

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania

Special Education Hearing Officer

DECISION

ODR No. 00770-0910KE

Child's Name: N.B.

Date of Birth: [redacted]

Dates of Hearing: 6/2/10, 6/3/10, 6/4/10

CLOSED HEARING

Parties to the Hearing:

Parents

Parent[s]

School District

Penn-Delco
2821 Concord Road
Aston, PA 190142-2907

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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July 19, 2010

August 3, 2010

Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Student is currently residing at a behavioral treatment facility outside of the Penn Delco School District, where the Parents reside. Pursuant to an order entered after a prior due process hearing, the District funded the entire cost of the placement for approximately 1 year until Pennsylvania Department of Welfare assumed the responsibility for the residential portion, while the District continued to fund the educational portion.

Parents' current due process complaint was initiated primarily because of funding issues. Student has been approved for the next, less restrictive residence treatment option, but that phase of the program hasn't been approved for the medical funding, and there is a possibility that the current placement will not be re-authorized for continued funding. Parents contend that a residential placement remains essential for Student, requiring the District to reassume responsibility for the costs of the residential portion of the facility Student currently attends should the medical funding become unavailable. Parents further contend that Student's continued progress will be compromised unless the District assumes responsibility for the next phase of residential treatment, which Magellan Behavioral Health, the DPW program manager, has so far refused to approve for payment. In essence, therefore, Parents seek an order imposing the entire costs of Student's current placement on the District to assure that Student receives an appropriate residential program.

The due process hearing record, compiled over three consecutive sessions in early June 2010, cannot, however, support the conclusion that either the recommended "step down" residential program offered at the facility Student currently attends, or any residential placement, is necessary for Student to receive an appropriate educational program. Consequently, as explained in detail below, Parents' claims will be denied.

ISSUES

1. Does Student require a residential placement in order to derive meaningful benefit from special education services?
2. Is the School District obligated to assume the costs of a residential program for Student at the facility where Student is currently placed, but in a less restrictive setting, the Program, for which other public funding is unavailable?
3. Is the School District obligated to fund the specific residential program for Student where Student now receives services in the event other sources of public funding become unavailable for that placement?

FINDINGS OF FACT

1. Student is a pre-teen-aged child, born [redacted]. Student is a resident of the School District and is eligible for special education services. (Stipulation, N.T. p. 20)
2. Student has a current diagnosis of autism in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(1); 22 Pa. Code §14.102 (2)(ii); (Stipulation, N.T. p. 20)
3. The parties to this case entered into a stipulation of facts that provides additional background and other facts concerning the origin and history of the dispute between the parties, and Student's current placements at [redacted] a facility located in [redacted], [neighboring state]. The stipulation was identified as Hearing Officer Exhibit 1 (HO-1) at the first hearing session on June 2, 2010 and admitted into the record on June 4, 2010. The stipulated facts are incorporated into this decision as if fully set forth. (N.T. pp. 352; HO-1, pp. 1—5, ¶¶ 1—32).
4. The Facility offers three progressively less restrictive behavioral treatment options, The [redacted], The Program, and The [redacted] programs. A fourth service component, the School, is a classroom based special education placement for residents of the Program and [redacted] programs, and also accepts a large number of students who do not reside in a Facility residential program. (N.T. pp. 150, 155, 156, 158)
5. In April 2008, another Pennsylvania due process hearing officer ordered the District to fund a residential placement for Student. (HO-1, p. 2 ¶ 12)
6. After the decision was affirmed on appeal, Student was admitted to The [redacted], which met the criteria for an appropriate program as described by the hearing officer. (N.T. pp. 332; HO-1, p. 1, ¶4, p. 4 ¶¶ 14, 15)
7. The [redacted], the first tier of the Facility residential treatment centers is a crisis intervention program delivered in a highly restrictive "lock-down" facility where Student was admitted in July 2008 for constant, intensive behavioral therapy via the Applied

Behavioral Analysis (ABA) method. The goal of ABA therapy is the assessment and treatment of problem behaviors. (N.T. pp. 121, 128, 262, 305; HO-1, p. 2 ¶12)

8. Student's specific therapeutic goals were, and are, to reduce self-injurious, aggressive and destructive behaviors. (N.T. p. 262; P-7)
9. Student's ABA therapy at The [redacted] began with baseline observations and a functional analysis of Student's behaviors. After the assessment period, an individualized treatment/behavior plan was developed to reduce Student's problem behaviors and maintain progress by replacing the unwanted behaviors with appropriate skills. Every day in The [redacted] is highly structured by means of a schedule that covers every moment that Student is awake. (N.T. pp. 79, 80, 126—131)
10. The usual duration of a stay at The [redacted] for intensive therapy is 9—12 months, by which time most children are ready to move to a less restrictive setting. (N.T. pp. 133, 334)
11. The next level of the Facility, The Program, is a "step-down," less restrictive residential treatment setting designed as a transition from The [redacted] to other, still less restrictive residential or community settings. After approximately a year in The [redacted], Student was approved for transfer into The Program, and was also approved to transition to the School for educational services. Residents recommended for The Program are ready to attend school full time. (N.T. pp. 86, 105, 134, 305)
12. From September 2008 to late August or September 2009, Student's educational program was delivered entirely at The [redacted] by a 1:1 tutor for approximately one to two hours/day. (N.T. pp. 82, 105, 128, 196, 297; HO-1, p. 5 ¶31)
13. Student still needs ABA therapy to build behavior skills, and still needs a high degree of structure, consistency and intensive staffing to assure that the behavior plan is implemented with appropriate responses for the ABA therapy and to develop additional strategies as Student's behaviors improve. (N.T. pp. 176, 177, 262, 263, 264, 289—291)
14. Based upon Student's medical diagnoses of autism and mental retardation, and upon behavioral data reviewed in March 2010, Student's developmental pediatrician believes that Student continues to need a residential placement due to continued high rates of aggressive and self-injurious behaviors. The doctor first recommended a residential placement for Student in July 2007. (N.T. pp. 168, 176, 180, 182; P-2, P-3)
15. Like The [redacted], The Program residential program provides ABA therapy, and a behavior analyst also oversees all clinical programming for residents. As in The [redacted], the staff in The Program develops behavior plans that are implemented in all settings for consistency throughout the day. (N.T. pp. 263, 264, 305)
16. The focus of The Program is providing opportunities for residents to access community settings to practice engaging in appropriate behaviors and to access leisure activities,

while continuing to work on skill goals. Although The Program still has a high staff to resident ratio and is very structured, it is a much less restrictive setting than The [redacted]. (N.T. pp. 134—136, 264, 336)

17. The Facility staff who work with Student believe that The [redacted] is no longer an appropriate residential setting for Student. (N.T. pp. 131, 133, 197, 198, 334)
18. One of the reasons The [redacted] is no longer appropriate is the peer population, which consists of children with very severe behaviors who need the kind of intensive treatment Student needed two years ago. As behaviors improve, it is expected that the residents move on to another treatment facility or program, and as that occurs, they are replaced with more children who need intensive treatment. Although Student's severe behaviors improved through the ABA treatment, Student is regularly exposed to peers with extreme behaviors. Parents and The [redacted] staff have noted some regression in the residential setting, likely due to the milieu, and believe that remaining at The [redacted] will likely result in slower progress toward Student's behavior skills goals. (N.T. pp. 85, 86, 94, 95, 97, 132, 133, 149, 153, 154, 263, 264, 336—338)
19. Although Student was ready to move to The Program approximately a year ago, Student still resides at The [redacted] because Parents could not obtain funding for The Program residential program. The public funding source for the residential program, the Pennsylvania Department of welfare through its program manager, Magellan Behavioral Health, has assumed the costs of the residential services at The [redacted] for the past year, but refuses to pay for The Program because it is not Medicare approved. (N.T. pp. 86, 87, 95, 198, 203, 206—208, 263, HO-1, p. 4 ¶18; P-1, p. 1, S-9)
20. Facility's delivery of Student's educational services in a less restrictive setting was not affected by the issues concerning the residential program. After a transition period that began in late summer 2009, Student enrolled full time in the [redacted] Elementary Education Program of the School at the end of October 2009 for the full 6.5 hour school day. Student entered a classroom grouping with 6 other children, a teacher and 7 one to one aides, who are assigned to work with all of the students on a rotating basis. (N.T. pp. 196, 242, 284; HO-1, p. 5, ¶31; P-9, p. 1)
21. In December 2009, a new IEP was developed for Student's full-time placement at the School, replacing the IEP dated 9/15/09. Parents, Student's teacher, a District representative, the School psychologist, a social worker from The [redacted], a supplemental teacher, an occupational therapist and a speech/language therapist participated in the December 10 IEP meeting, either in person or by telephone (N.T. pp. ; P-8, p.1; S-1)
22. Progress reports from the first full marking period in which Student was enrolled at the School (11/17/09—3/29/10) show that Student made progress toward the goals developed for all instructional areas: Visual and Performing Arts; Comprehensive Health and Physical Education; Language Arts Literacy (reading, writing, speaking, listening); Math,

Science; Social Studies; World Languages; Technological Literacy; Career Education; Speech and Language.¹ (N.T. pp. 234—237, 241, 252, 253; J-11, S-2)

23. Student was included in weekly trips taken by Student's class to community settings such as stores, where the students practiced identifying items and learned other shopping skills. Student was able to participate in those activities with assistance. (N.T. pp. 241—243)
24. At the School, Student has a behavior plan developed by The [redacted] clinical staff based upon ABA techniques. During the school day, the behavior intervention plan is implemented by the aide assigned to work with Student, who also collects daily data on Student's behavior that is later entered into a computer for review by the Student's interdisciplinary team (IDT), which includes the Students' behavior analyst and clinical case manager from The [redacted], the school psychologist and the special education teacher. (N.T. pp. 258, 282, 285, 287, 288; P-7)
25. Student's social worker at The [redacted], who observed Student in the School classroom several times, noted progress in the school setting in Student's ability to remain seated and work at tasks. (N.T. p. 194)
26. The classroom teacher is not trained in ABA techniques and does not use ABA methods in the classroom. (N.T. pp. 258, 282)
27. The [redacted] staff continues to provide ABA therapy to Student before and after school hours and on weekends and tracks Student's behaviors across all settings. Student's specific therapeutic goals are to reduce self-injurious, aggressive and destructive behaviors. (N.T. pp. 262, 266, 301; P-7)
28. The data shows that the behaviors targeted for reduction via ABA therapy—self-injury, aggression and destructiveness—increase when demands are placed on Student, since the primary function of the behaviors is to escape tasks. (N.T. pp. 262, 263, 266, 302; P-5)
29. The targeted behaviors are heightened, meaning more frequently observed,² in the classroom, where Student faces the greatest task demands. Unlike the residential program, there is little down time in the school program. Student is expected to be actively working on academic goals the entire school day, from 8:30 a.m. to 2:15 p.m. (N.T. pp. 258, 262, 263, 286, 292, 298, 314, 315; P-9)

¹ Although the names of the instructional areas suggest that Student is functioning at a fairly high academic level, Student's goals in each instructional area can fairly be described as the development of functional life skills and pre-academic skills. Student's reading goals, *e.g.*, are to receptively identify Student's name in print, independently, and receptively identify common classroom sight words, such as "exit" with gestured prompts. Writing goals include using a stamp to sign Student's name and drawing lines and circles. Science and math goals are directed toward such basic skills such as identifying body parts independently and geometric shapes with gestured prompts. (JT-11, pp. 6, 7, 11, 13)

² Only the frequency of the targeted behaviors is tracked. Data is not collected on intensity at this time. (N.T. p. 292)

30. Student's challenging behaviors in the School are characteristic of children with autism and similar to the behaviors of other children in the class. The behaviors Student continues to exhibit in the classroom are appropriate for that setting and do not make The School an inappropriate educational placement for Student. (N.T. pp. 245, 246, 315; HO-1, p.5, ¶31)
31. Despite the demands of a full day school program, leading to an increase in aggressive behaviors, Student's other targeted behaviors decreased by April 2010. Based upon the data, and considering Student's placement in a full-time educational program beginning in October 2009, Student made better than expected progress between admission date and April 2010. (N.T. pp. 312, 314, 315; P-5)
32. Since December 2009, Student's Father has observed regression in Student's behaviors in the residential program at The [redacted], but not in the School classroom, where Student's peers are on a higher behavioral level. Parent observed that Student's behaviors in school are considerably better than at The [redacted]. (N.T. pp. 91, 92, 97, 99, 100, 179; P-1, p. 1)
33. Parents and Student's sibling maintain contact with Student through twice weekly visits. After several months of ABA treatment at the [redacted], the family has been able to take Student to fast food restaurants for meals and on other community outings. (N.T. pp. 83, 84, 111—114)
34. Despite Student's behavioral progress since July 2008, approved private schools in Pennsylvania with a residential component for which Magellan would provide funding for the residential component will not admit Student due to the level of aggressive and self-injurious behaviors that Student still exhibits. Most residential schools cannot provide staffing at a level that can effectively deal with high rates of dangerous behaviors. (N.T. pp. 87, 88, 92, 93, 145, 146, 199, 200; HO-1, p. 3, ¶13)
35. Magellan has offered other residential school placements for Student but Parents rejected those alternatives because all are in other states, at distances too great to maintain the family's schedule of frequent visits. (HO-1, pp. 1, 2, ¶¶ 6,7, 8)

DISCUSSION AND CONCLUSIONS OF LAW

I. Relevant History and Legal Standards

The record of this case leaves no doubt that the greatest challenge arising from Student's autism disability is eliminating extreme behaviors that adversely affect all aspects of Student's life. By the time of the first due process hearing decision involving the same parties, Student's self-injurious, aggressive and destructive behaviors had made both family life and education

impossible. *See* J-3; P-2, P-3. At the recommendation of Student's developmental pediatrician, Student was approved for a placement in a residential treatment facility in 2007 based on medical necessity. (HO-1, p. 1 ¶5) Parents, however, refused to accept any of the placements that were approved for funding by Magellan Behavioral Health of Pennsylvania, the program manager for the Pennsylvania Department of Public Welfare, and obtained the current residential placement via a due process hearing decision. (FF 5, 6)

The current hearing record also leaves no doubt that the residential placement ordered by the hearing officer in the 2008 decision was very effective in terms of bringing Student's behaviors sufficiently under control to permit Student to return to a special education classroom for the 2009/2010 school year. (FF 20, 21) In 2008, the hearing officer concluded that a residential placement with very specific characteristics was necessary because Student could not benefit from educational services without receiving treatment for violent and self-injurious behaviors using ABA methods. The accuracy of that determination has been confirmed by subsequent events. Between July 2008 and August 2009, the behavioral treatment services provided at The [redacted] brought Student from tolerating only very limited educational services, delivered by a one to one tutor, to the point where Student could participate effectively in a special education classroom for a full school day. (FF 12, 20, 21, 22, 23) The purpose of the order, therefore, was successfully fulfilled.

The prior decision, however, does not govern the question whether the District is presently obligated to fund Parents' preferred residential placement, either as currently provided or in the next level of the residential setting that Student's doctor and the clinical staff at Facility are recommending. The underlying circumstances related to Student's education have changed dramatically by virtue of Student's educational progress in the two years since entering the

residential placement. Moreover, the legal standards applicable to residential placements under the IDEA statute have been refined in the interim by a recent appeals court case, *Mary Courtney T. v. School District of Philadelphia*, 575 F.3d 235 (3rd Cir. 2009).

In a much earlier case, *Kruelle v. New Castle Count School District*, 642 F.2d 687 (3rd Cir. 1981), the Court of Appeals established a standard for assessing whether a local educational agency is obligated to pay for a residential placement for an eligible student based upon whether the residential services designed primarily to address non-academic issues are educationally necessary, *i.e.*, required to fulfill a district's obligation to provide a free, appropriate public education. 642 F. 2d at 693. The court explained that a residential placement meets that standard if a child's medical, social or emotional needs so pervasively affect all aspects of functioning that it is not reasonably possible to sever his/her educational needs from other needs, and the additional services provided by the residential placement are, therefore, necessary to provide special education. 642 F. 2d at 694.

In *Mary Courtney T.*, the Court of Appeals further refined the standard, emphasizing that because virtually any service that addresses an area of significant need relates to a child's ability to learn, the inquiry must focus on the substantive goal to which a particular method, service or strategy is directed. 575 F.3d at 245. In order to impose the costs of residential services upon a school district, the purpose of the services must be closely linked to an eligible student's unique learning needs, in other words, "intended" and "designed" to address educational needs. *Id.* Another significant factor is whether the services provided by the residential placement are of the kind traditionally available in a public school setting. *Id.* Finally, the court returned to the basic principle enunciated in the *Kruelle* decision, looking to whether a student's educational and non-educational needs are "severable." 575 F.3d at 246.

II. Relevant Evidence Concerning Student's Current Status Re: Educational Needs

The key to the decision in this case is the unequivocal evidence that Student's educational and treatment needs have diverged over the past two years and are now severable. Extreme behaviors can certainly interfere with educational progress, and did for this Student in the period prior to the first due process hearing. In addition, services to address severe behaviors, such as behavior plans that rely on particular strategies and methods and emphasize consistency in implementation, are regularly provided in a public school setting. Moreover, the evidence establishes that Student has been receiving, and continues to need, a highly structured environment in both the educational and residential environments. Nevertheless, the evidence also establishes that Student does not need around the clock behavioral treatment services to successfully access and benefit from special education services.

A. Facility Residential/Educational Programs

Before discussing the evidence concerning Student's educational and residential programs that supports denial of Parents claim, a critical underlying issue must be addressed, *i.e.*, the nature of and the relationship between the various components of the Facility. There appeared to be some confusion by counsel for both parties with respect to the structure of the Facility residential and educational programs.

The [redacted], where Student was first admitted, is a very restrictive residential treatment center, with an educational program delivered within the residence via individualized tutoring. (FF 7, 12) After a year at The [redacted], where most of every day was devoted to intensive treatment of Student's behaviors, with only 2 hours/day spent in educational programming, Student was deemed ready to move to a less restrictive residential placement and to return to a classroom setting with other pupils. (FF 10, 11) Although the inability to obtain

public funding of the “step down” residential program kept Student’s residence at The [redacted], the funding issue did not interfere with a substantial increase in Student’s educational programming by transitioning Student to the school operated by Facility. (FF 11, 20, 21)

Both Parents’ counsel and District counsel persistently, and erroneously, described the school Student began attending full-time in October 2009 as a component of Facility’s Program. The testimony of Facility employees from The [redacted] and from the School, Student’s special education teacher from Elementary Center, does not support that characterization. The evidence established that unlike The [redacted], which initially provided Student with a combination of therapeutic and educational services, The Program is entirely a residential facility and focuses entirely on therapeutic and behavior support with the goal of continuing development of skills so that Student can ultimately successfully return to living in the community with Student’s family. (FF 15, 16; N.T. p. 88)

The School is a completely separate educational program, much more like a day school for students with special education needs. Like students in any public or private day school, Student and Student’s classmates commute to and from school from their homes, whether they reside with their families, in a group home or other community setting, or in a residential treatment facility, such as The Program, or, in Student’s case, The [redacted]. In a somewhat unusual arrangement for the Facility, Student continues to reside, and receive behavior therapy during out of school hours, at The [redacted].

Upon full-time enrollment in the School in October 2009, when Student no longer received educational services from The [redacted], the connection between Student’s residence in a Facility full-time treatment program and Student’s educational placement was effectively severed. The connection between The [redacted] and School is identical to the connection

between The Program and School —two are different residential programs, separate from each other and from the third, purely educational program, the School. (FF 4) Contrary to the suggestion of Parents’ counsel, with which District counsel appeared to agree, there is no closer connection between School and The Program than there is between The [redacted] and School.

Student has never been enrolled in The Program, or otherwise linked in any way to The Program via enrollment in the School educational program. The only connection established by the hearing record between The Program and the educational services provided by the School is that a resident recommended for The Program is also considered ready for a full school day educational program at the School. (FF 11)

These unequivocal facts actually simplify the legal analysis required by the decision in *Mary Courtney T.*, since they establish that there is no longer any intertwining of the treatment Student receives for continuing disability-related behavior problems and Student’s educational services, as there had been during Student’s first year at The [redacted].

B. Student’s Educational Need for a “Step Down” Residential Program

The record in this case suggests that Student’s continuing treatment needs arising from Student’s disability could better be met in The Program for a number of important reasons. (FF 16, 18) Based upon the evidence produced at the hearing, therefore, there is little doubt that Student would benefit, generally, from entering the more advanced or “step-down” residence program offered by The Program for continuing treatment of the behaviors associated with Student’s disability.

It is not the hearing officer’s function, however, to determine those facts and order treatment in a particular facility or program, much less order the Student’s School District of residence to fund the treatment of Student’s disability where, as here, the record cannot support

the conclusion that Student's need for a particular setting for behavior treatment and Student's ability to benefit from special education services are closely linked. In this case, the record supports the entirely opposite conclusion, *i.e.*, that Student can fully benefit from the educational services Student is now receiving in the School, notwithstanding the medical funding issues that have kept Student in a far less than ideal residential treatment setting for approximately the last year. (FF 18, 19)

Student's behavior plan for the classroom, as well as throughout the day, every day, is based on ABA methods and is implemented in the classroom, as in all settings, by a one to one aide trained by residence staff. (FF 24, 27) The residence staff is also responsible for analyzing the behavioral data collected by everyone who provides one to one services to Student throughout the day, including the classroom aide, in order to use the data to adjust Student's behavior plan and to develop new behavior strategies. (N.T. pp. 287—291) There was no evidence suggesting that the way Student's behavior plan is developed, implemented or revised for the classroom would be altered in any way if Student were moved from The [redacted] to The Program.

The record also establishes that Student's inability to move to The Program residential program did not interfere with Student's ability to benefit from the special education services provided by the School. The unequivocal testimony from both Parents and Facility staff concerning Student's school behaviors did not support the conclusion that moving to The Program is educationally necessary. Student's Father observed that Student's behaviors were better in the classroom setting than in the residential setting. (FF 32) Rather than establishing Student's need for the specific treatment offered by The Program in order to benefit from classroom-based educational services, Parents' testimony that Student's behavior during school

is completely different--much better-- in the school program, actually emphasized the separation between the educational program and the treatment Student needs to continue overcoming the effects of Student's disability in other aspects of Student's life.

In addition, the parties agreed, and there was direct testimony from Student's clinical manager, that Student's behaviors in the school setting did not interfere with Student's ability to learn during the 2009/2010 school year, despite an increase in the targeted behaviors observed in the classroom. (FF 25, 30; N.T. pp. 294—296) Overall, Student made progress toward both Student's IEP goals and Student's behavioral goals, notwithstanding the increased demands of full school days and the opinions of the Facility residential staff that The [redacted] is no longer an appropriate residential setting for treating Student's behaviors. (FF 17, 18, 22, 23, 31)

In short, based upon the hearing record, Student's ability to make meaningful educational progress during the 2009/2010 school year was unaffected by Student's continuing to reside in The [redacted] rather than moving to The Program residential setting.

C. Student's Educational Need for Any Residential Setting

The next question is whether any residential setting is currently essential to assuring Student's educational progress. The evidence is somewhat less clear in that regard. The testimony of the Facility staff was almost entirely directed toward supporting Student's continuing need for ABA behavioral therapy to decrease the targeted behaviors and build replacement skills, as well as Student's continuing need for one to one staffing across all settings. (FF 13, 14) Student's rejection by residential schools that cannot provide such a high level of individualized support confirms that testimony. (FF 34) The opinions of Student's developmental pediatrician and Facility staff that Student continues to need a residential placement because Student's behaviors are still too severe to permit successfully living at home

or in a less supervised residential setting were certainly persuasive, and may establish a continuing medical need for behavior therapy services in a residential setting.

Nevertheless, just as the issue for a special education due process hearing is not to determine the best treatment setting for Student, it is also not to determine how much treatment Student needs before Student can be placed in a less restrictive residential setting, but whether Student's ability to function in a classroom is so adversely affected by Student's behaviors that education is not possible unless combined with treatment outside of school hours. At this time, that is not the case with respect to this Student.

First, there is no direct connection between the ABA behavioral treatment program developed and implemented under the supervision of the residence staff and the special education services Student receives. Student's special education teacher testified that she herself uses no ABA methods for instruction during the school day. (FF 26) More important, however is the consistent testimony and other evidence provided by the witnesses who testified on behalf of Parents that despite a less than ideal and perhaps inappropriate residential treatment setting, Student was still able to participate in classroom activities, and make good progress toward learning the academic and functional skills taught in the classroom. (FF 22, 23, 25, 32)

For this Student, and, indeed, for all eligible students, those are the characteristics of an appropriate education. The due process hearing record established that the School provides an appropriate educational program and placement, for which the District both pays the costs and participates in developing Student's IEP. (FF 19, 21, 22) The District is, therefore, providing Student with a free, appropriate public education, which is the limit of the District's obligation to Student and the family.

As discussed in detail above, the educational program has been very effective for Student without the particular residential placement Parents requested. Currently, although Student continues to receive residential services, the District is funding only Student's attendance at the School because the residential treatment is funded based upon medical necessity. Although there is a chance the funding might be withdrawn, the District would only be required to provide the additional therapeutic services available in a full time residential program to the extent necessary for Student to benefit from special education.

If the funding for residential treatment were to be withdrawn and Student cannot continue with the consistent, one to one implementation of the ABA treatment methods throughout all settings and at all times, it is certainly possible that such a significant change of circumstances might have an adverse effect on Student's future ability to make meaningful progress in a special education program. Whether that would occur at all, much less the level and extent of any potential effect on Student's educational program cannot, however, be determined from the evidence in this record. To create a future link between a residential placement and educational necessity by concluding that Student would become unable to benefit from special education if residential services were withdrawn would be a speculative leap. No witness who testified for Parent suggested that Student's educational progress would be impacted by withdrawing Student from a residential placement.

CONCLUSION

The evidence in this case established that the School is not part of any residential treatment program operated by Facility, the entity that also operates Student's current residential placement and Parents' requested residential program.

Although the residential setting in which Student now receives treatment has not been appropriate for the past year, according to medical opinion and the opinion of staff at the residential facility, Student's ability to benefit from Student's special education program was not adversely affected. There is, therefore, no link between Student's ability to make educational progress and the particular residential setting Parents request.

Because Student's special education program and placement are also severable from Student's therapeutic need for a residential placement in general, the School District has no obligation to provide funding for any residential placement at this time.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Parents' claims in the above case are **DENIED**. The School District is not required to provide funding for a residential placement for Student.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are denied and dismissed.

Anne L. Carroll

Anne L. Carroll, Esq.
HEARING OFFICER

August 3, 2010