

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

Student¹ a minor, by and through
His/her Parent(s),
Student

v.

Case No. 2023-DP-0055

██████████ Community Unit School,
District ██████████
District.

Mary Jo Strusz
Impartial Hearing Officer

FINAL DETERMINATION AND ORDER

JURISDICTION

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

BACKGROUND

Student is 14-year-old student who is the subject of this due process action. MB and KK (“Parents”) are the Student’s parents. The Parents reside within the geographic boundaries of Elmhurst Community Unit School District #205 (the “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 District’s boundaries. On October 11, 2021, the Parents unilaterally placed the Student in a residential program at IRC located in ██████████ Idaho. IRC is not approved by the Illinois State Board of Education (“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 December 2020. The Student’s current eligibility is pursuant to the *IDEA* disability classifications of Emotional Disability (primary) and Other Health Impairment (secondary). The Parents submitted their due process complaint (“Complaint”) to the School District on September 23, 2022. The undersigned was appointed to preside over the matter on September 26, 2022. The School District filed its response to the Complaint on September 30, 2022. On September 27, 2022, the parties agreed to waive the resolution session. Pre-Hearing Disclosures were jointly filed on October 27, 2022. Individual disclosures were not filed.

¹ Personally identifiable information is provided in Appendix A.

On October 31, 2022, the undersigned convened a pre-hearing conference. Participation 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 Assistant Superintendent for Student Services. The conference was conducted via Zoom video conferencing from 9:00 to 9:30 a.m.

ISSUES CERTIFIED FOR HEARING:

Issue 1: Whether the School District made a FAPE available to the Student from October 11, 2021 through July 17, 2022? And if not:

Issue 2: Whether the Parents' unilateral placement of the Student at IRC, a non-ISBE approved residential facility, provided educational instruction specifically designed to meet the unique needs of the Student, supported by such services as were necessary to permit the Student to benefit from the instruction and receive a FAPE from October 11, 2021 through July 17, 2022.

RELIEF REQUESTED:

- A. Reimbursement for tuition and room and board costs incurred by the Parents in connection with their unilateral placement of the Student from October 11, 2021 through July 17, 2022.

The Parents opted for a closed hearing. The hearing was held on December 19, 2022. The exhibits were admitted into evidence and the record was closed on December 19, 2022. [REDACTED] and [REDACTED] of Hansen & Cleary, LLC represented the Parents. [REDACTED] represented the District. The Parents and the District presented witness affidavits which were admitted into evidence. (Exhibits 34-36.) The Parents and the District presented the following joint exhibits (Exhibits 1-33.) This matter proceeded as a largely stipulated matter. The Parents' and Districts' Joint Stipulations of Fact document was admitted into evidence. (Exhibit 4.) The Parents and the School District provided citations of case law relied upon.

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

1. Student is 14-year-old student whose residence for school purposes is with her parents, MB and KK, within the geographical boundaries of Elmhurst Community Unit School District #205 ("District 205"). She is enrolled in District 205 and is eligible for special education under the *Individuals with Disabilities Education Improvement Act* ("IDEA") under the eligibility categories of Emotional Disability (primary) and Other Health Impairment (secondary).

2. Student was initially found eligible for special education and related services in December 2020.
3. Student has a history of social/emotional and mental health struggles and has current diagnoses of Major Depressive Disorder, recurrent, severe, with psychotic features; Autism Spectrum Disorder, requiring support in social communication (level 1), requiring support in restrictive, repetitive behaviors (level 1), without accompanying intellectual or language impairment; Generalized Anxiety Disorder; Other specified eating disorder – restrictive and purging type; Tourette’s disorder by history; Obsessive Compulsive Disorder (“OCD”), with poor insight, with panic attacks, by history.

4. Around January 2020, when Student was in 6th grade, she began experiencing depressive symptoms and suicidal ideation. She also developed irrational fears of urinating on herself in public settings (although this had never occurred to her but had to a peer while in choir class) and obtaining lice all over her body (as she had contracted head lice). In March 2020, the COVID-19 pandemic began, and District 205 closed for in-person instruction.

5. In June 2020, Student began seeing a private psychiatrist, Dr. [REDACTED], via telehealth. This is the first time that Student disclosed that she had been experiencing suicidal ideation for quite some time. Dr. [REDACTED] prescribed Lexapro for Student, which she began taking in early June. In mid-June 2020, due to the untimely death of a baby bird who Student had found abandoned and was attempting to raise, Student’s OCD symptoms increased in intensity. She began ruminating and attempted to stay up all night thinking that if she fell asleep, the bird would die. Shortly thereafter, Student began displaying both verbal and physical tics.

6. At the end of June 2020, Student was psychiatrically hospitalized for the first time and on an inpatient basis for approximately five days at [REDACTED] Health Hospital (“[REDACTED]”). Upon discharge on July 1, 2020, Student was diagnosed with Major Depressive Disorder, OCD, Generalized Anxiety Disorder, Social Anxiety Disorder, and Provisional Tic Disorder. At the time of this hospitalization, Student was only 12 years old. Student attended the Intensive Outpatient Program (hereinafter “IOP”) at [REDACTED] from July 2, 2020 through August 6, 2020. During the IOP, Student was diagnosed with Autism Spectrum Disorder (Level 1).

7. In August 2020, Student began private therapy with a new therapist, [REDACTED], weekly therapy with an OCD specialist, and weekly occupational therapy through [REDACTED].

8. Due to Student’s declining mental health and new diagnoses, the Parents requested that District 205 conduct an evaluation of Student. District 205 conducted an initial case study evaluation and Student was found eligible for special education and related services in December 2020.

9. On December 17, 2020, District 205 and the Parents developed an initial IEP for Student. The initial IEP provided that Student would attend general education classes with supplementary aids and receive 60 minutes per month of special education services outside of the general education setting, 120

minutes per month of social work services, and 120 minutes per month of direct and 20 minutes per month of consultative speech-language services. The initial IEP provided for placement in District [REDACTED]'s [REDACTED] Middle School, which Student began attending in January 2021 when District 205 reopened for in-person instruction.

10. In February 2021, the Parents took Student to the emergency room at Edwards Hospital due to Student having suicidal and intrusive thoughts. There was no bed available on the child/adolescent psychiatric unit until the following day, February 8, 2021, at which point she was admitted to Linden Oaks on an inpatient basis to the child/adolescent psychiatric ward and remained there until March 1, 2021. Throughout this inpatient hospitalization she continued to have suicidal plans and was unable to stabilize enough to return home. [REDACTED] recommended that Student transition to a residential treatment center for further stabilization and in order to keep her safe.

11. On March 2, 2021, the Parents placed Student at [REDACTED] in [REDACTED], Indiana. The emphasis of this program was on Dialectical Behavior Therapy ("DBT"). Student did not make adequate progress in this program, but remained there until discharge on April 7, 2021.

12. From April 20, 2021 through April 23, 2021, Student participated in the [REDACTED] Behavioral Health partial hospitalization program (hereinafter "PHP") in Skokie, Illinois to address her anxiety and depressive symptoms.

13. Student began expressing suicidal ideation again, this time with an active plan, and required inpatient psychiatric hospitalization at [REDACTED] from April 24, 2021 through May 25, 2021. During this inpatient hospitalization, Student was also experiencing disordered eating. She began commenting, "My body doesn't need food" and was only willing to drink supplements. At one point, she refused the supplements and a feeding tube needed to be inserted to give her nutrients.

14. These hospitalizations resulted in Student having many absences from school in District 205 during the 2020-2021 school year.

15. During early June 2021, Student became extremely dysregulated in the evenings at home. She attempted to leave her residence to walk into traffic in order to kill herself. On June 11, 2021, Student was readmitted to a child/adolescent psychiatric unit, this time at [REDACTED] in [REDACTED] due to suicidal ideation. She remained there until discharge on June 24, 2021.

16. On July 1, 2021, Student began participating in the PHP at Linden Oaks while the Parents awaited her admission to the [REDACTED] Mental Health Institute residential treatment program in Utah ("[REDACTED]").

17. On July 6, 2021, Student was discharged from the PHP and transported to Utah to be admitted into the [REDACTED] program.

18. While Student was participating in the [REDACTED] program, the Parents worked with an advocate to explore residential placement options without involving District 205: 1) [REDACTED] Academy (ISBE approved), which denied Student due to an inability to meet her Autism Spectrum Disorder needs; 2) [REDACTED] in [REDACTED] (not ISBE approved), which denied Student due to Student not eating at 75%; 3) [REDACTED] in [REDACTED] (not ISBE approved), which denied Student due to Student not eating at 75%; 4) [REDACTED] (not ISBE approved), which denied Student due to her disordered eating, mood instability and Autism Spectrum Disorder; 5) [REDACTED] [REDACTED] (not ISBE approved), which denied Student due to her disordered eating and behavioral issues; 6) [REDACTED] (ISBE approved), which denied Student due to her young age; 7) [REDACTED] Academy (not ISBE approved), which denied Student due to disordered eating; and 8) [REDACTED] Academy (not ISBE approved), which denied Student due to her need for a higher level of care.

19. On October 5, 2021, the District and the Parents convened an IEP conference to discuss Student's functioning in the [REDACTED] program and planning for her educational programming following her discharge from [REDACTED]. During that meeting, the Parents informed District 205 of their intent to unilaterally place Student at IRC, a residential program located in [REDACTED], Idaho. The Parents informed District 205 of their intent to seek funding from District 205 for their placement of Student at IRC. The District 205 staff members of the IEP team determined that Student did not require a residential placement for educational purposes at that time. District 205 discussed the need for the IEP team to consider [REDACTED] discharge documentation, a private evaluation report submitted by the Parents, and a reevaluation of Student by District 205.

20. On October 11, 2021, the Parents unilaterally placed Student at IRC.

21. IRC is not on the ISBE list of approved residential programs.

22. IRC is a residential facility that uses evidence-based scientific modalities and treatment approaches for its students who have not been successful in treatment previously. IRC maintains a physically and emotionally safe environment and works with students with complex mental health issues including mood disorder, depression and bipolar disorder; anxiety disorders, OCD, panic disorder, and social anxiety; executive functioning issues, adoption and attachment issues; Autism Spectrum Disorder; trauma and PTSD; strained relationships with parents and authority figures; declining academic performance; ADD and ADHD issues; eating disorders; thought disorders; personality disorders; negative peer relationships; somatoform disorders; and gaming/technology issues.

23. IRC provides physical, emotional, and mental support to its students. IRC's campus contains a solar-powered greenhouse for its students to utilize through a food-growing program. IRC provides individual, group, and family therapy weekly for its students and has its students engage in various forms of physical exercise on a regular and consistent basis.

24. IRC has small classes with a low teacher/student ratio. The milieu assists its students with developing coping skills necessary for age-appropriate life choices due to their clinical needs.

25. IRC provides comprehensive medication management with weekly medication checks; formal staffings every other week led by its full-time child and adolescent psychiatrist with written progress reports and updates given to parents; supervised personal and fitness plans; 24-hour awake staff supervision and support; daily educational groups on schedule maintenance, decision-making, finance, health and fitness, leisure, conflict resolution, health relationships, and recognizing the importance of attending to daily responsibilities; and classroom time interspersed with physical activity.

26. IRC has appropriately certified teachers for its student population.

27. IRC has age-appropriate curriculum, maintains enrollment and attendance data, provided District 205 with a school calendar, and will provide District 205 with a copy of its attendance records regarding Student.

28. IRC is able to implement Student's IEP from District 205.

29. On February 1, 2022, the Parents provided written consent for District 205 to conduct a reevaluation of Student.

30. On May 20, 2022, District 205 and the Parents convened an IEP conference to review the results of District 205's reevaluation. During that meeting, the IEP team determined that Student required a residential placement to meet her individual needs.

31. Following the May 20, 2022 IEP conference, District 205 sent referral packets to the various ISBE approved residential programs, which declined to admit Student either because she was not appropriate for the program or because there was no opening: 1) ██████████ Center (declined due to lack of availability); 2) ██████████ (the school was in the process of closing); 3) ██████████ (no response); 4) ██████████ (declined due to an inability to meet Student's needs); 5) ██████████ (all male); 6) ██████████ Center for Education (no response); 7) ██████████ Home (all male); 8) ██████████ (declined due to an inability to meet Student's needs); 9) ██████████ School (no response); 10) ██████████ (all male); 11) ██████████ (no response); 12) ██████████ School (declined due to Student's disordered eating and inability to meet her needs); 13) ██████████ (declined as Student is too high functioning for its program); 14) ██████████ Institute – ██████████ (no response); 15) ██████████ (no response); 16) ██████████ (wait list was 6-9 months); 17) ██████████ (declined as Student is too high functioning for its program); 18) ██████████ (no response); 19) ██████████ (all male); 20) ██████████ (no response); 21) ██████████ (declined due to inability to meet Student's needs); 22) ██████████ Academy (declined due to inability to meet Student's needs); 23) ██████████ (declined to no availability and inability to meet Student's needs); 24) Onarga (all male); 25) ██████████ Family Services (declined due to an inability to accept children with Autism

Spectrum Disorder); 26) ██████████ (declined due to young age); and 27) ██████████ ██████████ (declined due to an inability to meet Student's needs).

32. District 205 submitted to ISBE an Application for Reimbursement of Emergency and Student-Specific Residential Placement in Nonapproved Facility ("34-43 Application") for Student's placement at IRC.

33. On August 16, 2022, ISBE issued a letter to District 205 stating that the 34-43 Application had been approved for Student's placement at IRC for the time period of July 18, 2022 through May 19, 2023.

34. From October 11, 2021 through July 17, 2022, IRC provided Student with special education instruction for all academics and transition activities and direct related services of approximately 50 minutes per week of group therapy, 30 minutes per week of family therapy, 60 minutes per week of individual therapy, 25 minutes per week of speech-language therapy, and 25 minutes per week of school health services at the expense of the Parents.

35. Since July 18, 2022, District 205 has had programmatic and financial responsibility for Student's placement at IRC.

36. For Student's tuition and room and board at IRC from October 11, 2021 through July 17, 2022, the Parents have paid a total amount of \$139,525 to IRC.

CONCLUSIONS OF LAW

Based on the above Stipulated Facts, witness affidavits and documentary evidence admitted 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. 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). The Emergency Rules became final rules effective July 13, 2022. Section 226.330 provides, in relevant, part 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....

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 Cmty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993). In the present case, there is no dispute between the Parents and District that a residential placement was necessary for the Student from October 11, 2021 through July 17, 2022, and, thus, the Student did not receive a FAPE from October 11, 2021 through July 17, 2022. Moreover, the parties agree that IRC was an appropriate residential program for the Student. (Joint Stipulations, Paragraphs 22-28, 34).

3. The District and Parents jointly request that this Hearing Officer enter an order for the reimbursement of tuition and room and board costs incurred by the Parents for their unilateral placement of the Student at IRC, a non-ISBE approved residential facility located in Coeur d'Alene, Idaho, from October 11, 2021 through July 17, 2022. 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 required placement in a residential facility to meet her unique educational needs from October 11, 2021 through July 17, 2022. (Joint Stipulations, Paragraphs 30.) It is further stipulated and undisputed that the School District and the Parents undertook searches for an appropriate ISBE approved residential facility. However, none existed that was available and appropriate for the Student and could implement her IEP and provide her with a free appropriate public education from October 11, 2021 through July 17, 2022. (Joint Stipulations, Paragraph 18, 31.) Further, it is stipulated and undisputed that IRC was an appropriate residential facility to meet the Student's unique needs, implement her IEP and provide her with a free appropriate public education. (Joint Stipulations, Paragraphs 22-28, 32-34.)

CONCLUSION

Based on the above-described Joint Stipulations, witness affidavits and documentary evidence admitted into evidence, and Conclusions of Law, the Student needed a residential placement in order to receive FAPE from October 11, 2021 through July 17, 2022. No ISBE-approved residential program was available and appropriate to meet the Student's unique needs and for the Student to receive a FAPE during such time period. The Student's unilateral placement at IRC, a non-ISBE approved residential facility, from October 11, 2021 through July 17, 2022 was appropriate. Reimbursement for the Parents' costs of tuition and room and board for the Student's placement at IRC from October 11, 2021 through July 17, 2022 is proper.

ORDER

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

The District is hereby ordered to reimburse the Parents for tuition and room and board costs associated with the Student's unilateral placement at IRC from October 11, 2021 through July 17, 2022. Nothing in this Order precludes the School District from submitting to ISBE a request for reimbursement of tuition and room and board costs associated with the Student's placement at IRC from October 11, 2021 through July 17, 2022.

The School District shall reimburse the Parents for tuition and room and board paid by the Parents to IRC in the amount of \$139,525, due to their unilateral placement of the Student at IRC from October 11, 2021 through July 17, 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

Dated: *Dec 28*, 2022


Impartial Hearing Officer Mary Jo Strusz

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: *December 28*, 2022


Impartial Hearing Officer Mary Jo Strusz

Appendix A.

Student: [REDACTED]

Parents: [REDACTED] and [REDACTED]

Student's School: Referenced "IRC"- [REDACTED] located in [REDACTED], Idaho.

CERTIFICATE OF SERVICE BY EMAIL AND
CERTIFIED UNITED STATES POST OFFICE MAIL

I the undersigned, Mary Jo Strusz, certify that on December 28, 2022, a copy of the FINAL DETERMINATION AND ORDER, was served upon the following persons via email transmission by attached document in pdf format to the email addresses below and a copy of the printed documents with original signatures were placed in the United States Postal Service, Certified Mail, and address to the parties at the addresses below:

Parents:

[REDACTED]

Hansen & Cleary LLC

[REDACTED]

District:

[REDACTED]

Engler, Callaway, Baasten & Sraga

[REDACTED]

Andrew Eulass
Due Process coordinator
Illinois State Board of Education
Division of special Education Services
100 N. 1st Street
Springfield, IL 62777
AEulass@isbe.net

December 28, 2022

[REDACTED]

Mary Jo Strusz, Impartial Hearing Officer

[REDACTED]