, and his service providers. The Student's mother temporarily moved out of the family home due to the risk of harm that the Student posed to her.

12. On September 30, 2021, the Student was hospitalized at LFH after attacking his father and hitting himself repeatedly in the head. He has remained hospitalized since that time, through the date of this decision. (See also JE #6-7.)

13. On September 30, the Parents notified the District that the Student had been accepted for admission to SOIS, a private residential treatment program in New York that is designed for children and young adults with Autism who have complex and intensive functional, academic, and life skills needs. Although SOIS is not currently ISBE-approved, the Parents requested that the District assume full responsibility for all costs associated with this placement since no other options were available. The District responded by explaining that it was prohibited under the ISBE rule at 23 Ill. Admin. Code Section 226.330(c) from placing the Student at SOIS since it is not an ISBE-approved program. (See also Testimony of JS; JE #6-11.)

14. Of all the many programs contacted by the District and the Parents, no ISBE-approved residential programs were willing or able to enroll the Student. SOIS is the only program

that has been contacted that is both appropriate in that it has evaluated the Student's application for admission, indicated it is able to meet the Student's needs as set forth in his IEP, and is willing and able to offer the Student admission. Unfortunately, they do not expect to have an opening to admit the Student until November 30, 2021.

15. The Parents and the District agree that the Student requires placement in a residential treatment program designed to meet the academic and functional needs of a student with Autism, Intellectual Disability, and severe dangerous behaviors. SOIS is a residential program designed to meet these needs of the Student. (See also testimony of JS; JE #1, 5.)

16. SOIS treats individuals with Autism up to age 30. The program utilizes transdisciplinary academic and clinical approaches to teach students with Autism. The Student will have a dedicated 1:1 aide assigned to him for a minimum of 16 hours per day, seven days per week. He will be in a classroom with four students and five total staff members. SOIS is also a secure facility that is fenced and locked to protect against elopement. (See also JE# 5-7.)

17. SOIS's curriculum is individualized and includes a focus on building self-determination and self-advocacy skills and social/emotional skill development. The program also places an emphasis on developing critical transition skills, including independent living skills and executive functioning skills such as organization, time management, and task completion. At SOIS, these skills are practiced and reinforced throughout the school day and evening activities. (SF # 17.)

18. At SOIS, the Student will have his own private room. The program also accommodates students' individual personalized diets. This is important for the Student as he has particular food preferences and his behavior can be negatively impacted due to a lack of

appropriate nutrition. Significantly, SOIS is also a secure facility, which is essential to protect against the Student's elopement behaviors. (SF# 18.)

19. The only current impediment to placing the Student at SOIS is the fact that it is not 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, thus putting the District and the Parents in an untenable position. (See also Testimony of JS, BM⁶.)

20. The District and the Parents have urged ISBE to either approve SOIS 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 SOIS 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 it is unwilling or unable to honor either of these requests. (See also Testimony of BM.)

21. If SOIS were to apply for ISBE approval under Part 401 of the ISBE rules, ISBE's process to review and approve SOIS's application cannot be expedited and would most likely take several months to complete. Moreover, there is no guarantee that the ISBE would approve SOIS upon review of its application. To date, SOIS has not submitted an application for approval and does not intend to do so at this time. (See also Testimony of BM.) The Student requires placement in a residential treatment program as soon as possible to receive a FAPE.

⁶ BM is the Director of Special Education Department at the Illinois State Board of Education (ISBE) and has been so employed for approximately three (3) years. (See Stipulated Facts Regarding Testimony of [REDACTED] IHO Exhibit #22.)

22. On October 13, the Parents submitted payment to SOIS in the amount of \$34,497.75 as a deposit for the Student's enrollment. This amount will be applied to the total tuition costs of the program. (See also JE #6.)

23. The annual cost for the Student's tuition and room and board at SOIS will be approximately \$535,695.00. (See also JE #6.)

24. The Student requires transportation to/from SOIS. The District also provides parents of residentially placed students with reimbursement for up to four trips per academic year to visit their child. Reimbursable costs include flights, mileage, car rentals, meals, and lodging. The estimated annual transportation costs to/from SOIS for the Student and the Parents are an additional \$20,000.00 to \$30,000.00 per year. Though SOIS transportation costs are significant, ISBE reimburses at a high rate for costs associated with ISBE-approved residential facilities and should be reimbursed in kind in this matter. (See also Testimony of TW⁷.)

CONCLUSIONS OF LAW

Based on the above Stipulated Facts, 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

⁷ TW is the District Director of Special Education. She has been so employed for the past three (3) years. She is licensed in the State of Illinois by ISBE. (Testimony of TW; SD #3-4.)

Student to receive a FAPE. (SF # 4, 15.) The District has been and remains ready and willing to meet its substantive obligation to provide the Student with a FAPE; but for the lack of any residential program on ISBE's approved list that will accept the Student for enrollment, the District would be able to meet its substantive obligation. (SF# 15, 19-20.) However, ISBE does not have any currently available and appropriate placement options on its approved list of nonpublic special education facilities for this Student and there exists no mechanism to provide off-list placements in emergencies such as this. (SF# 19-21.)

A public school district can be held liable for the costs associated with a private placement 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 SOIS is appropriate for the Student. (SF #4-20.)

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 Robert 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 SOIS, 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 JS 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 #4.) 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 #4-20.) Further, it is stipulated and undisputed that SOIS is an appropriate residential facility which can meet the Student's unique needs and implement his IEP.

(SF #15-20.) Therefore, on or before November 30, 2021⁸, the District is hereby ordered to assume 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 SOIS on an individual basis for this Student or to order ISBE to reimburse the District for the Student's placement at SOIS 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 SOIS 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 SOIS 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

⁸ This is the date on which SOIS has indicated that it anticipates having an opening to admit the Student. (SF #14.)

⁹ See case law provided by all parties cited in their respective closing arguments and included in the Administrative Record. (IHO Exhibit #27.)

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 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 SOIS 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.

Compensatory Education Award

While Parents, District and this Hearing Officer previously agreed to bifurcate these proceedings and address the issue of any compensatory education award at a future date, this is a case of first impression with significant consequences to the education of the Student and significant financial consequences to the parties. Therefore, this Hearing Officer believes that a final order is necessary and same cannot be issued while retaining jurisdiction over the compensatory education award. This Hearing Officer hereby dismisses the compensatory education award issue without prejudice. Parents are welcome to refile a due process hearing request related to same.

CONCLUSION

Based on the above Stipulated Facts 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 SOIS, 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 SOIS are denied based upon

this Hearing Officer's lack of jurisdiction to order same. The compensatory education award request is dismissed without prejudice.

ORDER

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

- a. The District shall immediately, on or before November 30th, assume full financial responsibility for all expenses associated with the Student's placement at SOIS, 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, if any, in unilaterally placing the Student at SOIS, 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 deposit Parents paid to SOIS in the amount of \$34,497.75 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 SOIS 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 SOIS 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.

The following requested relief is hereby **dismissed without prejudice**:

- a. Parents' requested remedy of compensatory education is hereby dismissed without prejudice.¹¹ The December 9, 2021 Status Conference date is hereby stricken.

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

¹¹ Parents' alleged period of FAPE denial is from May 28, 2021 to November 30, 2021. Given the two (2) year statute of limitations period, Parents have ample time to re-file within the original statutory period. This Hearing Officer's Order is not to be viewed as an opportunity to extend the statute of limitations period.

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 23, 2021

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

APPENDIX A

[REDACTED] v. [REDACTED] HSD [REDACTED]
Case No: 2022-DP-0044

Child	[REDACTED]
Attending School	Currently hospitalized
District School	[REDACTED] HSD [REDACTED]
Child's Parents/Petitioners	[REDACTED] (Mother) [REDACTED] (Father)
District Witnesses:	
Private Placement Coordinator	[REDACTED] (JS)
District Representative/Director of Special Education	[REDACTED] (TW)
Director of Special Education ISBE	[REDACTED] (BM)
ISBE Witness:	
Director of Special Education ISBE	[REDACTED] (BM)
Hospitals:	
[REDACTED]	LGH
[REDACTED]	LFH
Schools:	
[REDACTED]	KDS
[REDACTED]	SOIS