

In re: Special Education Due Process Case # DP-25-12

FINAL ORDER

In this case, Parents filed a due process complaint seeking an order requiring the Supervisory Union to reimburse Parents for tuition paid to a private school after Parents unilaterally placed Student in that private school.

The parties have filed a Joint Motion for Summary Judgment that, if granted, would result in an order requiring the Supervisory Union to reimburse Parents for tuition paid for the school years 2024-2025.

The issue in this case is whether Student's current placement in a private school is appropriate. While attending one of the Supervisory Union's public schools, Student was consistently unable to access Student's education, despite the best efforts of school officials and Parents. Several years ago, Parents unilaterally placed Student in the private school where Student has experienced a period of unprecedented and ongoing success. The private school, however, is not approved to provide special education and related services to students with disabilities. For that reason, the parties have jointly requested an order permitting Student's ongoing placement at the private school in light of Student's undisputed progress while attending the private school.

For the reasons set forth below, the Joint Motion for Summary Judgment is granted.

FACTS

1. Student and Student's family reside in a town located in the Supervisory Union. Student's school district is located in the Supervisory Union.

2. Student was first evaluated by the District in 2017. Student was found eligible for special education and related services with a disability category of Specific Learning Disability with an adverse effect in math reasoning and math calculation. The District developed an Individualized Education Program (IEP) that provided Student with direct instruction in math in addition to addressing behavioral issues, social/emotional development, and dealing with conflict.

3. Beginning in April 2018, Parents engaged Shauna Hill, LICSW, in providing neurodiversity and complex behavioral therapy via individual and family outpatient services, clinical consultations, crisis support, case management/community support engagement, and school advocacy.

2019-20 School Year (6th Grade)

4. On October 10, 2019, Student's IEP Team met and determined that Student required full-time supervision and assistance, being provided at that time in the classroom in small groups. The IEP also noted Student frequently required one-on-one behavior support/supervision.

5. Beginning in December of 2019, Student became unable and unwilling to attend school. An evaluation indicated that “[Student] has been unable to attend [Student's] school since mid-December due to [Student's] emotional and sensory sensitivities that cause the classroom environment to be overwhelming.” Student's IEP Team convened in January of 2020 and changed Student's placement to “outside tutoring” based on Student's “need to be stabilized in a safe home environment with access to [Student's] mental health appointments, a non-socially charged school environment, and time to complete the neuropsychological evaluation.” During the same time, Student attended a 14-day inpatient program at a Northeastern Family Institute (“NFI”) facility “for crisis stabilization, psychiatric consultation, and after-care planning.”

6. In January 2020, the District contracted with Dr. Hutton of Deer Creek Psychological Associates to conduct a neuropsychological evaluation. Dr. Hutton concluded that the results of the

ADOS2 supported a diagnosis of Autism Spectrum Disorder (ASD). The report noted that rating scales continued to endorse the diagnosis of ADHD, and that Student endorsed symptoms of depression and anxiety despite taking medication to address Student's symptoms.

7. Stephanie Unaitis, the Program Coordinator for NFI, began serving as Student's NFI case manager in the Spring of 2019. On February 4, 2020, Ms. Unaitis submitted a packet to the Vermont Department of Health for CRC review for Student. The forwarding cover letter noted Student's "extensive history of emotional outburst that can result in physical aggression," and stated that despite "attempts at engaging [Student] in treatment and decreasing [Student's] mental health symptoms, [Student] has not been able to fully access [Student's] supports to make significant therapeutic progress."

8. As a result of the CRC process, Student was found to need a residential placement with support from the Department of Mental Health. This decision was made in February/March 2020, just before the onset of COVID-19.

9. At Student's three-year reevaluation in February 2020, the IEP Team concluded that Student continued to be eligible for special education and related services with a disability category of Autism Spectrum Disorder.

2020-21 School Year (7th Grade)

10. During the 2020-21 school year, Student had a homebound in-home ABA full-time program. A report indicated that "[Student] was considered a homebound student last year as the parents wanted to have what was determined to be medically necessary ABA services in the home." S.D. Associates provided in-home support for Student for 40 hours per week beginning in the spring of 2020 through April of 2021. The home environment did not enable Student to make appropriate educational progress. Student was not supported by Autism-trained educators and support professionals who understood

Student's needs related to academic instruction in combination with Student's ability to remain regulated and manage Student's sensory and emotional sensitivities.

11. In May 2021, Shauna Hill conducted a Neurobiological-Psycho-Social Evaluation with Recommendations. Ms. Hill noted Student's "history of substantially challenging anxiety, emotional dysregulation, disruptive behavior (refusal, rigidity, verbal aggression, physical aggression, or threats of aggression), long-term obsessive-compulsive features (aversions, rituals, controlling environments, perseveration, that remain sub-clinical for periods but exacerbate in periods of stress of decompensation), cognitive & functional rigidity, sensory processing & integration difficulties, central nervous system (CNS) disorganization & hyperactivation, and social alienation/isolation." Ms. Hill stated that Student's specific profile is "a significant clinical & educational 'outlier' due to the extreme reactivity & sensitivity of [Student's] nervous system, as well as the traumatic impact and past risk profile associated with [Student's] particular over-activation & processing profile."

12. Ms. Hill's May 2021 report included diagnoses of ASD (from Dr. Hutton), Persistent Depressive Disorder, ADHD, and other disorders of the nervous system (NOS).

13. Ms. Hill's May 2021 report outlined the interventions that had been attempted over several years with little to no appropriate progress. Her report stated: "Many years of intensive school & community support professionals have collaborated with [Student]'s family to to accommodate [Student's] needs. [Student] has been consistently unable to engage in academics, demonstrate skill development progress, or tolerate [Student's] community school milieu well enough to maintain a consistent focus, sense of environmental & social safety, or cognitive processing required to integrate learning and retain content or skills."

14. Evaluations in the spring of 2021 conclusively recommended that Student attend a residential placement. The report indicated that "[i]t is my assessment that a specialized residential school is the only appropriate option that will provide the basic safety, expertise, curricular accommodation &

support [Student] requires to re-engage [Student's] education.” The report concluded: “[Student] will gain the most from a residential, wraparound program.”

2021-2022 School Year (8th Grade)

15. The IEP Team convened on August 11, 20, and 27, 2021, and drafted an IEP for Student. At the IEP meeting on August 20, 2021, the IEP Team agreed that Student's placement for the 2020-21 school year would be a residential program.

16. At the IEP meeting on August 27, 2021, the IEP Team discussed possible residential placements where Student could attend. The IEP Team discussed a private school in another state and noted that it “meets the picture” of what Student needs but did not have the appropriate certification, as the private school was not approved by the other state to provide special education and related services to children with disabilities.

17. The District would have placed Student at the private school if it was approved to provide special education and indicated a willingness to place Student there if the Agency of Education would make an exception.

18. At the August 27, 2021 meeting, the IEP Team also discussed a residential placement in another state. The student population at that residential program included students with a diversity of diagnoses and Student would only have one peer with ASD in Student's class. Parents noted their concern about the restrictiveness of the placement, stating it seemed more like a treatment program than a school.

19. Shauna Hill was involved in conversations with representatives of that residential program in the summer of 2021. It was Ms. Hill's opinion that the residential program would not provide Student with a free and appropriate public education (FAPE) because it provided an inappropriate peer group, an inappropriate milieu in general, inappropriate therapeutic approaches that were inconsistent with Student's needs, and an inappropriate setting, and would cause a lack of progress and regression. Ms.

Hill also believed that the residential program would be too restrictive for Student and would not promote progress on the IEP goals in Student's IEP.

20. Student's August 2021 IEP describes the difficulties in finding services and supports that would meet Student's needs and allow Student to make progress. The IEP describes "several successive school years of increasing social alienation, academic struggle, environmental & sensory overwhelm, behavioral agitation, and emotional reactivity," resulting in Student having "difficulty remaining safe in order to access [Student's] education at school even with the provided accommodations and supports."

21. On September 9, 2021, the District issued a Form 7a announcing the residential program as the proposed educational site where Student's IEP would be implemented for the 2021-22 school year. The Form 7a noted that the IEP Team also considered the private school, but stated that it "is not approved for special education by the VT AOE or within VT therefore the school district cannot place [Student] there."

22. Parents unilaterally placed Student at the private school starting on September 11, 2021. The private school is a residential school, primarily serving students with Autism Spectrum Disorder, social disorders, anxiety, ADHD, and non-verbal learning disabilities. Student's peer group at private school is similar to Student's profile.

23. The private school serves approximately 90 students from 8th grade through post-graduate, and typical class size is 5-8 students.

24. The private school has provided Student with programming focused on inter-personal skills, conflict resolution, managing emotions, and identifying healthy coping strategies when Student is emotionally upset.

25. When Student started at the private school, Student was struggling with social-emotional issues, reciprocal conversations, managing frustrations, and engaging in an academic setting. During the

2021-22 school year, Student made great social-emotional growth and was able to move up a team due to this growth. Student demonstrated a marked increase in engagement at school.

26. In November 2021, Shauna Hill drafted a Neurobiological-Pscho-Social Update Report about Student. To complete the report, Ms. Hill had a two-day school placement visit at the private school where she spoke with Student's support and academic teams and spent six hours of direct contact time with Student.

27. Ms. Hill's report documented that over the course of Student's first two months at the private school, there had been "a significant re-engagement in education and reduction in all previous domains of concern including general school distress, mental health symptoms ... & behavioral challenges."

28. Ms. Hill's report stated that the private school's administrators reported that Student "has consistently shown higher-than average enthusiasm and engagement for [Student's] education and participated fully in all residential & community programming, quickly making connections with peers[.]"

29. The private school's administrators further cited weekly reports on academic and social-emotional and life skills data, which demonstrated "excellent attendance, participation, progress on academic work, consistent attending of residential responsibilities . . . and substantial participation in groups & community activities." Ms. Hill's report included input from Student's Learning Specialist about Student's academic progress and participation, which noted that Student was "exceeding everyone's expectations," and attending class and completing work consistently.

30. Ms. Hill spoke with Student during the two-day observation at the private school. Student was "demonstrably enthusiastic about [the private school] & the learning model[.]"

31. Ms. Hill concluded: "At this time, [Student] presents as a profoundly more regulated & engaged learner at the private school and is consistently demonstrating success & capacity building in all domains of [Student's] programs. [Student]'s own positive feelings about [Student's] success [is] a

refreshing contrast to the demoralized, isolated student I assessed earlier this year and the academic engagement & progress [Student is] maintaining is the result of [Student]’s complex learning needs being met in the FA environment. It is my assessment that [the private school] is consistently delivering the accommodations that [Student] needs per [Student’s] IEP.”

2022-2023 School Year (9th Grade)

32. Student attended the private school during the entire 2022-2023 school year.

33. Parents filed a due process complaint on November 29, 2022, seeking an order for Student’s placement at the private school.

34. Parents’ filing included an affidavit executed by Ms. Hill stating her belief that the private school was an appropriate placement for Student and was meeting Student’s needs, consistent with her observations from November 2021.

35. In December 2022, the private school’s Academic Dean stated that Student had made great growth at the private school since Student first enrolled at the private school.

36. The Academic Dean reported that Student was actively engaged in school, was attending classes regularly, and was doing well academically. In addition, Student had made a lot of social progress, and had been able to maintain Student’s room in “a neat and tidy way.”

37. The Academic Dean added that it was her belief that the private school was an appropriate placement for Student in light of Student’s growth and increased independence.

38. On January 1, 2023, the hearing officer issued an order granting Parents’ request for tuition reimbursement, finding that “Student’s placement at the private school was appropriate.”

39. Student continued to attend the private school for the remainder of the 2022-2023 school year, earning passing grades for all of Students’ classes.

2023-2024 School Year (10th grade)

40. Student attended the private school for the entirety of the 2023-2024 school year.

41. On November 15, 2023, Parents filed a second due process complaint that requested a hearing officer to order Student's continued placement at the private school.

42. The private school's Academic Dean executed an affidavit stating that Student "continued to make progress in all aspects of our program since December 2022, including social, emotional, and academic."

43. The Academic Dean reported that Student had grown more independent and passed all of Student's classes, earning "high pass" and "exceeds expectations" in multiple classes.

44. The Academic Dean also reported that although math had been an area of academic weakness for Student, Student was taking a math class that Student "actually enjoy[ed] and truly [understood]."

45. During the 2023-2024 school year, Student sustained and expanded Student's friend group on campus. Student was a member of student government and was the head of the student store, which required Student to organize materials, oversee store financials, and train and manage peers who worked at the school store.

46. Student received supports at the private school that enabled Student to make social and emotional progress. Student worked with a school counselor to talk about and practice social skills when socializing with non-preferred peers. Student met with Student's counselor weekly for a scheduled check-in, and would advocate for more frequent sessions when needed.

47. The Academic Dean stated that the private school "continues to be an appropriate placement for Student and that Student "continues to very much benefit from the in-the-moment support and instruction that the staff and faculty are able to provide."

48. On December 13, 2023, the hearing officer found that “Student’s placement at the [private school] is appropriate and ordered the District to reimburse Parents for tuition paid to the private school for the 2023-2024 school year.

2024-2025 School Year (11th grade)

49. Student continues to attend the private school and is currently in the 11th grade.

50. In a letter dated December 2, 2024, the Academic Dean stated that Student “has continued to make progress over the last year,” and has passed all of [Student’s] classes, earning exceeds expectations in multiple classes.”

51. The Academic Dean stated that Student continues to take advantage of the supports offered at the private school “such as breaks, organizational tools, and one-on-one support,” and the school is working with Student to advocate for those more independently. Student continues to actively work with a counselor at the private school.

52. The Academic Dean states that Student has maintained Student’s friend group and “is a leader among [Student’s] peers.” Student has joined the swim team, which further expanded Student’s peer group.

53. The Academic Dean concluded that the private school “continues to be an appropriate placement for [Student]. [Student] continues to make progress in all aspects of our program and has gained self-confidence in [Student’s] time here ... I strongly advocate my support for a continued placement at [the private school].”

CONCLUSIONS OF LAW

In this case, the parties agree that the private school continues to be an appropriate placement for Student, and have requested an order permitting the District to place Student there. As Student’s Local Education Agency (LEA), the District is required to provide Student with a FAPE per the Individuals with Disabilities Education Act (IDEA). The District’s FAPE offer is set forth in Student’s IEP, and a

District fulfills its FAPE obligation when it offers an IEP that is “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 137 S.Ct. 988, 1001 (2017). Part of the FAPE analysis includes consideration of the educational setting and educational environment set forth in the IEP, and the District is required to select an educational site that is the least restrictive environment where Student’s IEP can be successfully implemented. VSER 2361.3.

In selecting the appropriate educational site, school districts in Vermont are confined by VSER 2363.10(b), which states that when an LEA places a student for special education services in an independent school, the placement must be in “schools that have been approved” by the Agency of Education. The Agency of Education maintains a list of schools that are approved to provide special education to students, and LEAs are limited in their placement decisions based on schools that are on the list. If the IEP Team is considering placement at an out-of-state independent school, the school must be “approved by the host state for the purpose of providing special education and related services to children with disabilities within that State.” Vt. SBE 2229.5(a).

Under the IDEA and Vermont special education law, if the parents of a child believe that the IEP offered by the school district fails to provide the child with a FAPE, the parents may unilaterally remove the child from the district’s placement and place them at another school at the parents’ own expense, and then file a due process complaint seeking reimbursement. Reimbursement may be awarded upon a demonstration that: “(1) the proposed [programming] failed to provide the student with an appropriate education; (2) the parent’s private placement was appropriate to the child’s needs; and (3) equitable considerations support the parent’s claim.” *Reyes ex rel. R.P. v. N.Y.C. Dep’t of Educ.*, 760 F.3d 211, 215 (2d Cir. 2014); *see also C.L. v. Scarsdale Union Free Sch. Dist.*, 744 F.3d 826, 836 (2d Cir. 2014).

When a parent unilaterally places a child and seeks reimbursement, the parent is not limited to schools that have been approved by the Agency of Education. *See Florence Cnty. Sch. Dist. Four v.*

Carter ex rel. Carter, 510 U.S. 7, 8 (1993) (holding that IDEA’s requirement that a private school “meet the standards of the state educational agency does not apply to private parental placements”). Hearing officers can order reimbursement for private placements that are not on a State’s approved list of private schools; in fact, “reimbursement is [not] necessarily barred by a private school’s failure to meet state education standards.” *Id.* at 14. Consistent therewith, Vermont law provides an exception to the general prohibition on school districts placing students in private schools that have not been approved by the State, and permits such placement when it is pursuant to a hearing officer’s order. Vt. SBE Rule 2230 (“No . . . LEA shall make a special education placement in an independent school that has not been approved to receive public tuition pursuant to the conditions in Rule 2229, unless the placement is pursuant to . . . a hearing officer’s order.”).

In this matter, the parties agree that the continued placement at the private school is appropriate to meet Student’s educational needs. That agreement is fully supported by the undisputed facts set forth in the parties’ Joint Motion for Summary Judgment and its attached exhibits.

To prevail on their request for tuition reimbursement, Parents must demonstrate: “(1) the proposed [programming] failed to provide the student with an appropriate education; (2) the parent’s private placement was appropriate to the child’s needs; and (3) equitable considerations support the parent’s claim.” *Reyes, supra*.

For the reasons set forth below, this hearing officer agrees with the parties that (1) the undisputed facts demonstrate that *Reyes*’ three-prong test has been met; (2) Student’s continued placement at the private school is appropriate; and, (3) Parents are entitled to tuition reimbursement as requested in their due process complaint.

I. The Programming First Proposed in 2022 Failed to Provide a FAPE

When Parents filed their first due process complaint in November 2022, Student’s IEP recommended placement in an out-of-state residential program. In response to that first due process

complaint, the District agreed that the proposed out-of-state residential program was too restrictive for Student and would not promote progress on the IEP goals in Student's IEP. Rather, the residential placement was purely a function of compliance with the requirements set forth in Vt. SBE 2229.5(a). The out-of-state residential placement had the capacity to implement Student's IEP, and is approved to provide special education and related services. Therefore, the District offered the placement.

As noted below, however, the out-of-state residential placement originally proposed in 2021 is a more restrictive environment than the private school Student currently attends. Shauna Hill, a licensed social worker who provided direct support to Student and Parents consistently from 2018-2020 and has provided subsequent evaluations, opined during IEP Team discussions in 2021 that the residential placement was not appropriate for Student. Her concerns were that the proposed residential placement would have provided an inappropriate peer group, an inappropriate milieu in general, and inappropriate therapeutic approaches that were inconsistent with Student's needs and an appropriate setting and would have resulted in a lack of progress and regression. Ms. Hill also believed that the proposed residential placement would have been too restrictive for Student and would not have promoted progress on the IEP goals in Student's IEP.

Therefore, and particularly considering Student's demonstrated success at the private school, the District does not seek to prove that the proposed out-of-state residential program was an appropriate placement. Instead, the parties jointly sought an order placing Student at the private school.

As a result, the hearing officer concluded that placement in the out-of-state residential program would not have been appropriate because it would not provide Student with a FAPE.

II. The Private School Provides Student with a FAPE

In August 2021, the IEP Team convened to determine an appropriate placement for Student. Based on recommendations from evaluators, all parties agreed that Student required a residential placement, and the IEP Team discussed potential sites where Student's IEP could be implemented. The

IEP Team did not reach an impasse on the substance of what Student required. The only disagreement arose about the specific site that could offer Student a FAPE in the least restrictive environment. Parents sought placement at the private school, but the District was prohibited from placing Student at the private school because it is not approved to provide special education and related services to children with disabilities. Because the private school was not approved, it was the operation of State regulation (prohibiting the District from placing Student at the private school) that created an educational dispute about the appropriate site. Consistent with the regulations, the District issued a Form 7a placing Student at the residential placement in another state.

The central issue in this case continues to be whether placing Student at the private school provides Student with a FAPE. Based on the undisputed facts presented by the parties in their Joint Motion for Summary Judgment and Student's demonstrated educational and social success while attending the private school for the past two-and-one-half years, this hearing officer finds that Student's current placement at the private school provides Student with a FAPE.

III. Equitable Considerations Support Reimbursement

Finally, equitable considerations support an award of reimbursement in this matter. Unlike most due process cases seeking tuition reimbursement, the IEP Team in this matter has never reached substantive dispute. The Team has worked collaboratively for years in an effort to find appropriate programming to support Student and Student's needs. After years of disengagement, alienation, and a lack of progress, Student has finally found a school that has allowed Student to reengage in Student's education.

Because the private school is not currently approved by its home state to provide special education and related services, the parties have jointly requested an order approving their agreement that Student's placement at the private school is appropriate. This case presents the exact factual circumstances supporting such an order. Since enrolling in the private school in 2021, Student has

reengaged in academics, made substantial progress academically and socially, and has increased independence, all of which is thoroughly documented by the school's Academic Dean.

Student's remarkable progress since enrolling at the private school provides the final and compelling reason supporting an order finding that Parents' unilateral decision to place Student at the private school is appropriate and that they are entitled to tuition reimbursement as requested in Parents' due process complaint.

CONCLUSION

For the reasons set forth above, this hearing officer finds that the undisputed facts demonstrate that the *Reyes* three-prong has been met. Therefore, Student's placement at the private school is appropriate.

For that reason, the Joint Motion for Summary Judgment is granted and the Supervisory Union is ordered to reimburse Parents for tuition paid to the private school for the school year 2024-2025.

Dated at Montpelier, Vermont this 8th day of January 2025.

David J. Williams
Due Process Hearing Officer
Vermont Agency of Education

