

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

**Pennsylvania Special Education Due Process Hearing Officer
Final Decision and Order**

CLOSED HEARING

ODR No. 30585-24-25

Child's Name:

J.M.

Date of Birth:

[redacted]

Parent:

[redacted]

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Hearing Officer:

James Gerl, CHO

Date of Decision:

March 4, 2025

BACKGROUND

The parent filed a due process complaint alleging the school district denied a free and appropriate public education to the student by failing to provide a residential placement for the 2024 – 2025 school year. In the alternative that the student does not require a residential placement, the parent seeks compensatory education because the parent alleges that the educational program offered by the school district does not constitute a free and appropriate public education because it did not appropriately address the student's school avoidance issues. I find for the school district on the residential placement issue. I find for the parent and conclude that the school district denied the student a free and appropriate public education by failing to appropriately address the student's disability-related school avoidance issues.

PROCEDURAL HISTORY

Counsel for both parties did a good job of agreeing to a large number of stipulations of fact. The extensive stipulations shortened both the amount of time necessary for the hearing and the decisional process. The hearing was conducted in one efficient virtual session. Four witnesses testified at the hearing. Parent Exhibits P-1 through P-28 were admitted into evidence. The school district Exhibits S-1 through S-18 were admitted into evidence.

After the hearing, counsel for each party presented written closing arguments/post-hearing briefs and proposed findings of fact. All arguments submitted by the parties have been considered. To the extent that the arguments advanced by the parties are in accordance with the findings, conclusions and views stated below, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain

arguments and proposed findings have been omitted as not relevant or not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accordance with the findings as stated below, it is not credited.

To the extent possible, personally identifiable information, including the names of the parties and similar information, has been omitted from the text of the decision that follows. FERPA 20 U.S.C. § 1232(g); and IDEA § 617(c).

ISSUES PRESENTED

Prior to the hearing, counsel were able to resolve a dispute with regard to the stay-put placement for the student. Accordingly, the stay-put issue was withdrawn by agreement of the parties. The due process complaint, as explained and clarified at the prehearing conference for this matter, presents the following issues:

1. Whether the parent has proven that the school district denied a free and appropriate public education to the student by failing to provide a residential placement for the 2024 – 2025 school year?
2. Whether the parent has proven that the school district otherwise failed to offer a free and appropriate public education to the student for the 2024 – 2025 school year?

FINDINGS OF FACT

Based upon the parties' stipulations of fact, I have made the following findings of fact:

1. The student is a [redacted]-year-old student, born.[redacted]
2. The student is currently an [redacted]-grade student.
3. The student and the student's parent are, and have been at all relevant times, residents of the school district.
4. The district is the local education authority under the Individuals with Disabilities Education Act and state law.
5. The district is a federal funds recipient within the meaning of the IDEA, and Section 504 of the Rehabilitation Act of 1973.
6. THE student is a "child with a disability" within the meaning of the IDEA, and a "qualified individual with a disability" within the meaning of Section 504.
7. The student is eligible for special education and related services under the IDEA disability category of Emotional Disturbance ("ED") and secondary categories of Other Health Impairment ("OHI") and Speech or Language Impairment "SLI").
8. The student was [redacted]by the parent when the student was five weeks old.
9. The student's [redacted]mother did not receive prenatal care, and the student was born 10 weeks prematurely.
10. Per a psychiatric evaluation completed on or about December 13, 2022, the student was diagnosed with Reactive Attachment Disorder, Attention Deficit Hyperactivity Disorder, Disruptive Mood Dysregulation Disorder, unspecified anxiety disorder and severe aggression.

11. Per the parent report, the student has a significant history of partial and in-patient hospitalizations, with at least 20 hospitalizations and/or placements in seven years.

12. The student was evaluated for an independent educational evaluation ("IEE") report that was issued on or about February 10, 2023.

13. At the time of the IEE, the student was an inpatient at a hospital.

14. The student transitioned to [redacted] in March 2023.

15. While at that residential treatment facility ("RTF"), the student received education at the [redacted] School in a full-time emotional support program and placement.

16. [redacted] issued an updated psychiatric evaluation on May 21, 2024 and it noted possible discharge from the RTF in 90 days.

17. Releases for referrals to a new placement for the student, i.e., [redacted] were made in the summer of 2024.

18. The district issued a permission to reevaluate, including a functional behavior assessment in the home and in school on August 1, 2024. The parent consented on August 9, 2024.

19. The district proposed placing the student at [redacted] School's full-time emotional support day program for the 2024-2025 school year.

20. The district issued a NOREP to implement this program and placement at [redacted] on or about August 7, 2024.

21. The district made a referral to the Intermediate Unit on August 12, 2024 for a School Attendance Improvement Program Evaluation ("SAIP" and now known as the Restore and Improve Student Engagement "RISE" program) with areas of concern listed on the referral form as attendance, mental health, behavior, and academic challenges.

22. The student was discharged from [redacted] RTF on August 16, 2024.

23. The student began attending [redacted] day school on or about September 3, 2024.

24. The student was restrained on September 11, 2024 at [redacted]. An IEP meeting was held and the team agreed that the behavior specialist at [redacted] would complete a new school-based functional behavioral assessment.

25. The district, through the Intermediate Unit, completed a Functional Behavior Assessment ("FBA") of the student in the home in the fall of 2024, with report dated October 1, 2024.

26. On or about September 29, 2024, the parent brought the student to a Hospital Emergency Room for psychiatric evaluation. The student was then involuntarily committed to an inpatient facility ("302'd") by the parent and hospitalized at [redacted] Hospital on or about October 4, 2024.

27. Per the parent report, Medicaid refused to fund another residential hospitalization; so, the parent's private insurance agreed to pay for an RTF in [redacted], which is a short-term residential treatment program, with an average stay of 60 - 90 days.

28. On October 25, 2024, the parent requested a meeting with all relevant IEP team members to discuss the RTF recommendations and whether the district can pay for any costs associated with an RTF stay.

29. The student was discharged from [redacted] Hospital on or about October 30, 2024.

30. On or about October 30, 2024, the parent requested a meeting to discuss the residential treatment facility in [redacted] and to discuss whether the district can assist in funding the student's stay at the residential treatment

facility in [redacted]. In the same email, Parent informed the district that the program is a short-term RTF with an average stay of 60 - 90 days, with the student returning by the beginning of the third marking period.

31. The student began attending the residential treatment facility in [redacted] on or about October 31, 2024.

32. The district issued a NOREP on or about October 31, 2024 declining to fund the residential treatment facility in [redacted].

33. On or about October 31, 2024, the student was discharged from [redacted].

34. On or about November 8, 2024, an interagency meeting was held.

35. Per the parent, she was informed by the residential treatment facility in [redacted] on December 3, 2024 that the student would be discharged within days due to funding.

36. The district received a request from the parent for an IEP meeting to discuss the student's imminent discharge from the residential treatment facility in [redacted] on or about December 3, 2024.

37. The parent reported that the student would be discharged from the residential treatment facility in [redacted] and return home on or about December 8, 2024.

38. The district scheduled an IEP meeting for December 10, 2024.

39. On or about December 5, 2024, the parent filed a special education due process complaint alleging the district denied the student a FAPE during the 2024-2025 school year.

40. The district held an IEP meeting with the parent on or about December 10, 2024.

41. The district informed the parent that placement at [redacted] was unavailable at the time and an alternative placement at [redacted] Academy was discussed.

42. The district proposed placement at [redacted] Academy in its full-time emotional support day program.

43. The parent requested additional time at the December 10, 2024 IEP meeting and an additional IEP meeting was then scheduled for December 13, 2024.

44. The parent took the student to tour [redacted] Academy on December 11, 2024.

45. Additional revisions to the IEP were discussed to address the parent's concerns as well as other placements and referrals at the meeting on December 13, 2024.

46. On or about December 16, 2024, the District issued a revised IEP and NOREP to the parent for [redacted] Academy Day program as the proposed placement.

47. On or about December 16, 2024, the parent returned the NOREP with disapproval and requested due process based on disagreeing with the proposed placement.

48. "302'd" refers to Section 302 of the Mental Health Procedures Act in Pennsylvania. Section 302 covers the process for petitioning that an individual be involuntarily committed for psychiatric treatment at an inpatient psychiatric unit. The petitioner must be someone who has either witnessed first-hand a person's behaviors or threats, such as those that pose an imminent risk of danger to themselves or others or the inability to care for oneself, or another person who is otherwise authorized by law, such as a physician or police officer in the county.

49. The parties agree that based on representations by the parent, that the below is what the parent has represented concerning the student's various hospitalizations and school history and what each respective facility is: hospital, PHP, RTF, or school.

2022-2023 school year ([redacted]grade)

8/13/22- 10/25/22 inpatient hospitalization

2/12/22- 3/29/23 Inpatient hospitalization

3/29/2023 -5/2023 [redacted]RTF- residential placement

Attending [redacted]School for school while at RTF

2023-2024 school year ([redacted]grade) [redacted]RTF- residential placement Attending [redacted]School for school while at RTF until 8/16/2024

2024-2025 school year ([redacted]grade)

09/03/24- 09/27/24 [redacted]– APS school - day program

09/29/24- 10/04/24 Hospital ER – emergency evaluation hospitalization

10/04/24- 10/30/24 [redacted]Hospital – in-patient hospitalization

10/31/24- 12/08/24 [redacted]RTF – residential placement

Based upon the evidence in the record compiled at the due process hearing, the hearing officer makes the following findings of fact: ¹

50. The student is very creative and artistic. The student loves taking things apart and putting things together. (NT 126 – 127)

51. The parent initiated involuntary hospitalizations of the student numerous times due to conflict between the student and the student's mother in the home, including three residential treatment facility placements and

¹ (Exhibits shall hereafter be referred to as "P-1," etc. for the parent' exhibits; "S-1," etc. for the school district's exhibits; references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT____").

some partial hospitalizations. (S-1; P-6; NT 40 – 42, 58 – 59, 101 – 102, 263 – 264, 324)

52. While the student is at home, the student has an extremely difficult time in the morning getting out the door and onto transportation in order to attend school because of the student's disabilities. The student complains of stomach aches and dizziness. The student refuses to get ready for school, refuses to attend school and refuses to board transportation to school. During these mornings, the student frequently curses at the student's mother, pushes her, breaks things and attempts to hurt her. The mother frequently has to hide herself somewhere safe, like in a room with a locked door or in a car. The student's violent morning episodes frequently last from 5 to 30 minutes. (P-7; NT 40 – 42, 114 – 115, 145 – 146)

53. The RISE program is administered by the intermediate unit that covers the school district. The program is geared toward students who have chronic absenteeism or attendance issues. After a referral from a school district, the program begins with a comprehensive assessment to determine why a student is not attending school. The comprehensive assessment is conducted by three evaluators- a licensed and certified psychologist, a licensed and board-certified behavioral analyst (BCBA), and a licensed social worker or mental health clinician. The team completes a psychological assessment, a functional behavioral assessment and a mental health intake to identify barriers and develop recommendations for interventions. After the evaluation, the program provides the school district with recommendations. The RISE program also provides direct intervention services, sending two clinicians into the home to help the family implement individualized interventions to facilitate the student's attending school. The RISE program requires that a responsible adult be present during the delivery of services to a student. (NT 189 – 195)

54. The student was referred for a RISE evaluation in the summer of 2022. An evaluation was completed in 2022, but before intervention services could be provided, the student was involuntarily hospitalized by the student's mother. (NT 90 – 92, 196 – 198)

55. During the RISE evaluation in 2022, the intermediate unit staff told the student's mother that a parent must be home when RISE staff come to the home to deliver services, and that the student's mother would have to be physically present for the student to receive the RISE services. The intermediate unit staff told the student's mother that the student's grandmother could not stand in for the mother for this purpose. The student's mother has to leave the house for work at 7:00 in the morning. (NT 92 – 93)

56. The student attended a full-time emotional support program that includes both a residential component and a day program for the student's [redacted] grade year during the 2023 – 2024 school year. The student made progress at that placement. and thereafter, the student no longer required a residential treatment facility. Discharge planning from the residential treatment facility began on May 16, 2024 and the student was discharged on August 16, 2024. (S-1; NT 46 – 48, 78 – 83, 251 – 255)

57. On May 21, 2024 the residential treatment facility that the student had been attending issued a discharge summary that noted the student's progress and recommended that the student be transitioned from a residential placement to family-based services. (S-1; NT 79-83)

58. The school district issued a Notice of Recommended Educational Placement (NOREP) to implement the student's IEP at [redacted] day school. The parent signed this NOREP, consenting to the program. (S-6; NT 89, 260)

59. During the summer of 2024, the school district issued a Permission to Reevaluate the student, including functional behavioral

assessment in the student's home and at school. The school district also made a referral to the intermediate unit's RISE program. (S-5, S-7; NT 88 – 89, 258 – 261)

60. The RISE team began a new evaluation of the student on August 26, 2024. (P-7)

61. The student's May 2024 IEP included the student attending at [redacted] day school for the student's [redacted] grade school year, the 2024 – 2025 school year. The student's IEP included goals for behavioral and emotional regulation. (P-2; NT 90, 250 – 251, 258, 260, 321)

62. On September 11, 2024, the student was restrained while at the day school. The student had been cursing and threatening staff with a [redacted]. A staff member placed the student in a bear hug and staff continued to restrain the student for approximately seventeen minutes until the student calmed down. The restraint occurred after the RISE team psychologist's classroom observation and meeting. The student was deescalated, calmed and finished school that day. (P-25, P-28; NT 263 – 264)

63. On September 12, 2024, the RISE evaluators conducted their evaluation in the student's home. (P-25)

64. On September 25, 2024, the student's IEP team met to discuss the restraint incident. The student's teachers provided mostly positive input with regard to the student's transition to Audubon. The team agreed to complete an updated school FBA within the next 45 days. (P-5; NT 322 – 323)

65. The student attended school 13 of the 18 school days at the beginning of the 2024 – 2025 school year. The parent initiated an involuntarily psychiatric hospitalization of the student on Sunday, September 29, 2024. (P-5, P-7, P-25; NT 101 – 102)

66. The RISE team completed its evaluation of the student in early October 2024 and recommended new strategies, supports and interventions. The report recommended that two RISE clinicians come to the student's home each morning before school. Before the interventions could be implemented, the student was hospitalized again and then unilaterally placed at an out-of-state residential treatment facility by the student's mother. (P-7, P-25; NT 203 – 212)

67. The parent e-mailed the school district on Friday, October 25, 2024, to inform the district that the student would likely be discharged soon because the student did not meet the medical necessity standard. The parent's e-mail included a report from [redacted]Hospital and a request by the parent for the school district to fund an out-of-state residential treatment facility. (P-10; NT 282 – 283)

68. A report from [redacted]Hospital dated October 15, 2024 mistakenly states that the school district was pursuing truancy proceedings against the student. The report recommends a residential placement for the student for psychiatric treatment reasons and notes that the student "could also receive educational programming consistent with [the student's] needs while in the residential setting." (P-10)

69. The school district responded to the parent on Monday, October 28, 2024 to propose an IEP team meeting for October 31, 2024. (P-15; NT 265 – 268)

70. The parent responded to the school district on October 30, 2024 that the student was being discharged from [redacted]Hospital and that the parent would be transporting and unilaterally placing the student at residential treatment facility in [redacted]as of October 31, 2024. (P-14)

71. An interagency meeting was held on November 8, 2024. The parent informed the team that the student would likely be at the out-of-state residential treatment facility through mid-January. Another IEP team meeting was scheduled for December 6, 2024. (S-9; NT 108 – 109)

72. On October 30, 2024, the school district issued a Notice of Recommended Educational Placement refusing to fund a residential placement for the student, stating that it was not necessary and that the student did not require such a restrictive environment because the student could be successful in a full-time emotional support day program. (P-12; NT 268 – 269)

73. A member of the RISE staff told the parent at the December 2024 IEP team meeting that RISE would staff two individuals to assist the student's transitions to school. However, the representative stated that the two positions had not yet been filled, and there was currently no one available to implement the RISE interventions for the student in the mornings. The RISE program was able to fill the staffing positions as of the date of the due process hearing and would be able to implement the RISE program for the student at the student's home beginning on approximately January 10, 2025. (NT 70 – 71, 271 – 273, 312 – 313)

74. The educational programming for the student at the residential treatment facility in [redacted] was very limited and it did not address the student's special education and related services needs. (P-18; NT 72)

75. The student was not a risk of danger to the student or to others while at the day school with the exception of the restraint incident on September 11, 2024. (NT 263 - 264)

76. The student's mother picked up the student from the unilateral placement in the residential treatment facility in [redacted] on December 8, 2024. (P-17; NT 109)

77. The school district's offer of programming to the student as of the date of the due process hearing was to implement the student's IEP, as revised at the December 16, 2024 IEP team meeting, at the [redacted] full-time emotional support day program. The IEP provides for services to meet the student's educational and related services needs, including a positive behavior support plan, speech and languages therapy, occupational therapy, behavioral and emotional supports, instruction for reading, written expression and math. The IEP provides the related service of transportation for the student. The IEP team met again on January 10, 2025 to further review and revise the student's IEP. (S-12; NT 111 – 113, 271 – 273, 311 – 313)

78. The staff of the RISE program will have sufficient staff and will be able to implement the recommendations made by the RISE program for the student at the student's home beginning on approximately January 10, 2025. (NT 271 – 273, 312 – 313)

79. The parent agrees with all of the special education programming and related services offered by the school district for the student for the 2024-2025 school year with the exceptions of the parent's desire for a residential placement for the student and the parent's request for support to get the student out the door in the morning to attend school. (NT 114 – 115)

CONCLUSIONS OF LAW

Based upon the arguments of the parties, all of the evidence in the record, as well as my own legal research, I have made the following conclusions of law:

1. A parent or a local education agency may file a due process complaint alleging one or more of the following four types of violations of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq, (hereafter

sometimes referred to as “IDEA”): an identification violation, an evaluation violation, a placement violation or a failure to provide a free and appropriate public education. IDEA §615(f)(A); 34 C.F.R. § 300.507(a); 22 Pa. Code § 14.162.

2. The United States Supreme Court has developed a two-part test for determining whether a school district has provided a free appropriate public education (hereafter sometimes referred to as “FAPE”) to a student with a disability. There must be: (1) a determination as to whether a school district has complied with the procedural safeguards as set forth in IDEA, and (2) an analysis of whether the individualized educational program is reasonably calculated to enable the child to make progress in light of the child’s circumstances. Endrew F by Joseph F v. Douglass County School District RE-1, 580 U.S. 386, 69 IDELR 174 (2017); Board of Educ., etc. v. Rowley, 458 U.S. 178, 553 IDELR 656 (1982); KD by Theresa Dunn and Jonathan Dunn v. Downingtown Area School District, 904 F.3d 248, 72 IDELR 261 (3d Cir. 2018).

3. In order to provide FAPE, an IEP must be reasonable, not ideal. KD by Dunn v. Downingtown Area School District, *supra*; LB by RB and MB v Radnor Twp Sch Dist, 78 IDELR 186 (ED Penna 2021).

4. The appropriateness of an IEP in terms of whether it has provided a free appropriate public education must be determined at the time that it was made. The law does not require a school district to maximize the potential of a student with a disability or to provide the best possible education; instead, it requires an appropriate educational plan that provides the basic floor of educational opportunity. Ridley School District v. MR and JR ex rel. ER, 680 F.3d 260, 58 IDELR 281 (3d Cir. 2012); DS v. Bayonne Board of Education, 602 F.3d 553, 54 IDELR 141 (3d Cir. 2010); Mary Courtney T. v.

School District of Philadelphia 575 F.3d 235, 251, 52 IDELR 211 (3d Cir. 2009).

5. If a placement in a residential program is necessary to provide special education to a child with a disability, the program must be provided at no cost to the parent by the school district. 34 C.F.R. § 300.104. A school district is required to fund a residential placement for a student with a disability when residential placement is necessary for a student to receive special education. Munir ex rel. OM v. Pottsville Area School District, 723 F. 3d 423, 61 IDELR 152 (3d Cir. 2013). A school district is not required to fund a residential placement that is for medical or psychiatric purposes. Kruelle v. Newcastle County School District, 642 F. 2d 687, 552 IDELR 350 (3d Cir. 1981).

6. A school district must "...to the maximum extent appropriate, (ensure that), children with disabilities... are educated with children who are non-disabled and that special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only if the nature or severity of the disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2); IDEA § 612(a)(5)(A); 22 Pa. Code § 14.195)

7. The Third Circuit has ruled that the least restrictive environment requirement is a substantive requirement of IDEA. Oberti v. Board of Education, 995 F.2d 1204, 19 IDELR 908, @n. 18 (3d Cir. 1993).

8. To prevail on a claim of failure to implement an IEP, a parent must show that the school district failed to implement substantial or material provisions contained in the IEP. Abigail P by Sarah F v. Old Forge Sch Dist, 105 F.4th 57, 124 LRP 21769 (3d Cir 2024); MP by VC v. Parkland School

District, 79 IDELR 126 (E.D. Penna. 2021); see, Van Duyn v. Baker School District, 481 F.3d 770, 47 IDELR 182 (9th Cir. 2007).

9. An IDEA hearing officer has broad equitable powers to issue appropriate remedies when a local education agency violates the Act. All relief under IDEA is equitable. Forest Grove School District v. TA, 557 U.S. 230, 129 S. Ct. 2484, 52 IDELR 151 (n. 11) (2009); Ferren C. v. Sch. Dist. of Philadelphia, 612 F.3d 712, 54 IDELR 274 (3d Cir. 2010); CH by Hayes v. Cape Henlopen Sch Dist., 606 F.3d 59, 54 IDELR 212 (3d Cir. 2010); School District of Philadelphia v. Williams ex rel. LH, 66 IDELR 214 (E.D. Penna. 2015); Stapleton v. Penns Valley Area School District, 71 IDELR 87 (N.D. Penna. 2017). See Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005); Garcia v. Board of Education, Albuquerque Public Schools, 530 F.3d 1116, 49 IDELR 241 (10th Cir. 2008); In re Student with a Disability, 52 IDELR 239 (SEA W.V. 2009). The conduct of the parties is always relevant when fashioning equitable relief. CH by Hayes v. Cape Henlopen Sch Dist., 606 F.3d 59, 54 IDELR 212 (3d Cir. 2010). See, Branham v. District of Columbia, 427 F.3d 7, 44 IDELR 149 (D.C. Cir. 2005).

10. Compensatory education is one remedy that may be awarded to parent when a school district violates the special education laws. In general, courts, including the Third Circuit, have expressed a preference for a qualitative method of calculating compensatory educational awards that addresses the educational harm done to the student by the denial of a free and appropriate public education. GL by Mr. GL and Mrs. EL v. Ligonier Valley School District Authority, 802 F.3d 601, 66 IDELR 91 (3d Cir. 2015); Gwendolynne S by Judy S and Geoff S v West Chester Area Sch Dist, 78 IDELR 125 (ED Penna 2021); see Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005). In Pennsylvania, in part because of the failure of special education lawyers to provide evidence regarding harm to the

student caused by the denial of FAPE, courts and hearing officers have frequently utilized the more discredited quantitative or “cookie cutter” method that utilizes one hour or one day of compensatory education for each day of denial of a free and appropriate public education. The “cookie cutter” or quantitative method has been approved by courts, especially where there is an individualized analysis of the denial of FAPE or harm to the particular child. See, Jana K. by Kim K v. Annville Sch. Dist., 39 F. Supp. 3d 584, 53 IDELR 278 (M.D. Penna. 2014).

11. The parent has not proven the school district denied the student a free and appropriate public education by failing to provide a residential placement for the student.

12. The parent has proven that the school district denied a free and appropriate public education to the student by not appropriately addressing the student’s significant issue with getting out the door in order to attend school for the period of time while the student was not hospitalized or in a residential facility from the beginning of the 2024 – 2025 school year until the date of the hearing herein.

DISCUSSION

I. Merits

1. Whether the parent has proven that the school district denied a free and appropriate public education to the student for the 2024 – 2025 school year by failing to provide the student with a residential placement?

The parent contends that the student needed a residential placement to receive to receive a free and appropriate public education for the 2024 – 2025

school year. The school district contends that the student did not need a residential placement for the 2024 – 2025 school year in order to receive a free and appropriate public education.

The evidence offered by the parent in this case does not demonstrate that the student needed a residential placement to receive a free and appropriate public education for the 2024 – 2025 school year. Instead, the record evidence reveals that the student needed to be periodically hospitalized or placed in residential facilities for treatment for psychiatric and medical issues. This includes a number of involuntary hospitalizations initiated by the student's mother because of violent outbursts by the student in the home. The school district is not legally responsible for funding a residential psychiatric or medical treatment for the student.

In the parent's post-hearing brief, the main thrust of the parent's argument is that the student would do better academically in a residential placement. Indeed, the parent's post-hearing brief refers to the "best educational interests" of the student. In order to provide FAPE, however, a school district need not provide the best education or an ideal education. The parent is clearly applying the wrong standard to determine what FAPE requires. The parent's brief also cites an independent educational evaluation that is dated, having been prepared in the 2022-2023 school year. The IEE also seems to endorse a potential maximizing standard involving the level of the student's progress in previous hospitalizations and residential treatment facilities. The IEE is afforded little weight. The parent's argument is rejected.

The parent also points to the October 15, 2024 report by [redacted] Hospital that recommends that when the student is discharged from the hospital that the student be provided residential treatment for medical reasons. The report mentions in passing that the student "could also receive

educational programming consistent with the student's needs while in the residential setting," but the report cannot be read to support the conclusion that the student requires a residential placement for educational reasons or for educational reasons that are inextricably intertwined with medical or psychiatric reasons.

The most persuasive evidence in the record concerning this point is the May 21, 2024 report by the residential facility in which the student had been placed. The report concludes that because of the progress made by the student during that residential placement that the student be discharged from a residential placement and transitioned to a family-based set of services. Thus, the record evidence shows that the student did not need a residential placement.

Moreover, a residential placement is among the most restrictive types of educational placement. Least restrictive environment factors also weigh against a residential placement. Because the student does not need a residential placement for educational reasons or for medical reasons that are intertwined inextricably with educational reasons, the least restrictive environment for the student is a highly structured and therapeutic day program, such as the one offered by the school district. The testimony of the school district's school psychologist to this effect was highly credible and persuasive. The student does not require a residential placement.

The testimony of the school district witnesses was more credible and persuasive than the testimony of the student's mother concerning this issue. This conclusion is made because of the demeanor of the witnesses, as well as the following factor: the student's mother gave highly evasive and inconsistent testimony pertaining to the discharge meeting at the residential facility in May 2024, as well as the reasons for that discharge.

It cannot be concluded from the record evidence that the parent has proven that the student required a residential placement for educational reasons, or for medical and psychiatric reasons that were inextricably intertwined with educational reasons, in order to receive a free and appropriate public education for the 2024 – 2025 school year.

2. Whether the parent has proven that the educational program for the student offered by the school district for the 2024 – 2025 school year constitutes a denial of a free and appropriate public education?

The school district's offer of programming for the student for the 2024 – 2025 school year includes a full-time emotional support day program. The IEP includes appropriate goals to meet the student's needs, including a positive behavior support plan, speech and language services, occupational therapy services, behavior and emotional supports, instruction in reading, written expression and math. The educational program outlined by the IEP is appropriate. Indeed, the only disagreement between the parent and the district involves whether the student needs a residential placement and whether the school district program adequately deals with the student's extreme difficulty getting to school.

The unique, individual circumstances of this student include the fact that when the student is at home, the student's disabilities cause the student to have an extremely difficult time getting out the door and onto transportation in order to attend school. The picture painted by the record evidence concerning the atmosphere in the home as the family is trying to prepare the student to leave for school is quite dark. The student complains of stomach

aches and dizziness. Frequently the student has violent outbursts when the mother tries to get the student to leave for school. The student curses at and tries to hurt the mother. Sometimes the mother has to hide from the student and lock herself in a safe place. Clearly, the student is not able to benefit from the student's education unless the student is able to attend school.

The school district attempted to address this issue by referring the student to the RISE program of the intermediate unit. The RISE team evaluated the student and suggested a number of appropriate strategies and interventions to make it much more likely that the student would get out the door in the morning to attend school. The recommendations made by the RISE team of multi-disciplinary professionals are highly appropriate and squarely address the student's biggest need. The program developed by the RISE team is reasonably calculated to address the student's school attendance issues.

There are two problems regarding the implementation of those recommendations, however, that render the school district efforts to address the issue ineffective and, therefore, not appropriate. The first is that the credible evidence in the record indicates that the RISE staff told the student's mother the student's grandmother could not be the responsible adult at the home in the morning to work with the RISE team to get the student out the door. The mother was told that she as the parent would have to be present for the services to be implemented. The student's mother has to leave the house for work at approximately 7:00 a.m. Accordingly, the RISE team was not able to implement the program for the student. Indeed, it was only at the due process hearing that the parent was made aware that the grandmother would be able to substitute for the mother as the responsible adult to work with the RISE team to get the student out the door.

Secondly, when the RISE team discussed the RISE program with the student's mother at an IEP team meeting, the RISE team indicated that they did not have available the staff people necessary to implement the program for the student at that time. The student's mother was not made aware that there would be staffing available to implement the RISE program until the due process hearing.

Accordingly, it is concluded that the highly material IEP provisions concerning the RISE team recommendations could not be implemented and are ineffective, and, therefore, the IEP was not reasonably calculated to appropriately address the student's unique individual circumstances until the date of the hearing in this case. Because the RISE services were not available during that period, the school district did not provide FAPE to the student during that period.

The testimony of the student's mother was more credible and persuasive than the testimony of the intermediate unit representative from the RISE program with regard to this issue. This conclusion is made because of the demeanor of the witnesses, as well as the following factor: the witness from the intermediate unit suffered from poor memory and was evasive when answering questions with regard to whether or not the student's grandmother could substitute for the mother as the adult to be present when RISE services were being provided.

It is concluded that the educational program offered by the school district did not constitute an offer of a free and appropriate public education to the student until the date of the due process hearing, when it became clear that the RISE services component of the student's IEP could be implemented and delivered to the student in order to appropriately address the student's unique individual circumstances.

II. Relief

The parent has not proven that the student needs a residential placement. The parent has proven a denial of FAPE and seeks compensatory education as a remedy therefor. As stated in the parent's post-hearing brief, the parent seeks compensatory education from the date that the student was enrolled for the 2024 – 2025 school year until the student's hospitalization at [redacted]Hospital, as well as from the date of the student's discharge from the residential facility on December 8, 2024 until the denial of FAPE ends. Based on the discussion above, it is concluded that the student was denied FAPE from the first day of the 2024-2025 school year until the date of the hospitalization and again beginning on December 8, 2024. The denial of FAPE ended on the date of the due process hearing, when the parent was made aware that the student's grandmother could substitute as the adult to work with RISE team and that the RISE team had identified and was able to provide the two staff members to deliver the RISE services to the student. Because the RISE services were critical to the student's ability to benefit from the student's IEP, full days of compensatory education shall be awarded for each school day during the period of denial of FAPE.

Because all relief under IDEA is equitable relief, it should be flexible, and because IDEA is meant to be a collaborative process, Schaffer v. Weast, 546 U.S. 49, 44 IDELR 150 (2005), the parties shall have the option to agree to alter or change the relief awarded herein so long as both parties and all attorneys representing them agree in writing.

ORDER

Based upon the foregoing, it is HEREBY ORDERED as follows:

1. The school district is ordered to provide one full day of compensatory education to the student for each school day during the period of denial of FAPE, as described above. The award of compensatory education is subject to the following conditions and limitations:

a. The student's parent may decide how the compensatory education is provided. The compensatory education may take the form of any appropriate developmental, remedial or enriching educational service, product or device for the student's educational and related services needs;

b. The compensatory education services may be used at any time from the present until the student turns age twenty-one (21); and

c. The compensatory services shall be provided by appropriately qualified professionals selected by the parent. The cost to the school district of providing the awarded days of compensatory education may be limited to the average market rate for private providers of those services in the county where the district is located; and

2. The parties may adjust or amend the terms of this order by mutual written agreement signed by all parties and counsel of record; and

3. All other relief requested by the instant due process complaint is hereby denied.

IT IS SO ORDERED.

ENTERED: March 4, 2025

James Gerl

James Gerl, CHO
Hearing Officer