

[REDACTED]

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

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STUDENT <sup>1</sup> ,	)	
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Student,	)	
	)	Case No. 2023-DP-0019
v.	)	
	)	Janet Maxwell-Wickett, Esq.
[REDACTED] High School District [REDACTED]	)	Impartial Hearing Officer
Cook County, Illinois	)	

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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**

DPN (the “Student”) is the subject of this due process action. Father and Mother (the “Parents”) are the Student’s parents. The Student turned 18 on May 3, 2022. On May 4, 2022, he delegated his right to give consent and make decisions concerning his education to the Parents. (IHO Exhibit #1). The Parents reside within the geographic boundaries of the [REDACTED] High School District [REDACTED] (the “School District”). The Student previously resided within the geographic boundaries of the School and, but for the residential placement detailed below, would continue to reside within the School District’s boundaries. On October 26, 2021, the Parents unilaterally placed the Student in a residential program at [REDACTED] (NFA) in [REDACTED], Utah. NFA is not approved by the Illinois State Board of Education

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

("ISBE") to serve students with disabilities and it was not approved on the date of the Student's placement.

The Student was initially determined eligible for special education and related service instruction pursuant to the *Individuals with Disabilities Education Act* ("IDEA") in elementary school. The Student's current eligibility is pursuant to the IDEA disability classifications of Autism (primary) and Other Health Impairment (secondary). The Student completed his senior year of high school in May of 2022, but did not receive a diploma. He remains eligible for special education and related service instruction as set forth in his IEP.

The Parents submitted their due process complaint ("Complaint") to the School District on August 2, 2022. (IHO Exhibit #1). The undersigned was appointed to preside over the matter on August 10, 2022. (IHO Exhibit #3). The School District filed its response to the Complaint on August 12, 2022. (IHO Exhibit #4). On August 17, 2022, the parties agreed to waive the resolution session. (IHO Exhibit #6). On September 7, 2022, the undersigned convened a pre-hearing conference. Participating in the conference were: the undersigned Impartial Hearing Officer, [REDACTED] and [REDACTED] Attorneys for the Parents, [REDACTED] Attorney for the School District, and Dr. [REDACTED] the School District's Director of Special Education. The conference was conducted via Zoom video conference. (IHO Exhibit #7-9).

This Hearing Officer's 45-day timeline was reset to October 1, 2022, after the parties jointly waived the resolution session. (IHO Exhibit #6, 9.) No continuances were requested. The Prehearing Conference was completed on September 7<sup>th</sup> and the Due Process Hearing date was set by agreement for September 19, 2022. The decision due date is set for October 1, 2022. (IHO Exhibit #9.)

The Parents opted for a closed hearing. The Due Process Hearing was held on September 19, 2022. The Parents were represented by Ms. [REDACTED] and Ms. [REDACTED] of Hansen & Cleary, LLC. The School District was represented by Ms. [REDACTED] of Engler, Callaway, Baasten & Sraga, LLC. The District Representative was Dr. [REDACTED] the School District's Director of Special Education. The testimony of three joint witnesses was presented via affidavit. The parties presented only Joint Exhibits (JE): # 1-12 which were

admitted into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-14. The parties waived opening and closing statements. This matter proceeded to hearing as a largely stipulated matter. Parents' and Districts' Joint Stipulations of Fact document was admitted into evidence. (JE #8.)

### ISSUES

The issues raised by the Parent, including the relief requested, and the response of the District, present the following issues, defenses and requested relief for determination by this Hearing Officer:

a) 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 Parent's unilateral placement of the Student at [REDACTED] (NFA), a non-ISBE approved residential facility, is appropriate and 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 the NFA 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.

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 [REDACTED] (NFA), a non-ISBE approved facility, with appropriate transportation for the 2022-2023 school year;

- b. Reimbursement to Parents for any tuition and room and board monies paid to NFA to place the Student at said facility from October 26, 2021 through the date of hearing.

**PARENTS' AND SCHOOL DISTRICT'S JOINT  
STIPULATIONS OF FACT**

1. The Student is an 18-year-old male who resides with his parents, the Parents, within the geographical boundaries of the School District and who is enrolled in the School District. He is eligible for special education under the *Individuals with Disabilities Education Improvement Act* ("IDEA") under the eligibility categories of Autism (primary) and Other Health Impairment (secondary). (SF #1; JE #1).
2. The Student was initially found eligible for special education services in elementary school. (SF #2; JE #5).
3. The Student has had longstanding social/emotional, mental health, and behavioral struggles throughout his educational career. These struggles included disciplinary issues in the educational setting, psychiatric hospitalizations (inpatient and outpatient), placement in a wilderness program, placement in a longer-term mental health hospital for stabilization, and many interventions from District staff and the Parents. These struggles have resulted in missed days of school, frequent seeking out staff support beyond scheduled minutes, missed instruction due to the need to "process" with staff, difficulties in the home and community setting, suicidal ideation, self-injurious behaviors, and physical aggression to peers and adults. The Parents have attempted to alleviate many of the Student's symptoms on their own through psychiatric intervention and medication management, through mental health treatment from private therapists, and through in-patient and out-patient hospitalizations. Despite the Parents' attempts to address the Student's symptomatology, he continued to decline socially, emotionally, and behaviorally throughout the COVID-19 pandemic and into the 2021/2022 school year. (SF#3; JE #1,5-6, 11-12).

4. On February 12, 2018, an articulation IEP meeting was convened with the Parents, staff from the Student's elementary district, and School District staff to discuss the Student's transition to the high school setting in the fall of 2018. The IEP reflects that the Student remained eligible for special education services under the Autism and Other Health Impairment categories. The Student was to be in the general education setting without special education supports only for lunch and physical education; was to be provided with a 1:1 aide; was to receive 30 minutes per week of social skills instruction in a social communication group; was to receive 30 minutes per week of individual social work; was to receive special education instruction four times per week for 90 minutes per day in the resource setting; and was to receive special education instruction five times per week for 90 minutes per day in the resource setting. The Student was not provided with transportation or extended school year services. A Behavior Intervention Plan ("BIP") was included that targeted the following behaviors: being on task and focused across classroom settings, not asking questions that the Student likely knows the answers to, not talking negatively about a peer's looks and/or voice or race and fostering independence. (SF #4; JE #1,5).
5. The Student began attending GBS in the School District on August 22, 2018 as a freshman. It was during his sophomore year, the 2019/2020 school year, that the COVID-19 pandemic disrupted his educational programming in the spring of 2020. Since he began high school, the Student has struggled with appropriate peer and adult interactions, with his social skills in general, with self-regulating, with work completion, and with his executive functioning skills. (SF #5; JE #1,5,11).
6. In June 2020, the Student began attending a partial hospitalization program ("PHP") due to outbursts at home and his heightened anxiety. He continued in the PHP until discharge in early August 2020. (SF #6; JE #5).
7. In the spring of 2021, the Student attended an intensive outpatient hospitalization program ("IOP") from April 1, 2021 - May 12, 2021. (SF #7; JE #5).

8. On December 16, 2020, the School District sent a Notification to the Parents regarding the need to conduct a re-evaluation of the Student for the triennial evaluation. (SF #8; JE #1).
9. On January 26, 2021, the Student's IEP team met to review the results of the triennial evaluation. At the time of this IEP meeting, the Student was halfway through his junior year of high school at GBS. According to the School District Psychoeducational Evaluation, "Teachers have historically reported the Student is a kind and motivated student who wants to do well in school and build positive relationships. He is well versed in strategies that can help him be successful, but his impulsivity often makes it difficult to access these strategies in the moment. The Student can be extremely insightful after a negative interaction or behavior occurs. Prior to e-Learning, the Student often struggled with managing negative peer relationships as it would affect his ability to focus in class. At times, teachers reported the Student may misinterpret peer interactions. When feeling upset or frustrated in class, the Student benefits from taking a break or seeking out support in Student Services to process and de-escalate a classroom incident." The Student remained eligible under the Autism and Other Health Impairment categories. He was provided with a 1:1 aide for Spanish, English and chemistry. He received 30 minutes per week of social skills instruction via a social communication group, 30 minutes per week of individual social work, and 180 minutes per week of special education instruction in a resource setting (advisory). (SF #9; JE #1, 5, 11).
10. The Student had a number of disciplinary issues and struggles as documented in the School District's Discipline Log Entries, which contain many incidents of verbal outbursts and struggles with engaging in appropriate peer and adult interactions. As some examples of the Student's most recent behaviors in the School District, on May 19, 2021, the Student made inappropriate comments in class in front of peers which were directed toward his aide. Specifically, he said, "Not you Ms. Nobody B■■■■," "I'm going to tell them to fire you," "worthless crap," and "you should go die." He refused to walk into the sensory room, swiped

the walkie-talkie out of his behavior modification specialist's hand when she tried to call for support, and ended up being escorted to another room by the school resource officer. Because the Student was so heightened, he was sent home for the rest of the day in order to de-escalate. On May 5, 2021, the Student became "angry and dysregulated," "continued to shout, swear, and make inappropriate comments about staff members," and made statements "about not wanting to be alive anymore." At that time, the Student was participating in the IOP and the School District requested that he be assessed for safety before he could return to the School District. On March 10, 2021, the Student intentionally bumped into a peer. In January 2021, a female student reported feeling uncomfortable because the Student was seeking her out often in the hallways before and after classes. School District staff met with the Student to discuss appropriate boundaries. On March 10, 2020, the Student became agitated and punched a peer's backpack. On March 9, 2020, the Student called a peer a "moron." After the Student's aide talked to him about the name-calling, the Student walked by that same peer and purposely turned his body so that his backpack hit the student. On March 6, 2020, the Student called a peer a "mother f---er." On February 18, 2020, the Student met with school staff "due to an incident that occurred on Friday. Student was still upset about the incident and was ruminating and became frustrated and began making threatening statements about other students." (SF #10; JE #1, 5, 11).

11. From May 2021 through August 2021, BK, a Licensed Clinical Social Worker (LCSW), of ██████████ Counseling worked with the Student and the Parents to provide individual and family psychotherapy. On two occasions, BK had to provide the Parents with crisis intervention services late in the evening, outside of normal working hours, because of the Student's extreme dysregulation. Through the telephone, BK could hear the Student screaming and guided the Parents through regulating the Student to prevent psychiatric hospitalization. (SF #11; JE #1, 5, 11).

12. On June 1, 2021, an IEP meeting was convened to discuss the Student's special education programming, needs, and placement. The IEP reflects ongoing struggles that the Student was having in the educational setting including, but not limited to, perseveration on preferred topics, behavioral incidents, and struggles in math as the content was challenging for him. The Student's final grades for the 2020/2021 school year reflect 2-A's, 1-B, and 3-C's. The IEP reflects that an IA hallway escort had been added three days prior to the meeting due to the Student's behaviors. Although it had only been three days, the addition of the IA hallway escort was going well. No additional substantive changes were made at this IEP meeting. (SF #12; JE #1, 5, 11).
13. In August 2021, the Parents unilaterally placed the Student at a wilderness therapy center in Utah. After only twenty-eight (28) hours in the program, on August 25, 2021, the Student was emergently discharged from that program and taken to the local emergency room in [REDACTED], Utah in order to be assessed. He had physically assaulted multiple staff members multiple times and threatened to kill people while in the wilderness program, he was extremely dysregulated, and additional staff were called to assist in order to de-escalate the Student and transport him to the emergency room. (SF #13; JE #5).
14. Hospital records reflect, "[the Student] is very upset about being here. . .He has physically attacked some of the [wilderness program] staff members. He has tried to hurt himself by taking a stick and scraping his arms. He states that if he is forced to stay in this program [sic] is going to hurt himself. . .He is brought to the emergency department for psychiatric evaluation with the recommendation from the program psychologist that he be admitted to a mental health facility pending new arrangements." (SF #14; JE #5).
15. On August 26, 2021, the Student was transported from the emergency room to a behavioral health hospital in Utah and admitted on an inpatient basis. He remained psychiatrically hospitalized on a child/adolescent psychiatric unit until August 30, 2021, at which point he was deemed stable and safe enough to be

- discharged. He was diagnosed with Autism Spectrum Disorder and Disruptive Mood Dysregulation Disorder upon discharge. The Student was transported directly to a longer-term mental health hospital in Syracuse, Utah. He remained there until discharge on October 25, 2021. (SF #15; JE #5).
16. In September 2021, JK, LCSW, the Student's primary therapist at the wilderness program, wrote a letter detailing the Student's level of functioning during the 28 hours that the Student attended the wilderness program in August 2021. Specifically, she wrote that "[the Student] was visibly anxious upon arrival at the airport. Once he arrived at the office, [the Student] became more overwhelmed and refused to exit the vehicle. After 45 minutes, [the Student] agreed to come inside and continue the intake process. During this process, his agitation increased substantially, and he became physical aggressive with the program staff and threatened to harm himself. At this time, [the Student] was placed in a benevolent hold. [The Student] was unable to calm himself or access any appropriate coping skills . . . Upon arrival to the mountain, [the Student] again was escalated. He indicated that if was not able to call his mother, he would kill himself. In addition, many other inappropriate and offensive slurs and threats were made." JK recommended that the Student first receive treatment in a hospital-type placement to meet his level of care and needs and then "continue with care in a therapeutic residential treatment setting. [The Student] needs 24-hour support to continue to learn the necessary skills for him to have a chance to live independently." (SF #16; JE #5).
  17. On September 12, 2021, Dr. G, the Student's former treating psychiatrist, wrote a letter on the Student's behalf. Dr. G indicated that she began working with the Student in February 2013 and was responsible for his medication management. According to Dr. G, "Over time [the Student's] behavioral reactivity, anxiety and explosive reactions have grown ever more frequent and difficult to manage both in school and particularly at home with his parents where there have actually been physical altercations." Dr. G explained that she had recommended that the

Student participate in the PHP in 2020 and described his ongoing struggles. She concluded her letter by indicating, "Given his escalating emotional dysregulation and physical aggression I am urging placement in a therapeutic residential program. He cannot safely be managed at home or in his local school district." (SF #17; JE #5).

18. On September 23, 2021, BB, LCSW, a social worker working with the Student, sent an e-mail to the Parents summarizing the Student's behavior since August 30, 2021. BB outlined a number of struggles that the Student had been having, "[The Student] does not understand people with transgender, LGBTQ, or gender fluidity issues. He becomes agitated and threatens physical aggression toward anyone who tells him they may associate with those identities. As a result, we have had to keep him separated from other program participants who may identify as such," and "Any time [the Student] perceives, which is often, that someone is insulting, judging, or mocking him, he becomes emotionally upset, shouts obscenities, postures physically in an aggressive manner, and throws objects at others. He has thrown objects on three occasions: he threw an apple at a gender fluid resident; he threw cereal at another gender fluid resident; and, most recently, he threw a water bottle at a staff member," and "Upon discovering that a program resident identified as gay, [the Student] used a marker to write, '[Client's name] is a faggot' on the wall. The wall had to be repainted to cover the damage" and "[the Student] has been separated, for the most part, from other program participants in order to ensure their physical and emotional safety," and "[the Student's] outbursts are generally unprovoked and unpredictable. He requires a staff member to supervise him continually in order to ensure safety for all. He also requires constant and continual coaching, de-escalation and supervision. His attention needs, in order to ensure the safety of others, are beyond what would be considered reasonable in a normal residential treatment or education setting." BB recommended that the Student be placed in a residential treatment program "specializing in the treatment of Autistic Spectrum Disorder and with a staff intensive setting." (SF #18; JE #5).

19. On September 23, 2021, ER, LCSW, the Student's individual therapist with whom he worked from January 2020 through August 2021, wrote a letter summarizing her treatment of the Student. A copy of this letter was provided to the School District. According to ER, "Many months prior to the beginning of the 2021 school year, the Student described experiencing profound dread and an enormous amount of anxiety in regard to returning to school. The Student has reported experiencing symptoms of PTSD resulting from numerous instances of bullying occurring in the school setting, all of which have caused significant emotional damage. The Student has consistently presented with an extraordinary amount of difficulty managing appropriate peer relationships and impulse control, often leading to physical and intense verbal altercations both at school and in the home. In these discussions, we explored the need for an alternative school setting that could appropriately help manage the Student's needs and help him thrive in a more attuned environment." (SF #19; JE #5).
20. On September 24, 2021, Dr. C, the Student's pediatrician, wrote a letter regarding the medical visit he had with the Student on August 19, 2021. According to Dr. C, "During the visit, [the Student] had very high emotions and agitation. Agitation was noticeable upon check in with medical assistant. He escalated very quickly. During the exam, the Student's dysregulation increased. He was agitated by seeing notes of ASD and ADHD on the computer screen during visit, and by each question I asked him. He was sweating, swearing, talking at elevated levels throughout the visit." (SF #20; JE #5).
21. On September 28, 2021, BK wrote a letter summarizing his work with the Student and recommended the Student be placed in a residential setting "that can provide him with the around-the-clock therapeutic interventions necessary to teach him long-term emotional, behavioral and relational stability." (SF #21; JE #5).
22. On September 30, 2021, an IEP meeting was convened at Parents' request. Counsel for the Parents and for the School District attended this meeting. The School District received copies of the communications from the Student's private

providers described in paragraphs 14, 16 through 18, 20, and 21 above at or before the September 30<sup>th</sup> meeting. These communications were considered by the IEP team at the September 30<sup>th</sup> meeting. (The School District received a copy of the private provider communication described in paragraph 19 above after the September 30<sup>th</sup> IEP meeting.) The Parents requested that the School District consider residential placement for the Student in light of his declining functioning despite all of the interventions that the Parents and District had previously attempted. During the IEP meeting, the Student's mother shared with the team that the Student was set to attend a summer residential program, a program for children on the Autism Spectrum, during the summer of 2021 but was disinvited upon arrival due to his heightened anxiety. School District staff indicated that the Student struggled to adjust as more students began to return to the School District following the COVID-19 pandemic. [The Student] was perseverating more often. He made comments that included profanity and derogatory statements. While he was easily redirected and apologetic, he struggled with implementing coping strategies in the moment. He was often verbally aggressive toward his peers. There were times when the Student stood and "postured" as if he was going to engage in physical confrontations with staff and students. In addition, the Student struggled to work with a particular instruction assistant, often was angry at her and said inappropriate things to her on multiple occasions. Furthermore, he struggled with appropriate peer interactions and "often perseverated on negative experiences that happened in the past with certain peers." The school social worker indicated that the Student often was not disciplined; rather, the team processed various incidents with him in the social worker's office. The team also discussed the fact that the COVID-19 pandemic benefitted the Student, in some ways, as remote instruction removed the socialization piece. He did not have to be confronted with peers who he perceived had traumatized him. When GBS students returned full-time in the winter/spring of 2021, the Student initially transitioned well when fewer students were present at school. However, as more

students returned, including students who he perceived to have bullied him in the past, the Student's perseverations and agitation increased. The School District provided additional supports to address these challenges. At home, the Student's behavior escalated significantly, including verbal and physical aggression towards family members and statements of suicidal and homicidal ideation. The team considered the reports received from the Student's outside providers (as detailed above) and the Parents' reports regarding the Student's dangerous behaviors at home. The team discussed the Student's goals and agreed to add additional areas based on the Parents' request; specifically, in the areas of reducing time out of class and having appropriate peer interactions. At the conclusion of the IEP meeting, the team agreed to place the Student in a residential setting as it was not safe for him to be in any less restrictive setting. (SF #22; JE #1, 5, 7, 11).

23. On October 7, 2021, JY, PMHCNS-BC, APRN, and BB, LCSW, wrote a letter regarding the Student. According to JY and BB, over the course of his admission, the Student has struggled to integrate socially within the peer milieu, has demonstrated significant rigidity of thought, has trouble interacting appropriately with peers, and does not appear to internalize learned tolerance of others. The Student does not tolerate peers who have different beliefs, opinions, or ideas than he does. He focuses on these differences and creates a belief system that those peers are dangerous, bullying, threatening, and abusive. During many peer interactions, his emotions become dysregulated. He shouts, cries, and has postured physically in a manner which suggests he may become physically aggressive (jaw tightening, clenched fists, puffed out chest, raised voice, use of profanity, degrading statements, and verbal threats). The Student has not been physically aggressive with others but has thrown objects at the floor or wall when frustrated. (SF #23; JE #5).
24. The letter from JY and BB further reflects that the Student struggles to interpret social cues appropriately and hyper-focuses on his interests. JY and BB recommended that the Student "transition to a residential treatment program

specializing in the treatment of ASD, Level 2. This program will require intensive staff involvement and supervision to provide him with ongoing coaching, academic intervention, life skill development, redirection, therapeutic support, and social skill development. The Student will require 1:1 staffing, at times." A copy of this letter was shared with the School District. (SF #24; JE #5).

25. Following the September 30, 2021 IEP meeting, the School District sent referral packets to the various ISBE approved residential programs, which declined to admit the Student either because he was not appropriate for the program or because there was no opening: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] Academy, and [REDACTED] School. In addition, the School District contacted more than a dozen additional ISBE-approved programs to check for available beds for a student with the Student's profile. All of these additional programs advised that they either could not serve a student with the Student's profile or did not have available beds. (SF #25; JE #1, 5, 7, 10).
26. The Parents worked with an educational consultant to broaden the scope of residential program options for the Student. The following programs rejected the Student: [REDACTED] (Utah), [REDACTED] (Utah), [REDACTED] (Utah), [REDACTED] (Utah), and [REDACTED] (Utah). [REDACTED] (New York) was interested in pursuing placement for the Student but did not have any availability until November 2021 at the earliest. None of these programs are on the ISBE approved list of programs. [REDACTED] Center is an ISBE approved residential program, but was not accepting students until spring 2022 at the earliest. NFA was the only residential program that accepted the Student, was appropriate and could meet his special education needs, and had an immediate opening for him. (SF #26; JE #5, 10).
27. On October 11, 2021, the Parents provided the School District with proper ten-day, written notice of their intent to unilaterally place the Student at NFA, a residential

- program located in Utah, and did unilaterally place him there on Tuesday, October 26, 2021. (SF #27; JE #5, 7).
28. NFA is not on the ISBE list of approved residential programs. (SF #28; JE #7).
  29. The Student has remained at NFA since October 26, 2021. (SF #29; JE #5, 7).
  30. On November 22, 2021, the Student's primary therapist from NFA, WR, LCSW, wrote a letter summarizing her work with the Student thus far. The letter indicates that the Student "struggles with executive functioning, social awareness, verbal, and occasionally physical outbursts." In fact, the Student had assaulted a staff member at NFA within the first 30 days of attending the program. According to WR, "[the Student] may someday be able to live apart from his family but will likely require assistance with Activities of Daily Living, Safety, Mood Regulation, and Financial Decisions. . . [the Student] requires a specialized educational environment that includes a small class size with behavioral health coaches as well as educators trained to work with this population to assist him complete school tasks, follow directions, and maintain emotional regulation. The Student demonstrates frustration with schoolwork and requires daily one-on-one instruction from educational professionals, frequent breaks, and psychiatric oversight." WR also stated, "[the Student] is enrolled at NFA because we can meet his needs as a Residential Treatment Center that provides a high staff to student ratio of 3 students to 1 staff member, 24-hour therapeutic milieu, daily group therapy, on-site psychiatric provider, on-site daily contact with his designated primary therapist, oversight by a neuropsychologist, support from a board certified behavior analyst (BCBA), weekly speech and language therapy, weekly family sessions, specialized and individualized education, recreational therapy, and monitored nutrition for optimum health." In addition, the letter indicates how much the Student was struggling initially at NFA; specifically, "[the Student] has demonstrated danger to others when he becomes overwhelmed emotionally and physically strikes out. [The Student] has required one-on-on interventions to prevent him harming others. [The Student] will express suicidal and self-harm

- ideation during times of emotional dysregulation. While [the Student] is allotted at least 60-minutes of individual mental health therapy weekly, he requires that treatment be provided in sessions that last about 20-minutes due to his short attention span, impaired frustration tolerance and perseverations. NFA provides [the Student] with at least three 20-minute sessions a week, though he often requires two to three additional 10-to-15-minute interventions from his primary therapist daily, as well as three to five additional interventions daily from other professionals and milieu staff present at the facility.” A copy of this letter was provided to the School District. (SF #30; JE # 1, 5-6, 12).
31. NFA is a residential facility located in Utah that opened in 2018 and that assists neurodiverse students who have a similar profile to the Student; namely, students who have been diagnosed with Autism Spectrum Disorder. (SF #31; JE #6).
  32. NFA accepts students between the ages of 12-18 and the educational level between 6-12 grade, who have at least a 75 IQ or higher. NFA will keep students through their 18<sup>th</sup> year. (SF #32; JE #6).
  33. The Co-Founders of [REDACTED] are Dr. P, a licensed clinical psychologist, who is the Executive Director, and JW, CTRS, TRS, CMHC, the Clinical and Operations Director. (SF #33; JE #6).
  34. The NFA’s clinical team consists of JW; MJ, CMHC; and SK, LPCC.
  35. LU is the special education teacher at NFA and is licensed by the Utah State Board of Education for K-12+. (SF #35; JE #6).
  36. KB, APRN, PMHNP-BC, is the NFA Medical Director. There is also a full-time certified nurse. (SF #36; JE #6).
  37. NFA has four dogs available to provide emotional supports to its residents. (SF #37; JE #6).
  38. Most of the students enrolled at NFA have struggled in a traditional educational setting due to their Autism Spectrum Disorder and needs stemming from that diagnosis. (SF #38; JE #6).

39. NFA provides a supportive environment for adolescent boys and girls to gain the skills needed to live independently. (SF #39; JE #6).
40. The NFA program emphasizes the following for its students - building relationships, understanding and expressing their needs appropriately, and practicing self-care. NFA has small classes with a low teacher/student ratio. The milieu focuses on key areas including, but not limited to, life skills, functional math (*e.g.*, using calendars, counting money, budgeting, measuring), functional language arts (*e.g.*, reading instructions, identifying important information, reading schedules, using adaptive tools independently), community-based living (*e.g.*, using public transportation, shopping, time-management, planning for emergencies), and social-emotional learning (*e.g.*, emotional regulation, social and physical boundaries, internet safety, job specific social skills). (SF #40; JE #6).
41. NFA has developed a Master Treatment Plan for the Student to address the following areas of need: a) Aggression/Safety, b) ADHD, c) Depression/Suicidal Ideation, and d) Anxiety. (SF #41; JE #6, 12).
42. The Student's treatment team meets each month for one hour to discuss the Student's functioning in the residential milieu and any areas of needed improvement. (SF# 42; JE #6, 12).
43. NFA has and can continue to provide the Student with group therapy, family therapy, and individual therapy as well as special education instruction. (SF #43; JE #6, 12).
44. The Student receives individual therapy for approximately 120 minutes per week, and more often on an "as needed" basis. He participates in various groups as well - a process group for 45 minutes, twice a week; a CBT group for 30 minutes, twice a week which focuses on the third wave of CBT (Acceptance and Commitment Therapy (ACT)); experiential group therapy, 45 minutes per week; and recreational therapy, which ranges anywhere from 90 minutes to 200 minutes per week. The Student receives 60 minutes per week of family therapy. (SF #44; JE #6, 12).

45. NFA has appropriately certified teachers for its student population. (SF #45; JE #6, 12).
46. NFA has an age-appropriate curriculum and delivers services in an age-appropriate setting. (SF #46; JE #6, 12).
47. NFA maintains enrollment and attendance data and will provide the School District with a copy of its attendance records regarding the Student as well as a school calendar. (SF #47; JE #6, 12).
48. NFA has been provided with a copy of the Student's most recent IEP, the September 30, 2021 IEP, and is able to implement it and provide the Student with a free and appropriate public education. (SF #48; JE #6, 12).
49. NFA's program is certified by the Utah State Board of Education and accredited by COGNIA. (SF #49; JE #6, 12).
50. NFA is a year-round program and there are no summer vacations. (SF #50; JE #6, 12).
51. WR, LCSW, was the Student's therapist from October 2021 - mid-August 2022. WR is a Licensed Clinical Social Work and maintains a Utah license (Number: 12355890-3501). (SF #51; JE #6).
52. As of mid-August 2022, JW, CTRS, TRS, CMHC, Co-Founder of [REDACTED] and Clinical & Operations Director, became the Student's primary therapist. JW is licensed in the State of Utah (Number 5629178-6004) as a Clinical Mental Health Counselor. (SF #52; JE #6).
53. The Student is enrolled in the following classes for the 2022/2023 school year: Economics, Health, Home Economics and Cooking, Physical Education, High School Language Arts, Math Essentials, High School Science Concepts, and Foreign Language. (SF #53; JE #6, 12).
54. The Student can remain at NFA until he reaches the age of 19 in May 2023. (SF #54; JE #6).
55. The Parents and the District agree that the Student requires placement in a residential treatment program designed to meet his academic, social/emotional,

mental health, and functional needs of a student with Autism and Other Health Impairment. The parties further agree that NFA is a residential program that is able to meet the Student's special education needs; implement the Student's IEP; and provide the Student with a free and appropriate public education. (SF #55; JE #1, 5, 7).

56. On January 10, 2022, ISBE made a written commitment to address the lack of available residential placements, impacting families and districts across the state. They 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 has further committed to notifying school districts of procedures for requesting reimbursement for due process hearing decisions. (SF #56).
57. The Student began attending NFA on October 26, 2021. In total, the Parents have paid \$169,045.00 to NFA through September 12, 2022, which equates to his tuition and room and board from October 2021 through September 2022. (SF #57; JE #5-6, 9).
58. The daily rate of tuition and room and board at NFA was \$485.00 and increased to \$515.00 as of June 1, 2022. (SF #58; JE #5-6, 9).
59. To date, the Parents have provided transportation for the Student and themselves to/from NFA. (SF #59; JE #5).

### CONCLUSIONS OF LAW

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

1. 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 School District that residential placement is necessary for the Student to receive a FAPE. (SFF #1-22). The School 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 is appropriate and available for the Student for enroll. (SFF #25-26). On February 2, 2022, ISBE submitted Emergency Rules to address the lack of available residential placements, impacting families and districts across the state as part of 23 Illinois Administrative Code 226.330(g)-(j). Effective February 4, 2022, the Emergency Rules provide as follows:

(g) A school district may place a student in a nonpublic special education facility ("facility") providing educational services, but not approved by the State Board of Education pursuant to 23 Ill. Adm. Code 401 or other applicable laws or administrative rules, provided that the State Board of Education provides an emergency and student-specific approval for placement. The State Board of Education shall promptly, within 10 days of the request, approve requests for emergency and student-specific approval for placement when the following have been demonstrated to the State Board of Education:

- 1) The facility demonstrates appropriate certification of teachers for the student population;
- 2) The facility demonstrates age-appropriate curriculum;
- 3) The facility provides enrollment and attendance data;
- 4) The facility demonstrates the ability to implement the child's IEP; and

5) The school district demonstrates that it made good faith efforts to place the student in an approved facility, but no approved facility has accepted the student or has availability for immediate placement of the student.

(h) Resident district financial responsibility and reimbursement under Section 147.02 of the School Code [105 ILCS 5/14-7.02] applies for both nonpublic special education facilities that are approved by the State Board of Education pursuant to 23 Ill. Adm. Code 401 or other applicable laws or administrative rules and nonpublic special education facilities that receive emergency and student-specific approval for placement by the State Board of Education pursuant to subsection (g).

(i) When an impartial due process hearing officer contracted by the State Board of Education orders placement of a student with a disability in a residential facility that is not approved by the State Board of Education, for purposes of subsection (g), the facility shall be deemed approved for placement and resident district payments and State reimbursements shall be made accordingly.

(j) Placement in a facility approved pursuant to subsection (g) or (i) may continue to be utilized so long as:

- 1) The student's IEP team determines annually if such placement continues to be appropriate to meet the student's needs, and
- 2) At least every 3 years following the student's placement, the IEP team reviews appropriate ISBE-approved facilities under 23 Ill. Adm. Code 401 to determine whether there are any approved facilities that can meet the student's needs, has accepted the student, and has availability for placement of the student.

2. 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. [Student]*, 510 U.S. 7 (1993). In this case, there is no dispute among the parties that the School District has been unable to provide the Student with an ISBE-approved residential placement and, thus, has been unable to provide the Student a FAPE. Moreover, the parties agree that NFA is an appropriate residential placement for the Student. (SFF #1-22, 25-26, 55).

3. The School District and Parents jointly request that this Hearing Officer enter an order placing the Student at NFA, a non-ISBE approved residential facility located in Utah. 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 #1-26, 55). It is further stipulated and undisputed that the School District and the Parents have undertaken a search for an appropriate ISBE approved residential facility. However, none exist at this time which are available and appropriate for the Student and can implement his IEP and provide him with a free appropriate public education. (SFF #25-26.) Further, it is stipulated and undisputed that NFA is an appropriate residential facility which can meet the Student's unique needs, implement his IEP and provide him with a free appropriate public education. (SFF #27-55.) Therefore, the School District is hereby ordered to assume full financial responsibility for all costs and 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. [Student]*, 510 U.S. 7 (1993). The School District will pay twice its per capita tuition rate annually and receive ISBE approved reimbursement for the remainder of the associated costs.
4. Further, the parties stipulate and agree that Parents have paid to NFA the sum of \$169,045.00 for the Student's initial placement costs, including room and board since he began attending NFA on October 26, 2021, through September 12, 2022, for which they are entitled to reimbursement. (SFF #57-59).

### CONCLUSION

Based on the above-described Joint Stipulations of Fact, witness affidavits and documentary evidence admitted into evidence, and Conclusions of Law, the Student is currently in need of a residential placement in order to receive FAPE. The School District can provide FAPE by funding the Student's placement at NFA, the only program that is currently available and appropriate to meet the Student's needs, implement his IEP and provide him with a free appropriate public education with the School District providing Parents reimbursement for said initial placement costs, including tuition and room and board, and funding the placement going forward with ISBE reimbursement after the School District pays twice its per capita tuition rate.

### **ORDER**

Based on the above-described Joint Stipulations of Fact, witness affidavits and documentary evidence admitted into evidence, and Conclusions of Law, the Parents are hereby granted the following relief:

- a. The School District shall, as of the date of this Order, assume full financial responsibility for the expenses associated with the Student's placement at NFA, i.e., specifically, tuition, related services expenses associated with the Student's current IEP if billed separately, and room and board. The School District shall also provide necessary transportation from the date of this Order. Said expenses are to be paid by the School District on a monthly basis within 30 calendar days of receipt of invoices for same or by the stated due date of invoices of providers.
- b. The School District shall reimburse the Parents for tuition and room and board paid by the Parents to NFA in the amount of \$169,045.00, due to the unilateral placement of the Student at NFA beginning on October 26, 2021, through September 12, 2022. Said amount to be paid within 30 calendar days of mailing of this Final Determination and Order.

In accordance with 105 ILCS 5/14-8.02a(h), within **45 school days** of receipt of this Final Determination and 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: September 27, 2022

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



