STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 1525 Sherman Street, Denver, Colorado 80203	
[Father] and [Mother], Parents of [Student], Complainants, VS. **DOUGLAS COUNTY SCHOOL DISTRICT RE-1,** Respondent.	✂ **COURT USE ONLY** ✂ **CASE NUMBER:** **EA 2018-0030**

AGENCY DECISION

On July 19, 2018, the Colorado Department of Education, Exceptional Student Services Unit ("CDE") received a due process complaint filed by [Father] and [Mother] ("Complainants," or "[Father]," or "[Mother]," respectively) on behalf of their minor child, [Student] ("[Student]" or "Student"), alleging that the Douglas County School District R-1 ("Respondent" or the "District") had denied [Student] a free and appropriate public education under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415(f), its implementing regulations at 34 C.F.R. § 300.511, and Colorado's Exceptional Children's Educational Act ("ECEA"), 1 CCR 301-8. The complaint was forwarded to the Office of Administrative Courts ("OAC") and assigned to Administrative Law Judge ("ALJ") Keith J. Kirchubel for an impartial due process hearing.

Hearing was held in Denver, Colorado on January 14, 15, 16, and 17, 2019. Complainants appeared through their counsel of record, Mr. Jack Robinson. The District was represented by its counsel, Ms. Elizabeth Friel. At hearing, the ALJ admitted into evidence Complainant's exhibits A through Y, and AA through KK,[1] and Respondent's exhibits No. 3,[2] No. 5, No. 10, No. 14 through No. 16, No. 18, No. 19,[3] No. 24, No. 25, No. 42 through No. 48,[4] and No. 50 through No. 53. The proceedings were digitally and stenographically recorded. Following conclusion of the hearing, the parties each submitted a written closing brief.

[1] Only pages 1 through 4 of Hearing Exhibit GG were admitted; only pages 9 through 13 of Hearing Exhibit II were admitted.

[2] Only pages Bates No. 000328-000329 were admitted.

[3] Only pages Bates No. 000006, and Bates No. 000010-000026 were admitted.

[4] Only pages 57 through 61 (Bates No. 001512-001515, and Bates No. 001483) were admitted from Hearing Exhibit No. 48.

ISSUES PRESENTED

Whether the District violated the procedural requirements of the Individuals with Disabilities Education Act ("IDEA") in scheduling and completing a requested evaluation of the Student, and by preventing meaningful participation of the Complainants in the development of an Individualized Education Program ("IEP") for the Student, completed in April, 2018; and whether the April, 2018, IEP identified and included all services and supports necessary to provide the Student with a Free Appropriate Public Education ("FAPE"). To the extent that the second issue is affirmatively established, Complainants seek reimbursement of the costs of educating the Student at the [Residential Treatment Center 1] in [State 1] for the period beginning sixty days after Complainants gave consent for evaluation in October, 2018, through the date of the decision in this matter, and an order confirming the [Residential Treatment Center 1] as the appropriate educational placement for the Student going forward.

FINDINGS OF FACT

Based on the evidence in the record, the ALJ finds the following:

1. [Student] is a fourteen year-old boy who, as of the time of hearing, attends ninth grade. Complainants reside within the jurisdictional boundaries of the District and have [other] children, including [Student]. There is no dispute that the Student is a child with a disability and therefore entitled to a FAPE. He has been identified as a child with severe emotional disability.

2. Prior to 2008, [Student] was in the custody of his biological mother. [Mother] established that he was found unsupervised on a city bus at age four and thereafter placed (with his [sibling]) in foster care. [Student] had already experienced periods of homelessness, being left in the care of strangers by his biological mother, exposure to inappropriate "horror" genre movies, and observation of his mother being beaten. He had not lived in a home prior to being placed with Complainants, who eventually adopted him and his [sibling].

3. [Mother] established that these early experiences resulted in [Student] being forced to feel responsible for his own well-being, as well as that of his [sibling]. He developed an attitude that he was the only person who knew "what was right." He was unable to accept being told "no" and would act out in such instances, displaying behaviors such as defiance, lying, and stealing. As he has aged, [Mother] established that the behaviors became magnified.

4. [Student] attended preschool and then elementary school within the District. He was first identified as a child with a disability in the first grade, resulting in his initial IEP. [Student] had been diagnosed with attention deficit hyperactivity disorder ("ADHD"),

post-traumatic stress disorder ("PTSD"), and dyspraxia, a form of impaired motor coordination.

5. By the time the Student was in the fifth and sixth grades, his behaviors became more than his family could handle. He was stealing from his family and from businesses. He ran away from home more than once, leading to the involvement of law enforcement. [Student] was disruptive and defiant at school to the point where teachers were unable to instruct other children when [Student] was present. He would blurt out statements in class, wander off during transitions, and refuse to do work unless supervised in a 1:1 setting. His behaviors led to his alienation from other students. During the last half of his sixth grade year, the Student attended a shortened school day limited to the mornings. [Mother] confirmed that [Student] had never needed to be physically restrained while enrolled in District schools. There was no evidence that the Student harmed himself or any other person at school while attending in the District.

6. During the spring of 2017, Complainants determined that the Student was not "growing" from his education in the District. They decided to place him privately at the [Private School]. [Mother] established that [Student] was not successful at [Private School]. He continued to exhibit defiance to teachers, refusal to complete school work, and wandering. He also wielded a stick at another student. [Student] demonstrated the same behaviors at home, church and in the community, as well as lying and destroying property. These actions were not so severe that Complainants involved law enforcement or social service agencies for help.

7. Complainants reluctantly accepted that providing love and support to [Student] was not enough to control his behaviors. They had accessed county mental health services and three psychiatrists without any substantial breakthrough with him. [Mother] spoke to the Student's therapist, [Therapist], during the summer of 2017 about continuing problems with the Student. [Therapist] recommended that the family contact an educational consultant named [Educational Consultant].

8. [Educational Consultant] met with the family including [Student], and reviewed documentation provided to him by Complainants. [Educational Consultant] recommended that Complainants send the Student away for an extensive, 30-day evaluation in the areas of cognition, social/emotional functioning, and sensory processing.

9. On June 7, 2017, [Student] arrived at [Residential Treatment Center 2] in [State 2] where he was evaluated in a residential setting through July 6, 2017. Complainants' family was also interviewed as part of the evaluation by [Residential Treatment Center 2].

10. [Clinical Psychologist], testified in his capacity as clinical psychologist and head of neuropsychological services at [Residential Treatment Center 2].[5] He described the team approach to the 30-day evaluation of [Student] by himself, a child/family therapist, a psychiatric nurse practitioner, and a developmental pediatrician to observe the Student

[5] [Clinical Psychologist] was qualified as an expert in the field of pediatric neuropsychology. Hearing Exhibit JJ.

in difficult environments with his peers and yield a comprehensive picture of his functioning. [Clinical Psychologist] focused on the relationship between the Student's brain and his behaviors with emphasis on understanding emotional triggers.

11. [Clinical Psychologist] produced a neuropsychological report following his observation and testing of the Student. Hearing Exhibit R. [Clinical Psychologist] evaluated the Student's cognitive abilities (intellectual and academic skills), visual and fine motor skills, learning and memory skills, executive functioning, and aspects of his behaviors, emotions, and personality. He found that the Student suffered from severe impairments in executive functioning and self-regulation that led to impulsive behaviors. [Student] also exhibited an impaired ability to understand consequences, a factor also commonly associated with impulsivity. [Clinical Psychologist] described the Student as non-violent and could not recall any concerns regarding suicidal ideation.

12. [Clinical Psychologist] diagnosed the Student with disinhibited social engagement disorder, a non-neurodevelopmental condition, that reflected [Student]'s adaptation to the unstable environment (characterized by neglect and possible abuse) in his early life. [Clinical Psychologist] opined that [Student] has a compromised ability to form appropriate social attachments as follows: he engages in compulsive seeking out of relationships, forms shallow relationships, and has trouble managing social relationships. [Clinical Psychologist] also diagnosed the Student with anxiety disorder that is manifested as nervousness, worrying, fearfulness, and extreme emotional sensitivity that quickly leads to distress. [Student]'s combination of intense emotions and poor self-regulation result in anti-social behaviors as a quick response. Lastly, [Clinical Psychologist] diagnosed [Student] with developmental coordination disorder manifested as high motor restlessness (inability to sit still and/or stay on task) and severe difficulty tolerating emotional distress. With regard to the latter feature, [Clinical Psychologist] explained that compromised motor coordination is associated with poor executive control or an inability to know what to do with incoming information. [Student] had a particular difficulty with processing correction or being wrong.

13. [Clinical Psychologist] provided a lengthy list of recommendations for the Student in his report. *Id* at pages 7-10. These included on-going psychiatric services, a structured environment with clear expectations for behavior, individual therapy addressed to behaviors and interpersonal skills, and special education services and accommodations.

14. The [Residential Treatment Center 2] team presented its evaluation summary, including broad recommendations for [Student], in writing and in a meeting attended by Complainants in early July, 2017. Hearing Exhibit M. The team proposed a comprehensive and integrated approach that [Clinical Psychologist] characterized as a "therapeutic lifestyle." This approach was described as viewing the patient "as a whole" to recognize different aspects of lifestyle—such as sleep patterns, recreation, education, social interactions—as being either therapeutic or negative. The report uses the phrase "milieu therapy" to describe the optimal environment where structured and integrated therapeutic interventions from caregivers could provide the Student with in the moment

training opportunities.[6] Increased predictability in the routines of the day could help [Student] better understand expectations and avoid behavioral triggers. The team emphasized that the Student required constant supervision, in part, to assist with appropriate social interactions and to model healthy relationship styles that include boundary setting, effective communication, consistency, patience, and support. Individual therapy was indicated to build the Student's coping and emotional regulation skills, impulse control, and mindfulness. The latter term was defined in terms of understanding one's own body, mind, emotions, and feelings while in many situations.

15. The [Residential Treatment Center 2] team recommended that [Student] receive a therapeutic residential level of care.[7] [Clinical Psychologist] testified that the Student's combination of challenges result in significant stress to [Student] himself, his family, teachers, and caregivers. [Clinical Psychologist] opined that residential placement would enable the Student to receive the intensive services needed in a carefully structured environment that was more emotionally neutral than a family home. Family therapy was specifically endorsed by the team as was a level of family involvement in the Student's residential placement characterized by phone contacts, letter writing, and visits. Family involvement should occur in the context of supporting the Student's goals and objectives.

16. [Clinical Psychologist] acknowledged that lesser restrictive options are generally preferred over residential placement, where appropriate. He established that the relevant criteria are whether the environment is safe, stable, and conducive to learning. He acknowledged that preserving a family unit to the extent possible is always a goal and that removing a child from his family is a big decision. In the case of [Student], [Clinical Psychologist] believed that the Student's ability to form healthy family attachments was repeatedly disrupted by his own behaviors to the point where the preference for home was outweighed by the damage done to the family relationship(s).

17. On cross-examination, [Clinical Psychologist] established that [Student] felt vulnerable when separated from those who provide him with support. Even though the Student experienced loneliness and isolation without nurturing and emotional support, [Clinical Psychologist] endorsed the recommendation for an "emotionally neutral" environment. He clarified that the phrase does not mean a cold, unresponsive setting, but rather an ability to respond calmly to [Student]'s problems of high emotions.

18. [Clinical Psychologist] testified that he was unclear if Complainants' home environment was adequate to support a day treatment modality for [Student]. The ALJ understood this to mean [Clinical Psychologist] questioned the ability of the family to remain emotionally neutral in the face of the Student's behaviors. [Clinical Psychologist] also stated that he would want to know more (than he did) about what individual and family counseling was included in the plan for day treatment. [Clinical Psychologist] could

[6] [Clinical Psychologist] explained that "in the moment" prompting can enhance learning for a student with ADHD because there is less time between the cause (say, a behavior) and the effect (a consequence).

[7] [Clinical Psychologist] noted the team recommendation, but stopped short of making his own specific recommendation that [Student] undergo residential placement.

not recall if day treatment was discussed as an option at the final staffing meeting. He stated that he would disagree with a recommendation for day treatment in this case, but could not say without more information that day treatment for the Student would be unreasonable.

19. [Mother] testified that the [Residential Treatment Center 2] evaluation seemed to explain how the pieces of the puzzle (meaning the psychosocial picture of [Student]) fit together. She understood that the recommendation of residential placement flowed from the team's conclusion that the Student's needs exceeded what could be provided at home. She confirmed that she felt unable as a parent to provide the "matter of fact" emotionally neutral environment recommended for [Student].

20. Although the Student's evaluation at [Residential Treatment Center 2] was completed on July 6, 2017, he remained in [State 2] after that date rather than returning home to Colorado. [Educational Consultant] presented Complainants with a list of six or eight schools he felt might be appropriate for [Student]. Complainants investigated the choices and received responses from two that indicated they had an appropriate combination of programming and peers to suit the needs of the Student. One of the Schools was the [Residential Treatment Center 1] in [City], [State 1] ("[Residential Treatment Center 1]").

21. In the period between the completion of the [Residential Treatment Center 2] evaluation, and August 15, 2017, when they learned that [Residential Treatment Center 1] had a spot available for [Student], Complainants re-enrolled the Student in the District. They shared the results of the [Residential Treatment Center 2] evaluation with the District and began a discussion around what other assessments might be necessary to develop a new IEP. They also signed a release to permit the District to discuss the Student's evaluation directly with [Residential Treatment Center 2]. On September 28, 2017, Complainants signed a consent for evaluation of [Student] sent to them by the District. Hearing Exhibit A.

22. [Mother] established that Complainants committed to send [Student] to [Residential Treatment Center 1] upon learning that a spot was available for him. She and [Father] had filled out an application and completed a parent interview with [Residential Treatment Center 1]. They also took the Student to [State 1] for a half-day visit that included a chance for them to observe the school setting and potential peer groups. The decision to offer a position to [Student] was made by the team at [Residential Treatment Center 1]. He was admitted on August 21, 2017. Hearing Exhibit W.

23. [Senior Clinical Supervisor] testified in his capacity as the senior clinical supervisor at [Residential Treatment Center 1].[8] In that position, he oversees four clinical supervisors who manage the [Residential Treatment Center 1] dorms; [Senior Clinical Supervisor] is also involved in after school programs, including treatment teams. He served as the Student's primary group therapist for the first year after he was enrolled at

[8] [Senior Clinical Supervisor] was qualified as an expert witness in the areas of social work, counseling, and residential programming.

[Residential Treatment Center 1]. [Senior Clinical Supervisor] established that [Residential Treatment Center 1] is accredited by the [State 1] state department of education and licensed by the state department of public health.

24. [Senior Clinical Supervisor] described the physical campus of [Residential Treatment Center 1]. The facility occupies a 500 acre property and features four dormitory buildings. Each dorm houses up to twelve students. There is also a school building with ten classrooms, a wood shop, and a lake where residents can fish. Approximately ten to twelve students attend [Residential Treatment Center 1] as part of day treatment program and then return to their homes at night. The Student was housed in a private room in one of the dorms. There was no evidence that the [Residential Treatment Center 1] campus is secure, and [Mother] acknowledged that [Residential Treatment Center 1] had one resident run away and harm himself.

25. [Senior Clinical Supervisor], [Principal],[9] and [Mother] established that a typical day at [Residential Treatment Center 1] is highly structured. Students are awakened at 7:00 a.m. and have one hour to dress and prepare for the day. They take breakfast in a dining hall and then attend classes from 8:15 to 12:25. They have a lunch break and finish with school in the afternoon. Following school, residential counselors take over and students attend group therapy with a master level caregiver. Dinner is served in each dormitory. A structured recreation activity occurs after dinner followed by television time or (if earned) arcade time. Lights out is at 9:00 p.m.

26. [Senior Clinical Supervisor] described [Residential Treatment Center 1] as employing a milieu approach in which every minute of the day has therapeutic value. Residential staff foster coping skills to get through the day. Therapeutic staff assist with personal and family issues. [Student] participated in daily group therapy focused on building executive skills, social skills, cooperation, and team dynamics among the residents. Weekly individual therapy with the Student focused on managing his sexual impulsivity according to [Senior Clinical Supervisor].

27. [Residential Treatment Center 1] developed an Individual Treatment Plan for the Student. Hearing Exhibit W. [Senior Clinical Supervisor] reviewed [Student]'s problems with impulsivity, distractibility, social attachments, and behaviors including arguing, noncompliance, and defiance. He also commented on the Student's extremely low range processing speed which causes [Student] to need more time than is typical to understand and do what he was told.[10] [Student] also has pragmatic language deficits that impair his ability to express his needs. This inability can lead to frustration that, in turn, promotes negative behaviors. [Senior Clinical Supervisor] confirmed the Student's delayed executive skills that inhibit his planning and mood regulation causing him to rely on adults around him to act as executive control.

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[9] [Principal] testified in his capacity of the chief administrator (principal) of the school program at [Residential Treatment Center 1].

[10] [Senior Clinical Supervisor] established that it may take up to ten seconds for the Student to process the instruction, "put the stick down." Given that time allowance, the Student's compliance was estimated at 75-80 per cent.

28. Since arriving at [Residential Treatment Center 1], [Student] has formed friendships with other residents who chose to spend time with him. In the beginning, the Student had a very difficult period of adjustment manifested in very poor behaviors. He was swearing, yelling, stealing, physically pushing, kicking, and elbowing others. [Senior Clinical Supervisor] established that [Student] has been placed in more physical restraint holds than the average for students at [Residential Treatment Center 1]; he also needs more 1:1 attention that the average for other students. For a time, the Student was habitually screaming the word "penis" over and over, and exposing his genitals to staff. Those latter behaviors had subsided by the time of hearing but led to the Student being housed in a private dorm room for the protection of the other residents.

29. [Residential Treatment Center 1] prepares critical incident reports ("CIR") for each time a resident requires physical restraint or demonstrates what are considered to be extreme behaviors. Hearing Exhibit CC. [Senior Clinical Supervisor] established that [Student] generated approximately five times more CIRs than is typical for other students. Most of the Student's CIRs were generated by behaviors after the school day which [Senior Clinical Supervisor] established ended at 2:30 p.m.

30. Prior to January 25, 2018, [Residential Treatment Center 1] prepared a draft of an IEP for the Student that was shared with the District. Hearing Exhibit Z. On October 19, 2017, [Residential Treatment Center 1] prepared a Behavioral Intervention Plan for [Student] that was subsequently updated prior to February 8, 2018. Hearing Exhibit AA. On cross-examination, [Senior Clinical Supervisor] explained that the Student does not have an IEP that is implemented at [Residential Treatment Center 1], although the draft elements are informally incorporated into his program. [Senior Clinical Supervisor] listed the Student's goals at [Residential Treatment Center 1] as follows: end of violent responses toward others, ability to access the school curriculum, ability to make and keep friendships, ability to regulate his moods, and ability to express feelings and needs. Those goals do not correlate in any direct way to the goals written into the draft IEP.

31. [Senior Clinical Supervisor] summarized his impressions of the Student for Complainants on October 23, 2018. Hearing Exhibit FF. At hearing, he described [Student]'s hyperactivity and impulsivity as occurring on an hourly basis and needing constant redirection. He singled out the Student's aggressive behaviors as the principal reason why [Student] has not been discharged to a less restrictive environment. Of 35 critical incidents in the first eighteen weeks [Student] was at [Residential Treatment Center 1], 23 involved assaults or aggressions; of 43 critical incidents occurring after the first eighteen weeks, 24 involved assaults and/or aggressions (5 of which were in school), 6 involved exposing his penis or buttocks (one of which was in school), and one involved [Student] claiming he had a gun in his bedroom and threatening to kill staff. [Senior Clinical Supervisor] acknowledged that it "is impossible to quantify the extent to which [Student]'s participation in the [Residential Treatment Center 1] residential program contributes to his ability to access the curriculum in school" but added that "there is a significant connection." *Id*. [Senior Clinical Supervisor] opined that the Student's level of impulsivity and sexual acting out made it difficult to imagine him being successful outside of residential treatment. "Continuity of care and an extremely high level of adult supervision appear to be key for allowing him to make slow, but steady, progress at

replacing maladaptive behaviors with pro-social behaviors." *Id*. At hearing [Senior Clinical Supervisor] testified that in order for [Student] to receive a basic education and to have some social enrichment, he continued to need residential services. The biggest factors in this opinion, according to [Senior Clinical Supervisor], are the significant safety risks that the Student posed to himself and others, and the likelihood of skill regression if the strict continuity of care was not maintained.

32. In talking about the progress that [Student] had made at [Residential Treatment Center 1], [Senior Clinical Supervisor] identified fewer behavioral disruptions occurring after the end of the school day, fewer verbal outbursts, ability to maintain friendships, and participation on the school basketball team.

33. On cross-examination, [Senior Clinical Supervisor] opined that the Student displays fewer extreme behaviors during school time because there is more structure and focus on the curriculum. [Student] has required far fewer physical restraints during the school day as compared to afterwards. [Senior Clinical Supervisor] agreed that all treatment should be oriented to allow the Student to be reunited with his family. However, during his time as [Student]'s treatment coordinator, [Senior Clinical Supervisor] determined that the Student was too agitated with his parents for an immediate reunion to be beneficial. [Senior Clinical Supervisor] also acknowledged that [Residential Treatment Center 1] is not the only school setting that should be able to meet the Student's needs.

34. [Principal] established that 35 youth attended school at [Residential Treatment Center 1] at the time of hearing in grades spanning middle and high school. The Student has nine or ten others in his class supervised by one special education teacher and two or three assistants. The average ratio of teachers to students at [Residential Treatment Center 1] is 1:3, but [Student]'s class features more individual instruction based on the higher needs of the students.

35. [Principal] described the Student's strengths as a desire to learn and to do well, a desire to formulate friendships, verbal comprehension, and reading comprehension. He is challenged by limited impulse control, processing deficits, and impaired social skills.

36. In the classroom, the Student receives specialized instruction in a therapeutic milieu. His math curriculum is modified to address identified deficits in numerical operations, problem solving, and fluency. He receives accommodations in the form of additional time, breaking down assignments, and the ability to take space when needed. He has received weekly speech therapy as well as counseling to foster improvement in his self-regulation and social skills.

37. [Principal] established that [Student] is a very disruptive student who requires constant adult intervention to follow classroom routines. He tends to wander in class and will blurt out inappropriate statements. [Principal] testified that [Student] has made quite a bit of progress to reduce behaviors during class time, respond more positively to adults, and reduce the amount of time that he has to leave class because of

emotional dysregulation. Consistent with the impression of [Senior Clinical Supervisor], [Principal] established that the Student experiences regression in skills every time he leaves the classroom. The longer he is away from a structured environment, the more problems resurface. For this reason, [Principal] endorsed the notion of "around the clock structure" for [Student]. He did not anticipate that [Student] could be successful as a day treatment student and could not imagine the Student's parents and/or peers tolerating him without significant support. [Principal] testified that he would not accept [Student] as a day treatment student because he considered the after-hours counseling element of residential treatment essential to the Student being able to have appropriate peer contacts, including during school.

38. [Principal] established that although he was not aware of the Student having injured himself, [Student]'s ability and propensity to provoke others represented a risk of harm to himself. The Student has not been involved in any fights during the school day while at [Residential Treatment Center 1], although [Principal] was aware of staff (including himself) having to intervene between [Student] and other residents in the dorm setting.

39. Based on the Complainants having provided consent for evaluation, the District moved forward with that process in October and November, 2017. Prior to November 6, 2017, Complainants authorized release of records by [Residential Treatment Center 1] and completed health and social histories of [Student] as requested. On November 6, 2017, [Father] also identified [Senior Clinical Supervisor] and provided contact information for the District to obtain more information about coordination of the Student's treatment and services. Complainant's counsel forwarded this latter information to the District on November 14, 2017.

40. On November 15, 2017, the District obtained the Student's records from [Private School].

41. [Learning Specialist] testified in her capacity as a learning specialist at [District School] within the District. [District School] would be the Student's home school based on where Complainants reside. [Learning Specialist] coordinated efforts to obtain documents and information regarding [Student]; she also administered a writing skills assessment to him over the winter break in 2017. On December 15, 2017, [Learning Specialist] confirmed that an IEP team meeting would be convened for the Student on January 25, 2018, for purposes of determining eligibility under the IDEA. Hearing Exhibit 44 at page 22 (Bates No. 005349).

42. [Student] completed the Test of Written Language ("TOWL") with [Learning Specialist] on December 21, 2017. She confirmed that [Residential Treatment Center 2] identified specific deficits in the Student's writing skills through administration of the Wechsler Individual Achievement Test and that the District wanted more information about this issue. [Student] achieved average or higher scores on four of the six subtests. In spelling, for which his scaled score fell in the "poor" range, [Learning Specialist] noted that more than half of the spelling errors [Student] committed were errors of capitalization. She described him as fidgety and needing to take frequent breaks to walk around the

room. She attempted to encourage him to stay on task by breaking the testing into "chunks" of smaller sets of questions. Eventually, [Student] perceived one subtest as too difficult and ceased any effort to continue.

43. [Learning Specialist] spoke to a representative of [Private School] about the Student's experience there. She learned that he struggled to engage academically with specific problems attending to tasks, initiating and completing work, and behaviors. [Learning Specialist] learned that [Private School] did not have a speech language pathologist or occupational therapist to work with [Student] while he was there.

44. [Learning Specialist] also reviewed the Student's academic records and CIRs from [Residential Treatment Center 1]. She found evidence of the same academic struggles, although [Student] was found to have met the expected competencies in all areas except mathematics. [Learning Specialist] confirmed that the Student has a relative strength in reading and deficits in writing and math.

45. Other than the TOWL administered by [Learning Specialist], the District relied on the results of the assessments from [Residential Treatment Center 2] to determine the Student's strengths and weaknesses as part of the IEP process. These results were presented in an Evaluation Report dated January 24, 2018. Hearing Exhibit C. That document formed the basis of an eligibility discussion on January 25. [School Psychologist] testified in her capacity as school psychologist for [District School]. [School Psychologist] also observed [Student] during the TOWL test, reviewed the WISC administered at [Residential Treatment Center 2], and reviewed the CIRs from [Residential Treatment Center 1].[11] [School Psychologist] prepared sections of the Evaluation Report on testing observations, social-emotional functioning, and student interview. [School Psychologist] established that no member of the January 25, 2018, meeting objected to the completeness of the District's evaluation of [Student]. Complainants, who also attended the meeting, agreed with the District's determination that the Student was eligible for special education and related services with identified areas of serious emotional disability, other health impairment, and specific learning disability. Hearing Exhibit D.

46. A further IEP team meeting was scheduled for February 16, 2018, but that meeting was cancelled due to a family emergency experienced by the District's special education director, [Special Education Director]. Rescheduling the meeting was made very difficult due to the conflicting schedules of Complainants, their counsel, District personnel, and [Residential Treatment Center 1] personnel—all of whom participated. Ultimately, the IEP team convened on April 10, 2018.

47. [Learning Specialist] and [School Psychologist] started to work on an IEP document based on the draft (Hearing Exhibit Z) initially created by [Residential Treatment Center 1]. The District's draft IEP dated February 16, 2018, was shared with counsel for Complainants prior to the next meeting of the IEP team. Hearing Exhibit L.

[11] [School Psychologist] noted that most of the behavioral incidents occurred during transitions or unstructured times. Hearing Exhibit C at page 18.

[Learning Specialist] testified that the draft was always subject to revision by the team as appropriate. The goals set forth in Hearing Exhibit L correlate significantly with those in Hearing Exhibit Z, albeit with different numbering. The District draft also included additional goals (No. 2, and No. 5) that were not proposed by [Residential Treatment Center 1].

48. On February 9, 2018, at the direction of [Special Education Director], [District Liaison], the District liaison for out-of-district placements, contacted [Chief Officer] of [Day Treatment Center] in [City], Colorado, with a referral of [Student]. Hearing Exhibit GG at pages 1-2. [Day Treatment Center] provided day treatment at that location for children with needs like those of the Student. The referral included a copy of Hearing Exhibit L, IEP team notes, and information from the January 25, 2018 eligibility meeting. On February 14, 2018, [Chief Officer] asked [District Liaison] if it was permissible for [Day Treatment Center] to reach out to the family of the Student. Hearing Exhibit II at page No. 9. [District Liaison] replied in the negative. *Id*. On February 14, 2018, [Chief Officer] also indicated that [Day Treatment Center] "would like to accept" [Student]. *Id*.

49. At hearing, [District Liaison] testified that the District's instruction to [Day Treatment Center] not to contact Complainants was based on her understanding that the IEP team had not selected [Day Treatment Center] at that time. [Special Education Director] testified that she asked [District Liaison] to start exploring options, including residential programs, after the eligibility meeting so that if and when an offer of placement was to be made at a particular facility, the District would be able to give the parents specific information about it. She instructed [District Liaison] to proceed with referral to [Day Treatment Center] even though there had been no IEP team decision about [Student] being educated there so as to avoid any potential problem with the Student being wait listed. [Special Education Director] indicated that [District Liaison] had information about [Day Treatment Center] that informed her decision to submit a referral there in February, 2018. [Special Education Director] also stated that [Day Treatment Center] offers the option of residential treatment at one of its other campuses which was an option the IEP team could consider.[12] [Special Education Director] did not want the referral disclosed to Complainants because of concerns that it would be seen as a signal of the District having predetermined the Student's educational program and thereby shut down further conversation by the IEP team members.

50. At the IEP team meeting on April 10, 2018, the team members reached consensus in approving much of the content. [Mother] testified that Complainants had no objections to the statement of the Student's present levels of educational performance, the statement of Student needs and impact of disability, the appropriateness of the goals and objectives, the appropriateness of the stated accommodations and modifications, the necessity of extended school year services, the applicability of state assessments, the

[12] [District Liaison] established that no referral was ever made to a residential program. [Special Education Director] testified that no indication was ever given by [Day Treatment Center] that the Student would be accepted into the residential program.

statement of service and delivery, or the extent to which the Student would be educated in the least restrictive environment.

51. [Speech Pathologist] testified in her capacity as a speech language pathologist employed by the District. [Speech Pathologist] reviewed records from [Residential Treatment Center 1] and drafted the portion of the statement of present levels of performance related to how the Student's pragmatic language skills affect his education and social interactions. She participated in the preparation of goal No. 7, goal No. 8, and the accommodations tailored to pragmatic communication, cooperation, and social/emotional supports based on input from [Residential Treatment Center 1]. As discussed in the previous Finding of Fact, the appropriateness of the IEP in these areas is not disputed.

52. [Learning Specialist] established that a number of IEP provisions were modified during the course of the April 10 meeting based on the input of team members, including Complainants. She identified elements of the accommodations[13] and impact of disability that reflected discussion in the meeting, modifications regarding the Student's processing speed, and Complainants' reference to crisis prevention intervention (Hearing Exhibit H at page 9) as examples.

53. With regard to where the IEP was proposed to be implemented, the evidence was disputed. [District Liaison] could not remember discussion of a residential treatment option that was "documented as such." She did remember that the Student's placement at [Residential Treatment Center 1] was discussed, but could not recall discussion of the "pros and cons" of continued residential treatment under the District IEP. That testimony was supported by [School Psychologist]. [Mother] testified that residential placement was not discussed by the team although she told the team that residential placement should be considered. [Special Education Director] stated the District's offer of a day treatment placement at [Day Treatment Center], and [District Liaison] confirmed that no other location for placement was offered.

54. [Special Education Director] was the person with authority on the part of the District to make the offer. She testified that the IEP team did consider keeping [Student] at [Residential Treatment Center 1] but she was concerned with how far it was from his family given that she heard multiple times he was struggling with the separation. [Special Education Director] believed that the Student could be successful in a day treatment program even though [School Psychologist] confirmed that Complainants expressed concerns about the appropriateness of day treatment; [Mother] discussed [Student]'s safety, including the possibility of running away, if he was in their home at night. [Special Education Director] testified that she believed that the benefits of the Student living near his family outweighed the concerns regarding his behaviors. In that regard, the IEP team discussed the benefits and availability of family therapy to address the relationship of [Student] and his parents, but the evidence was unclear whether the IEP included direct

[13] Provide check for understanding of directions, allow wait time for processing instructions, 1:1 support and monitoring with computer tasks, and the opportunity to present oral responses. Hearing Exhibit H at page 14.

services for family therapy at District expense. Ultimately, [Special Education Director] put forth the offer of a day treatment program for the Student at [Day Treatment Center].

55. [Mother] was crying and clearly upset at the conclusion of the IEP meeting although [Special Education Director] stated she did not view this as discord with the offer of a day treatment program. [Mother] was concerned that the Student had previously run away from home four or five times leading to his apprehension by law enforcement. She also felt that a day treatment program where [Student] returned home at night would not result in the consistency between environments that he experienced at [Residential Treatment Center 1]. The Complainants indicated that they would visit [Day Treatment Center] but never did so. [Mother] testified that after she contacted [Day Treatment Center], she only received intake paperwork in response. Complainants did conduct some online research into [Day Treatment Center] but did not change their position that [Student] needed a residential placement.

56. [Chief Officer] testified in his capacity as chief officer over the residential and educational services at [Day Treatment Center]. He has never met [Student] but was provided with documents about him to consider in connection with the referral. [Chief Officer] was aware of [Student]'s history of aggressive and sexualized behaviors during unstructured time. He confirmed that he informed [District Liaison] that [Day Treatment Center] was willing to accept the Student into its day program and that [District Liaison] instructed him not to contact Complainants. [Chief Officer] testified that it was not uncommon for the District and other referring school districts to prohibit contact with families of referred students prior to the placement being codified through the IEP process.

57. [Chief Officer] established that [Day Treatment Center] has been designated as a facility school by the Colorado Department of Education. [Day Treatment Center] receives approximately fifteen to twenty referrals per year from the District. Between twelve and fifteen District students actually entered [Day Treatment Center] during the 2017-18 academic year. He testified that [Day Treatment Center] has experienced success helping students with serious emotional disabilities strengthen and repair relationships with their families. [Day Treatment Center] promotes consistency between the interventions implemented in the home and school environments by promoting communication and similar rewards and consequences for behaviors.

58. At the time of hearing, [Chief Officer] estimated that 35 to 40 students attend the [Day Treatment Center] day treatment program. Twelve to thirteen staff members serve those students to produce a ratio of 1:4 or 1:5. [District Liaison] had communicated to [Day Treatment Center] that a behavioral therapist or board certified behavioral analyst could possibly be provided by the District if [Student] was determined to need 1:1 services. Students with IEPs receive special education services at [Day Treatment Center]. Staff are trained in crisis prevention intervention, a modality to de-escalate students who are emotionally dysregulated. Therapeutic staff all have masters-level education and have experience with complex emotional disabilities including attachment disorders, ADHD, and fetal alcohol syndrome.

59. Students at [Day Treatment Center] benefit from individual therapy on a weekly basis to address issues and provide coping skills, as well as group therapy targeted to anger management, conflict resolution, and social skills. Family therapy is also offered on a weekly basis to identify past trauma, decrease conflict, and determine how best to support children and families. These services substantially conform to the notion of "milieu approach" discussed by [Clinical Psychologist] and [Senior Clinical Supervisor].

60. [Chief Officer] testified that [Day Treatment Center] was able to implement the provisions of the IEP (Hearing Exhibit H). The District's offer of [Day Treatment Center] was confirmed in a prior written notice dated May 3, 2018. Hearing Exhibit J.

61. [Father] established that the Student's placement at [Residential Treatment Center 1] was billed at $11,600 per month during the 2017-18 academic year. That amount was comprised of the costs for the education ($5,102.83) and the residential components ($6,497.17). For 2018-19, the total monthly amount has been increased to $11,948. Hearing Exhibit No. 16. Complainants request that the District reimburse past expenses and pay for the continuing costs associated with the Student's placement at [Residential Treatment Center 1].

CONCLUSIONS OF LAW

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that provides special education and related services designed to meet their unique needs. 20 U.S.C. § 1400(d)(1)(A). Central to the IDEA is the requirement that local school districts develop, implement, and revise an IEP calculated to meet the eligible student's specific educational needs. 20 U.S.C. § 1414(d). A school district satisfies the requirement for a FAPE when, through the IEP, it provides a disabled student with a "basic floor of opportunity" that consists of access to specialized instruction and related services that are individually designed to provide educational benefit to the student. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 201 (1982). To meet its obligations under the IDEA, the school district "must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County School District RE-1*, 580 U.S. __; 137 S.Ct. 988 (2017).

In providing FAPE, children should be educated in the "least restrictive environment," meaning that, "[t]o the maximum extent appropriate," disabled children should be educated in public classrooms, alongside children who are not disabled. 20 U.S.C. § 1412(a)(5)(A). A student should be removed to a more restrictive setting only when the nature or severity of the disability is such that "education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

Burden of Proof

Although the IDEA does not explicitly assign the burden of proof, *Schaffer v. Weast*, 546 U.S. 49, 58 (2005) places the burden of persuasion "where it usually falls, upon the party seeking relief." *See also Thompson R2-J Sch. Dist. v. Luke P.,* 540 F.3d 1143, 1148 (10th Cir. 2008) (stating that "[t]he burden of proof . . . rests with the party claiming a deficiency in the school district's efforts"). Complainants therefore bear the burden of proving by a preponderance of the evidence that the District violated its obligations under the IDEA by failing to provide [Student] with FAPE, and that they have established the elements required to establish a claim for tuition reimbursement from the District for their placement of the Student at [Residential Treatment Center 1].

Tuition Reimbursement

20 U.S.C. § 1412 (a)(10)(C)(ii) states in full:

> If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

Limitations are placed on this provision as follows:

> The cost of reimbursement described in clause (ii) may be reduced or denied
>
> > (I) if (aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
> >
> > > (bb)10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in item (aa);
> >
> > (II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 1415(b)(3) of this title, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or
> >
> > (III) upon a judicial finding of unreasonableness with respect to actions taken by the parents. 20 U.S.C. § 1412 (a)(10)(C)(iii).

The statute further explains that:

(iv) Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement—

(I)shall not be reduced or denied for failure to provide such notice if—

(aa) the school prevented the parent from providing such notice;

(bb) the parents had not received notice, pursuant to section 1415 of this title, of the notice requirement in clause (iii)(I); or

(cc) compliance with clause (iii)(I) would likely result in physical harm to the child; and

(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if—

(aa) the parent is illiterate or cannot write in English; or

(bb) compliance with clause (iii)(I) would likely result in serious emotional harm to the child. 20 U.S.C. § 1412 (a)(10)(C)(iv).

In *Jefferson County School District R-1 v. Elizabeth E. ex rel. Roxanne B.*, 702 F.3d 1227, 1236-1237 (10th Cir. 2012) the Tenth Circuit explained:

The plain language of the Act thus supplies the appropriate framework through which to determine whether a unilateral private school placement without the consent of or referral by the school district is reimbursable. A court or hearing officer must:

(1) Determine whether the school district provided or made a FAPE available to the disabled child in a timely manner; if it did, the unilateral parental placement is not reimbursable; then

(2) Determine whether the private placement is a state-accredited elementary or secondary school; if not, the placement is not reimbursable; then

(3) Determine whether the private placement provides special education, i.e., "specially designed instruction ... to meet the unique needs of a child with a disability"; if the placement provides no such instruction, it is not reimbursable.

(4) If the private placement provides additional services beyond specially designed instruction to meet the child's unique needs, determine whether such additional services can be characterized as "related services" under the Act, i.e., "transportation, and such developmental, corrective, and other supportive services ... as may be required to assist a child with a disability to benefit from special education," excepting medical services which are not for diagnostic and evaluation purposes. If the additional services cannot be so characterized, they are not reimbursable.

The initial questions, therefore, related to Complainants' request for reimbursement of the costs of education and residential services at [Residential Treatment Center 1] are whether the District's offer of April 10, 2018, was reasonably calculated to provide the Student with a FAPE and was made in a timely manner.

As clarified in the testimony of [Mother], the Complainants do not take issue with the content of the April, 2018 IEP as it related to the District's understanding of the Student's present levels of performance, the impact of his disabilities, the statements of goals and measurable objectives, the identified accommodations and modifications, the extent to which the Student might be eligible for extended school year services, and the statement of service delivery and least restrictive environment. All of these elements were acknowledged to be appropriate for [Student]. The issue of whether the District's offer was reasonably calculated to enable [Student] to receive educational benefit thus hinges on the District's determination that the Student's IEP could be implemented in a day treatment program as distinguished from the residential program described at [Residential Treatment Center 1]. In that regard, the ALJ finds and concludes that the District's recommended placement at [Day Treatment Center] was shown to offer the milieu treatment approach that was established to be appropriate for [Student] through the testimony of [Clinical Psychologist], [Senior Clinical Supervisor], and [Chief Officer]. Whether at [Day Treatment Center] or [Residential Treatment Center 1], [Student] would be educated in a highly structured setting where appropriate behavior interventions and mental health supports (including individual and group therapies) would be implemented to facilitate progress on the Student's academic and social/emotional goals. The distinguishing factor is the residential component of [Residential Treatment Center 1], where [Student] is apart from his family for extended periods of time and subject to additional highly structured restrictions after the end of the school day at substantial expense. If such a program is necessary as a related service to enable [Student] to receive appropriate educational benefit, then Complainants are entitled to reimbursement.

[Special Education Director] established that her decision to offer day treatment as the mode of implementing the Student's IEP derived from concerns about separation of [Student] from his family. [Clinical Psychologist] acknowledged that preserving a family unit is an important goal in considering placement of children like [Student]. Less restrictive options, he testified, should be preferred so long as a student is safe, stable, and learning. [Senior Clinical Supervisor], too, testified that all treatment at [Residential Treatment Center 1] is oriented to allow the Student to be reunited with his family. Accordingly, the ALJ finds and concludes that the District's motivation was consistent with the weight of the evidence about what is ultimately in [Student]'s best interest. The question is whether the choice of day treatment was appropriate for him as of April, 2018.

Understanding this aspect of the Student's unique educational needs is informed by the extensive evaluation of him undertaken at [Residential Treatment Center 2], the history of his behaviors and how they have and will impact his education, the expert testimony of [Clinical Psychologist], and the experience of [Student] at [Residential Treatment Center 1] that was known to the District at the time of the April, 2018 offer. As noted in the findings of fact, [Residential Treatment Center 2] determined that [Student]

had multiple disabilities that manifested as impulsivity, anxiety, poor executive control, and difficulties with social attachments. [Student] struggled with inappropriate behaviors that represented his response to these problems and that adversely affected his ability to access education and/or form appropriate relationships at school as well as in the community. There was substantial consensus among the witnesses that the Student required significant structure and support during his day and substantial consistency among educators and after-school caregivers in how the Student's behaviors were managed. [Mother] expressed serious concern that Complainants would be unable to implement such measures at home as [Student] had triggered family responses that were not "emotionally neutral." If the social situation at home tended to escalate and not reinforce the behavior modification strategies in place at school, then [Mother] feared that the Student would regress, potentially leading to failure on his IEP goals, inadequate social/emotional development, elopement, and even criminal conduct. [Clinical Psychologist] also expressed reservations about whether the Complainants' home environment was adequate to enable a day treatment model to be successful for the Student. [Clinical Psychologist], who specifically endorsed emotionally neutral responses to the Student's behaviors and who placed more emphasis on the Student's attachment issues than other therapists, did not opine that residential placement was the only way to implement a therapeutic lifestyle for [Student]. He did express confidence that a therapeutic residential placement could meet the Student's needs, and stated he would need to know more about the features of a day program-- including individual and family therapy-- to endorse such a program for [Student]. It must be noted, however, that the Student's current placement at [Residential Treatment Center 1] does not offer regular opportunities for [Student] to interact personally with his family, much less any consistent program of family therapy.

The District's direct experience with the Student's behaviors was to some extent dated. While he had no history of behaviors that required physical restraints during the time he was enrolled as a student in the District, he had grown in the intervening years and entered puberty. The sexualized behaviors noted by [Senior Clinical Supervisor] in terms of language and exposing himself were new since the Student had left the District in the spring of 2017. It was also established that the Student's behaviors and language at [Residential Treatment Center 1] had led to incidents where another student might feel provoked to the point of a physical altercation. Of 78 incidents of behaviors categorized as extreme or requiring [Student] to be physically restrained at [Residential Treatment Center 1], 47 involved assaultive or aggressive conduct on the part of the Student. The fact that the majority of incidents occurred after school hours underscored the need for consistent behavior interventions across times and environments. [Senior Clinical Supervisor] established that the Student's progress had been slow but recognizable in the after-school time with fewer disruptions and vocal outbursts, and improved ability to form and maintain friendships with peers. [Principal] addressed the Student's progress during school, including reduced disruptive behaviors, more positive responses to adults, and fewer times when he was required to leave class because of emotional dysregulation.

The evidence as to whether [Student] required residential placement as a related service so as to be able to access his education was not extremely one-sided in the estimation of the ALJ. The District chose to make use of a very thorough assessment

that endorsed residential placement and an IEP substantially drafted by persons who support the Student's current residential placement. And while the District is correct in its argument that an educational placement should not be a substitute for incarceration or other necessary social services, the ALJ does not view the [Residential Treatment Center 1] program as such a substitute. [Residential Treatment Center 1] is not a secure facility, but rather a place where the behavior management the Student experiences during the day is replicated in an emotionally neutral setting after school hours. [Student] has identified educational needs in the areas of executive functioning, pragmatic language, anxiety, and impulse control-- all of which need to be effectively supported to permit him to benefit from an educational program. The weight of the evidence showed that he experiences rapid regression in skills without consistent application of structured interventions. Such regression can occur as quickly as one day to the next. The record also established that although the day program offered at [Day Treatment Center] was reasonably calculated to enable implementation of the IEP goals and accommodations in a milieu approach, the environment in the Student's home was not appropriate as of April, 2018, to permit progress realized during the day to be retained and generalized to a reasonable degree. This evidence, derived from the testimony of [Clinical Psychologist], [Senior Clinical Supervisor], [Principal], and [Mother], was not substantially refuted by the District. Accordingly, the ALJ finds and concludes that Complainants met their burden of demonstrating the necessity of residential treatment as a related service to allow the Student to receive a FAPE.

The ALJ also finds and concludes that [Residential Treatment Center 1] is accredited by the State of [State 1] as a special education placement and non-public school. [Residential Treatment Center 1] offers specially designed instruction and supports to the Student in those areas of need connected to his disabilities. [Residential Treatment Center 1] provides related services in the areas of individual and group therapy, speech therapy, and supervision consistent with the delivery statement included within the April, 2018 IEP. Most significant to the relief requested by Complainants, [Residential Treatment Center 1] provides room and board to the Student as a related service. Based on the foregoing discussion, the ALJ finds and concludes that Complainants demonstrated that they are entitled to reimbursement for the Student's placement at [Residential Treatment Center 1] beginning on April 10, 2018, based on the determination below that the District did not unreasonably delay the completion of the IEP process.

Procedural Issues

A hearing officer's determination of whether a student received a FAPE must be based on substantive grounds. 34 *Code of Federal Regulations* (C.F.R.) 300.513 (a)(1). In matters alleging a procedural violation, a hearing officer may find that a student did not receive a FAPE only if the procedural inadequacies – (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provisions of a FAPE to the parent's child; or (iii) caused deprivation of educational benefit. 34 CFR 300.513 (a)(2)(i) – (iii).

Complainants argued that the District violated the IDEA by failing to timely complete the requested evaluation and development of the Student's IEP. They also argued that the Complainants were denied meaningful participation in the IEP process by virtue of the District's actions surrounding the identification and offer of the day program at [Day Treatment Center].

[Learning Specialist] established that she sent a consent form for evaluation of the Student as directed by [Special Education Director]. Complainants returned the signed form on September 28, 2017. Complainants also provided releases to allow the District to obtain information from [Residential Treatment Center 2] and [Residential Treatment Center 1]; [Learning Specialist] proceeded to gather records from both. The District performed one assessment of the Student in December, 2017, when he was home on holiday. Thereafter, a meeting of the IEP team was scheduled in January, 2018, to consider the evaluation information and address the issue of eligibility. [Special Education Director] canceled a subsequent meeting in February, 2018, because of an unavoidable family emergency. It took substantial time to reschedule the meeting due to the involvement of Complainants and their legal counsel, multiple District personnel, and representatives of [Residential Treatment Center 1]. These facts lead the ALJ to conclude that the District did not unreasonably delay the completion of the evaluation and IEP process. The Student was unavailable to participate in an assessment at the time consent was given, necessitating the postponement until December. Given the relatively large size of the IEP team and the unexpected cancellation of the February, 2018 meeting, completing the process was more difficult than might otherwise be the case. But [Learning Specialist] diligently attempted to reconcile the multiple scheduling conflicts as reflected in the email documentation. No relief is warranted on this issue.

Turning to the matter of fostering effective parent participation in the IEP process, the record established that Complainants actively participated in discussions related to the Student's needs that resulted in changes to the IEP document (Finding of Fact No. 52). That being said, the ALJ can discern no valid reason why the District actively prevented the Complainants from knowing that the day program at [Day Treatment Center] was under serious consideration. [Special Education Director] testified that she did not want the Complainants to misinterpret the referral as a predetermination of the appropriateness of [Day Treatment Center] without the input of the IEP team. This testimony was unavailing because a disclosure could have included the caveat that this was merely something under consideration by the District. The District had no problem sharing a draft IEP with counsel for Complainants in February, 2018, which likely included the same caveat and was not misinterpreted. Additionally, the District had direct knowledge of [Day Treatment Center] that Complainants did not. Because [Special Education Director] instructed [District Liaison] to prevent any communication to Complainants about the referral, Complainants were deprived of the ability to investigate [Day Treatment Center] as a potential placement for their son. When [Day Treatment Center] was offered at the conclusion of the April, 2018 IEP meeting, Complainants were at a distinct disadvantage to discuss the pros and cons of the offer with the other team members. The ALJ finds and concludes that while the evidence did not establish that the District predetermined the placement at [Day Treatment Center], the District's actions nonetheless created an imbalance of information about the proposed placement that

detrimentally impacted the Complainants' ability to participate as full-fledged IEP team members. As a result, the record demonstrated that parents and other team members did not feel that the issue of residential placement versus day treatment was thoroughly discussed. These facts establish a violation of 34 C.F.R. 300.513 (a)(1)(ii). However, given the result of the analysis above and the determination that Complainants are entitled to reimbursement for the Student's placement at [Residential Treatment Center 1], the ALJ finds and concludes that no separate or additional relief is warranted on this procedural violation.

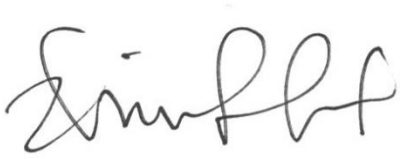
DECISION

The ALJ concludes that the Complainants met their burden of establishing that the April 10, 2018 IEP did not represent an offer of FAPE to the Student as required under the Individuals with Disabilities Education Act. Complainants also established that the Student's current placement at [Residential Treatment Center 1] satisfies the criteria for tuition reimbursement. Accordingly, Complainants are entitled to reimbursement of the cost of the Student's enrollment at [Residential Treatment Center 1] from April 10, 2018, and thereafter.

Complainants also established a procedural violation that substantively deprived them of their right to meaningful participation in the IEP process. No additional relief was determined to be warranted for this founded violation or for any other allegation in the due process complaint.

This Decision is the final decision except that any party has the right to bring a civil action in an appropriate court of law, either federal or state, pursuant to 34 C.F.R. 300.516.

DONE AND SIGNED this 15th day of March, 2019.



KEITH J. KIRCHUBEL
Administrative Law Judge