



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

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Student, a minor, by and through his	)	
Parents <sup>1</sup> ,	)	
	)	
Petitioners.	)	Case No. 2022-DP-0137
	)	
	)	Janet Maxwell-Wickett
	)	Impartial Due Process Hearing Officer
	)	
v.	)	
	)	
School District No.	)	
	)	
Local 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., the Illinois School Code, 105 ILCS 5/14-8.02a, and their respective implementing regulations.

**BACKGROUND**

The Student is a 17-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) category of Autism.

On January 21, 2022, the Parents filed their Due Process Hearing Request against Township High School District (the District). In their Complaint, the Parents alleged:

1) That the Student requires a residential placement to receive a free and appropriate public education (FAPE) and that the residential placement must be one designed to meet the needs

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

of a student with Autism and severe behaviors; 2) The District has denied Student a FAPE by failing to fulfill its obligations under the IDEA to provide the Student with an appropriate educational placement as no residential placement has been identified and no placement has occurred since the October 4, 2021 IEP meeting; 3) There are no appropriate and available ISBE-approved residential facilities that are willing to admit Student; and 4) The District is required to place the Student at [REDACTED] School (SOIS) in [REDACTED], a non-ISBE approved residential facility which is the only placement appropriate and available for the Student. (IHO Exhibit # 1.)

The parties agree that this Student requires a residential placement. However, due to his unique needs, the District has been unable to locate an ISBE-approved private residential treatment program that can meet this Student's needs. Per District counsel and Parents' counsel, the parties have been working collaboratively in order to identify a residential placement for the Student. However, at this time, only one private, non-ISBE approved residential treatment program identified by Parents in New York has agreed to accept the Student as of February 12, 2022. However, as the facility is not ISBE approved, the District is unable to place the Student at that facility. Due to the unique needs of this Student, the safety of the Student, Parents, educators, and treating providers is a significant issue which presents a crisis for both Parents and the District.

The District timely filed its Response to the Parents' Due Process Hearing Request on January 31, 2022. 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 is

appropriate and available to accept the Student for enrollment. (IHO Exhibit # 4.)

On December 3, 2021, the Parents submitted a Notice of Unilateral Placement letter to the District indicating that they would be placing the Student at SOIS. The Student began attending SOIS on February 12, 2022. (SF # 16, 25.)

The Parents and District waived the resolution session and the 45-day hearing timeline commenced on February 1, 2022. The decision due date in this matter is March 2, 2022, and the 45-day timeline expires on March 18, 2022. (IHO Exhibit # 6.)

The Parents opted for a closed hearing. The Due Process Hearing was held on February 15, 2022. Ms. Jennifer Hansen and Ms. Marina Diambri of Hansen & Cleary, LLC represented the Parents. Ms. Caroline Roselli and Mr. Jamar Orr of Robbins Schwartz represented the District. The Parents and District presented witness affidavits. The Parents and District presented the following Joint Exhibits (JE): #1-20 (JE p. 1-392), which were admitted into evidence. This matter proceeded as a largely stipulated matter. Parents' and District's Joint Stipulation of Facts document was admitted into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-18. Parents and District waived closing arguments and provided citations to 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 SOIS, 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 SOIS 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 both parties have been working collaboratively to resolve the outstanding residential placement issue in this matter, therefore, the balancing of the equities is not at issue in this matter.

Parents request the following relief:

- a. Placement of the Student at SOIS, a non-ISBE approved facility, with appropriate transportation for the 2021-2022 and 2022- 2023 school years, including extended school year services for 2022 and 2023;
- b. Reimbursement to Parents for any monies advanced to SOIS to date in order to secure the Student's placement at said facility.

### **STIPULATED FINDINGS OF FACT<sup>2</sup>**

1. The Student is a 17-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") category of Autism. (SF #1; JE 9-275, 278-328; Affidavits of Mother,

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<sup>2</sup> Findings of Fact are based upon the Parents' and District's Joint Stipulation of Fact and are referred to as Stipulated Facts (SF).

Father.)

2. The Student was initially found eligible for special education services on November 2, 2007, when he was three years of age. (SF #2; Affidavits of Mother, Father.)
3. On May 18, 2016, Parents and the Student's Elementary School District, Wilmette School District 39 (District 39), convened an IEP meeting for the Student's triennial re-evaluation. At that time, The Student was in the 5th grade and attending Highcrest Middle School (HMS). District 39 administered the Vineland-II, which reflected that the Student scored in the low range across all areas. The re-evaluation notes areas of concern, such as the Student's coping skills and regulation. A functional behavioral assessment ("FBA") was conducted to look at two areas: 1) disruptive behavior and 2) aggression. According to the FBA, the Student's disruptive behavior included property destruction and loud vocalizations or moving away from staff. The disruptive behavior occurred during work time, as a response to an adult directive, and to cease an activity, a denied request, or an unexpected disruption in routine. The Student's disruptive behavior also led to physical aggression at times. According to the FBA, the Student's aggression was defined as hair pulling, kicking, and grabbing. Past aggressive behaviors included hitting, grabbing at someone's face/neck area, scratching, biting, and head butting. These behaviors occurred independently but could also be preceded by property destruction. The disruptive behavior ranged from mild to moderate to severe and lasted a few seconds to two minutes. The aggression also ranged from mild to moderate to severe and lasted from a few seconds to up to four minutes. A behavior intervention plan ("BIP") was created to address the Student's behaviors. He

remained eligible for special education services under the primary eligibility of Autism and secondary eligibility of Other Health Impairment (OHI). (SF #3; JE 9-50.)

4. In September 2018, Dr. O [REDACTED] (Dr. O), an Illinois licensed clinical psychologist, of the [REDACTED] Psychology Group, conducted a Cognitive and Social/Emotional Evaluation Report (evaluation) of the Student. At the time of the evaluation, the Student was in the 8<sup>th</sup> grade. Dr. O diagnosed the Student with a moderate Intellectual Disorder<sup>3</sup> "as defined by deficits in overall cognitive ability (*e.g.*, abstract reasoning, judgment, and problem-solving) and evidence of limited independent adaptive functioning skills. He evidenced moderately impaired overall nonverbal intellectual functioning. The Student displayed moderately impaired receptive and expressive language skills." Dr. O also diagnosed the Student with Autism Spectrum Disorder (ASD) with accompanying intellectual impairment and accompanying language impairment, indicating, "He demonstrated a high level of symptoms across all three domains assessed, including nonverbal social communication, social/emotional reciprocity, and restricted and repetitive behaviors." Dr. O recommended that the Student's special education eligibility remain Autism and add Intellectual Disability (ID). (SF #4; JE 1-8; Affidavits of Mother, Father.)
5. On May 7, 2019, at the end of the Student's 8<sup>th</sup> grade year, the Parents and District 39 convened an IEP meeting to discuss the results of the Student's triennial re-evaluation, as well as for the Student's articulation meeting to high school. District

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<sup>3</sup> Dr. O administered the CTONI-2 to the Student, which reflected a Full Scale IQ of 52.

high school staff attended the meeting and developed an IEP for the Student's 9<sup>th</sup> grade year. The IEP team reviewed Dr. O's fall 2018 evaluation. The re-evaluation paperwork reflects, "Many of the evaluation results from the school-based informal assessments align as areas of need related to these [Dr. O's] diagnoses." An FBA was conducted, again to evaluate the Student's aggression and disruptive behavior. Based on the results of the FBA, a BIP remained in place to address both areas of need. According to the BIP, "aggression" included "grabbing, hair pulling. Past aggressive behaviors have included hitting, grabbing, scratching, kicking... ". The BIP defined "disruptive behavior" as "shouting, property destruction, and displacing materials." The Student's special education eligibility was changed at this meeting to reflect a primary eligibility of Autism and a secondary of Intellectual Disability. Following the eligibility portion of the meeting, the IEP team moved into the drafting of the Student's IEP. The IEP reflects the Student's placement for the 2019-2020 school year (his freshman year of high school) as: 1) 100 minutes per week of speech/language therapy, 2) 30 minutes per week of speech/language therapy consult, 3) 40 minutes per week of social work, 4) 60 minutes per week of occupational therapy, 5) 2150 minutes per week of aide support, and 6) placement in the general education setting for less than 40% of the day. The Student's special education placement for his 9<sup>th</sup> grade year was to be in the Educational and Life Skills (ELS) program at the District high school. The team also determined that the Student qualified for Extended School Year (ESY) services. (SF # 5; JE 9-93.)

6. In the fall of 2019, the Student transitioned to the District high school for his freshman year and began in the District's ELS program. The Student has continued to be placed in the District's self-contained ELS special education program during

his time in high school. In addition to his placement in the ELS program, the Student has received related services in the areas of speech and language, occupational therapy, social work, and an individual aide. Throughout his time in high school, the Student has continued to display aggression and disruptive behaviors. (SF # 6; JE 51-93.)

7. On May 4, 2020, the Student's IEP team met for his annual review meeting. The Student remained eligible for special education services under the Autism and Intellectual Disability categories. At the beginning of the year, the Student was able to sustain attention for 20-25 minutes. Subsequent to the start of the pandemic and remote schooling, the Student's engagement had lessened to only two to three minutes before "his body would become physically agitated (rocking, biting towel, etc.) and unrelated vocalizations would emerge (growling, singing, repeated words)." The IEP team drafted five goals for the Student and continued to maintain a BIP for him regarding the same two target behaviors - aggression and property destruction. The IEP team agreed that the Student was to receive special education instruction as follows: 1) 200 minutes per week of Math Foundations, 2) 180 minutes per week of English Foundations, 3) 180 minutes per week of Vocational Ed., 4) 180 minutes per week of Community Ed., 5) 60 minutes per week of Prep. Living, 6) 200 minutes per week of Adapted P.E., and 7) 200 minutes per week of High 5 Choir. The Student was to receive related services minutes as well as follows: 1) 2150 minutes per week of 1:1 aide support, 2) 60 minutes per week of occupational therapy, 3) 20 minutes per week of speech/language therapy consultation, 4) 100 minutes per week of speech/language services, and 5) 40 minutes per week of social work services. (SF #7; JE 94-131.)

8. In the fall of 2020, the Student began his sophomore year. On April 26, 2021, the Student's annual review IEP meeting was conducted by his team with the school staff and Parents in attendance. At that time, the Student was functioning adequately well within the ELS program at the District high school and was making progress academically, functionally, socially and behaviorally. During the meeting, the team noted that there were many factors that seemed to affect the Student's behavior including the effects of pandemic-related programming changes, and natural changes such as the effects of puberty, bathroom needs, sleep routines, and food routines. The team further noted that the Student's behaviors primarily were loud noises or biting his own shirt or hand and indicated that he had shown physical aggression at school in three instances that school year. Based on this, the team altered his behavior intervention plan to list disruptive behavior as the most significant target behavior and aggression as the second most significant target behavior. The team indicated, and Parents concurred, that the Student greatly benefits from naturally incorporating heavy lifting/carrying/pushing and exercise throughout his day and that keeping the Student busy, feeling productive and appreciated, and providing motivating rewards within his work/break routine ensured the Student's success at school. The team continued the Student's educational program in the ELS setting with the same special education and related service minutes and supports. (SF # 8; JE 132-170.)
9. On August 23, 2021, the 2021-2022 school year began. At the start of the school year, the Student displayed some agitation in the form of head scratching and yelling. Four weeks into the school year, the Student was frequently dysregulated throughout the school day and began displaying increased physical aggression in

the form of attacking staff members, which at times resulted in injury to staff. Around this time, Parents also began reporting to the District that the Student was engaging in increased physical aggression at home, including grabbing and attacking his parents. The District and Parents worked together to address the Student's increased dysregulation and attempted different strategies and supports to try to get the Student back to a more regulated state. Due to safety concerns, and after several classroom evacuations due to the Student's aggressive behaviors, the District created a separate learning environment for the Student outside of his classroom, with approximately three staff members with him at all times. Within this setting, the Student had limited access to either general education or special education peers. Although the District attempted to incorporate the Student's access to peers at various points throughout his day, he was sometimes too dysregulated to have any access to peers. As a result of the significant changes in the Student's behavior and safety concerns, in October 2021, the parties convened an IEP meeting to review the Student's behavioral and functional progress, his need for increased physical restraints, and to discuss supports, services and placement for the Student. (SF #9; JE 171-214; Affidavits of Mother, Father.)

10. On October 4, 2021, an IEP meeting was convened with the District and Parents to discuss the Student's increased behaviors that had resulted in the need for physical restraint. During the meeting, the team discussed that the Student's long-standing diagnosis of Autism Spectrum Disorder includes a high level of symptoms related to non-verbal social communication, social/emotional reciprocity, and restricted and repetitive behaviors. His social interactions and functional communication are severely limited. Maladaptive behaviors are also evident, including self-injury

(hand biting, forehead and scalp scratching until bleeding) and aggression towards others. During the 2021-2022 school year, the team noted that the Student had demonstrated an increase in grabbing and shouting behaviors, as well as physical aggression and lunging at staff. Through this behavior, the Student appeared to be seeking social interaction and physical/sensory input; however, due to his strength, it had become an unsafe situation for the Student, staff and peers. There were four aggressive incidents since the start of the school year that had required the Student to be restrained and students in the classroom to be evacuated for their safety. Parents also shared that the Student continued to be aggressive at home either to himself or to others. Father shared that when the Student is self-injuring, he does not attack others, but when he is not self-injuring he does aggress on others. Over the last few years, Parents reported they have become the target of the Student's aggressive behaviors. Mother indicated that the Student began his vigorous head scratching in January 2021 and by May 2021 was engaging in head scratching at school as well as at home. The team also discussed that when the Student is highly escalated, he can be aggressive towards adults, and his current behavior interferes with his ability to learn in a typical school environment. The team noted that the Student requires a highly structured, therapeutic environment that can provide consistent routines across school and living environments. He also needs a modified curriculum that includes reteaching, verbal and visual materials, opportunities to practice new learning across multiple environments, and staff to reinforce skills. The team further found that constant monitoring to ensure his safety and supports to develop communication and coping strategies are essential. Based on the discussions at the October 4, 2021, IEP meeting, the parties agreed that the Student

required placement in an ISBE approved residential facility. During the meeting, Parents asked for clarification that the District would continue to support the Student in his current setting at the District high school until a residential placement could be located. The school team confirmed that they would continue to provide the Student's current educational program with the current staffing and service levels until a residential placement could be located. Subsequent to this meeting, on October 11, 2021, the team also agreed to remove the Intellectual Disability eligibility from the Student's IEP to broaden residential placement options for him. (SF #10; JE 171-275; Affidavits of Mother, Father.)

11. After the October 4, 2021 IEP meeting and the decision of the team to change the Student's placement to a residential setting, the District's Outplacement Coordinator began to explore and send referral packets out to ISBE approved residential settings that were appropriate for the Student and could meet his needs. The District explored every residential facility on ISBE's approved list that was appropriate for the Student however, no facilities in the entire country accepted him for enrollment or had availability for the Student. (SF #11; JE 171-214, 335-339; Affidavit of MK; Affidavit of LB.)

12. The District sent referral packets to the following ISBE approved programs: [REDACTED], [REDACTED] School, [REDACTED] School, [REDACTED] Institute, [REDACTED] for Autism, [REDACTED], [REDACTED] School, [REDACTED], [REDACTED] Center, [REDACTED], [REDACTED], The [REDACTED] School, [REDACTED] School, [REDACTED], The [REDACTED] School, [REDACTED] School, and [REDACTED]. The District also spoke with other ISBE approved residential schools about the Student, but was told that either the Student was not appropriate

or there was no opening available. Those schools are [REDACTED], [REDACTED] School, [REDACTED] and [REDACTED] Family Healing. (SF #12, JE 335-339; Affidavit of MK.)

13. On December 3, 2021, Parents provided the District with a written ten-day notice letter indicating that they intended to place the Student at SOIS in New York, a special education facility for students with Autism which had accepted the Student for enrollment. SOIS is the only program that is available, willing to accept the Student, and has indicated that it is equipped to meet his needs as set forth in his IEP. (SF #13; JE 276-277; Affidavits of Mother, Father.)
14. Based on Parents' December 3, 2021, unilateral notice, on January 4, 2022, the Student's IEP team reconvened to consider Parents' unilateral notice and to review the Student's progress at the District high school. During the January 4, 2022, IEP meeting, the District indicated that it had exhausted its efforts to locate an ISBE approved residential placement for the Student. The District also noted that it has and continues to make changes to the Student's schedule, behavioral supports and staffing to support him. Parents expressed concern over the Student's current programming at the District high school and isolation from other students, as well as whether he was receiving a FAPE in light of the lack of residential placement. During this IEP meeting, the District indicated that it still believes that a residential setting is the most appropriate setting for the Student in light of his aggressive and dysregulated behaviors. At that time, Parents indicated that a residential placement needed to occur immediately to provide the Student with a FAPE and to address the Student's maladaptive behaviors, which had increased since the October 4<sup>th</sup> IEP meeting. The Parents indicated that SOIS, a non-ISBE approved facility, can meet

the Student's current needs. Parents shared how the Student continued to decline since the October 4, 2021, IEP meeting including self-injuring during winter break in the form of grabbing and scratching/rubbing his hair out of his head. A photograph of the Student's head and missing hair over the course of two different days (a one-day difference) was shared with the District. Parents also reported difficulties in transporting the Student to/from school and the need to install a plexiglass separator in their vehicle to keep the driver safe. They further shared that the Student has been engaging in rectal digging. Parents also indicated that a new form of self-injurious behavior had recently begun which involved the Student sticking his fingers down his throat to gag himself, which resulted in induced vomiting. (SF #14; JE 276-333; Affidavits of Mother, Father.)

15. The District has been unable to provide the Student a FAPE and place him in a residential program consistent with his October 4, 2021 IEP because there are no ISBE approved residential facilities appropriate and available for the Student.
16. The Student commenced attendance at SOIS on February 12, 2022. (SF #15; Affidavits of Mother, Father, MK, LB; JE 335-339, 390-392.)
17. SOIS is a facility designed for children with significant needs who have a similar profile to this Student; specifically, students who have been diagnosed with Autism Spectrum Disorder and related maladaptive behavioral challenges. (SF # 17; JE 365-386; Affidavit of Mother, Father, CS.)
18. 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 significant maladaptive and unsafe behaviors. The parties further agree that SOIS is a residential program

designed to meet the Student's needs. (SF #18; JE 171-333, 340-346; Affidavits of Mother, Father, LB, MK.)

19. SOIS utilizes transdisciplinary academic and clinical approaches to teach students with Autism. SOIS's curriculum is individualized and includes a focus on building self-determination and self-advocacy skills and social/emotional skill development. The program places an emphasis on developing critical transition skills, including independent living skills and executive functioning skills such as organization, time management, and task completion. These skills are practiced and reinforced throughout the school day and evening activities. (SF #19; JE 365-386, 390-392; Affidavit of CS.)
20. SOIS's teachers and educational staff are appropriately certified to meet the unique needs of this Student. SOIS provides an age-appropriate curriculum; will provide enrollment and attendance data; and has the ability to implement the Student's IEP. (SF #20; Affidavit of CS.)
21. SOIS staff have experience working with students who exhibit aggressive and self-injurious behaviors. All staff are certified in Advanced CPI to appropriately intervene when students are exhibiting challenging behaviors. (SF #21; Affidavit of CS.)
22. SOIS's BCBA works closely with staff to provide an Individual Support Plan addressing students' challenging behaviors to ensure behavior modification. (SF #22; Affidavit of CS.)
23. Parents provided the District with timely and proper notice of their intent to unilaterally place the Student at SOIS. An IEP meeting was convened to discuss this notice on January 4, 2022. Neither the District nor the Parents believed it necessary

to re-evaluate the Student in light of the unilateral placement notice, especially as the IEP team was in agreement as of October 4, 2021, that the Student required placement in a residential setting in order to receive a FAPE. The parties agree that the cost of SOIS is reasonable in light of the services and supports that the Student requires, and because it is the only residential facility that has accepted and has immediate availability to enroll the Student. (SF #23; JE 276-333, 349-364; Affidavit of LB.)

24. On January 10, 2022, ISBE made a written commitment to address the lack of available residential placements impacting families and districts across the state. It stated, "In order to address the residential placement issue, ISBE will take the following actions immediately: (1) reverse its position and reimburse school districts for placements of students in nonapproved residential facilities as a result of a due process hearing officer decision . . ." ISBE goes on to state, "In order to provide short-term relief, ISBE will . . . reimburse school districts for placements in non-approved facilities ordered by an ISBE appointed hearing officer, subject to necessary prorations after the school district pays twice the per capita rate for tuition" ISBE further committed to notifying school districts of procedures for requesting reimbursement for due process hearing decisions. (SF # 24; JE 347-348.)
25. The Student began attending SOIS on February 12, 2022. To that end, on January 14, 2022, Parents submitted payment in the amount of \$22,705.24 for the initial tuition and as a non-refundable deposit. On February 1, 2022, Parents submitted payment to SOIS in the amount of \$34,844.44 as the second of five tuition payments for the Student's placement. This amount will be applied to the total tuition costs of the program for

the remainder of the 2021-2022 school year. (SF # 25; JE 349-389, 390-392; Affidavits of Mother, Father, CS.)

26. SOIS advised the Parents and the District that the cost for tuition and room and board for February 12, 2022 through June 30, 2022 (the last four and a half months of its current school year) will be approximately \$205,663.00. The annual cost for July 1, 2022 – June 30, 2023 for tuition and room and board will be \$535,695.00. The District agrees to pay the annual cost of tuition up to two times the District's per capita tuition rate, pending ISBE reimbursement for remainder of the tuition costs for the 2021-2022 school year, including ESY 2022, and for the 2022-2023 school year, including ESY 2023. (SF # 26; JE 347-389; Affidavits of Mother, Father, CS.)
27. The District agrees to be responsible for providing transportation to and from SOIS for the Student pursuant to 23 Ill. Admin. Code §226.750, and consistent with the District's related guidelines. Transportation is also reimbursed by ISBE at a high rate for costs associated with ISBE-approved residential facilities and should be reimbursed in kind in this matter. (SF # 27.)

### **CONCLUSIONS OF LAW**

Based on the above Stipulated Findings of Facts, witness affidavits 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. (SFF # 10-12, 18.) 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 and is available to the Student for enrollment, the District would be able to meet its substantive obligation. (SFF #10-13, 15.) 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. (SFF# 10-12, 14-15.) In an effort to address this issue, on January 10, 2022, ISBE made a written commitment to address the lack of available residential placements, impacting families and districts across the state. It stated, "In order to address the residential placement issue, ISBE will take the following actions immediately: (1) reverse its position and reimburse school districts for placements of students in nonapproved residential facilities as a result of a due process hearing officer decision . . ." ISBE goes on to state, "In order to provide short-term relief, ISBE will . . . reimburse school districts for placements in non-approved facilities ordered by an ISBE appointed hearing officer, subject to necessary prorations after the school district pays twice the per capita rate for tuition." (SFF #24.)

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 residential placement since the October 4, 2021 IEP meeting and, thus, has been unable to provide the

Student a FAPE. Moreover, the Parties are in agreement that SOIS is an appropriate residential placement for the Student. (SFF #10-23.)

The District and Parents jointly request that this Hearing Officer enter an order placing the Student at SOIS, a non-ISBE approved residential facility. Based upon the stipulated facts of the District and Parents, as well as the witness affidavits, 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. (SFF #10-23.) 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. (SFF #10-23.) 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. (SFF #18-23, 25-27.) The parties stipulate and agree that the balancing of the equities is not an issue as they have been working collaboratively to resolve the outstanding issues in this matter. (SFF# 23.)

Therefore, as of February 12, 2022,<sup>4</sup> 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). The parties stipulate and agree that the District will pay twice its per capita tuition rate annually and receive ISBE approved reimbursement for the remainder of the associated costs<sup>5</sup>. (SFF# 26.)

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<sup>4</sup> This is the date on which Parents' unilaterally placed and the Student began attending SOIS (SF #16, 25.)

<sup>5</sup> This Hearing Officer advised legal counsel for both parties during a status conference and at the due process hearing that she does not have jurisdiction to order ISBE to approve reimbursement. Further, ISBE was not named as a party to these proceedings.

## **CONCLUSION**

Based on the above Stipulated Facts, witness affidavits 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 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.

## **ORDER**

Based on the above Findings of Fact and Conclusions of Law, the Parents are hereby granted the following relief:

- a. The District shall immediately, as of February 12, 2022, 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, and room and board. The District shall also provide necessary transportation from the date of this order pursuant to 23 Ill. Admin. Code §226.750. Said expenses are to be paid by the District on a monthly<sup>6</sup> basis within 30 calendar days of receipt of same or by the stated due date of invoices of providers for the remainder of the 2021-2022 school year, including ESY 2022, and for the 2022-2023 school year, including ESY 2023.
- b. The District shall reimburse the Parents for the tuition and room and board Parents' paid to SOIS in the amount of \$57,549.68, in unilaterally placing the Student at SOIS, within 30 calendar days of mailing of this Final Determination & Order.

In accordance with 105 ILCS 5/14-8.02a(h), within **45** 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

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<sup>6</sup> Monthly payments are ordered in the event that something unforeseen occurs and the Student is unable to remain at SOIS.

**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 18 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: February 17, 2022

[Redacted signature line]

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

[Redacted text block]

**APPENDIX A**

[REDACTED] v. [REDACTED] Twp HSD [REDACTED]  
Case No: 2022-DP-0137

Child	[REDACTED]
Attending School	[REDACTED] School (SOIS)
District School	[REDACTED] Twp HSD [REDACTED]
Child's Parents/Petitioners	[REDACTED] (Mother) [REDACTED] (Father)
<b>Joint Witnesses via Affidavit:</b>	
District Outplacement Coordinator	[REDACTED] (MK)
District School Psychologist	[REDACTED] (LB)
[REDACTED] School Representative	[REDACTED] (CS)
Mother	[REDACTED] (Mother)
Father	[REDACTED] (Father)
<b>Schools:</b>	
Wilmette School District 39	District 39
Highcrest Middle School	HMS
[REDACTED] Twp HSD [REDACTED]	District
[REDACTED] School	SOIS