



transcript to the parties on February 9, 2016.<sup>2</sup> The parties' written closing briefs were received on February 29, 2016. The hearing record closed on that date.

### **ISSUE<sup>3</sup>**

Whether the District's November 24, 2015 Individualized Education Plan (IEP), which offered Student placement in a general education setting beginning on December 1, 2015, was inadequate because it did not include a plan to transition Student from a private placement to the general education setting.

### **EVIDENTIARY RULINGS**

District Exhibits D1 through D8 and D10 through D7 were admitted into the record without objection. District Exhibit D9 was admitted over the Parents' relevancy objection.

Student Exhibits S1 through S16, S19, S33 and S34 were admitted without objection. The District's relevancy objections to Student Exhibits S17, S18, S31 and S32 were sustained, and these exhibits were excluded.

### **FINDINGS OF FACT**

1. Student, age 16, has been diagnosed with superior canal dehiscence<sup>4</sup> and obstructive sleep apnea. Student has had medical treatment for concussions and surgeries to address both of these medical conditions. In addition, Student has been diagnosed with anxiety,

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<sup>2</sup> The ALJ received the hearing transcript on February 24, 2016.

<sup>3</sup> At hearing and in their post-hearing brief, Parents raised the issue of Student's educational placement during the period of November 25, 2015 through January 30, 2016. However, Parents did not include allegations contesting the placement determination in their due process complaint. Although Parents marked the boxes on the Request for Due Process Hearing identifying "educational placement" and "the Provision of a Free Appropriate Public Education to your child" as areas of concern, the complaint itself did not allege that the November 24, 2015 placement decision was unilateral, nor did it claim that the residential treatment center was the least restrictive environment for Student during any particular time frame. Furthermore, during the January 7, 2016 prehearing conference, when counsel for the District sought clarification on the matters in contention, Parents, through their then-counsel, stipulated that placement was *not* at issue—the only issue for hearing was the lack of a plan to transition Student to the general education setting. This stipulation is reflected in the Notice of Hearing and Rights, which similarly lists only one issue: whether the November 24, 2015 IEP was inadequate and inappropriate because it did not include a plan to transition Student to the general education setting. Because Parents did not raise educational placement as an issue in the due process complaint and did not seek to amend the issues for hearing in the Notice of Hearing and Rights, Parents' challenges to the placement determination fall outside the scope of this hearing. OAR 581-015-2360(2) ("The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the hearing request unless the other party agrees otherwise.")

<sup>4</sup> Superior canal dehiscence syndrome is an inherited medical condition of the inner ear (vestibular disorder) that causes oversensitivity to sound and chronic dizziness and vertigo. In Student, the condition also caused headaches, depression, anxiety and cognitive issues. (Tr. 2 at 565-67, 584-85.)

depression and attention deficit hyperactivity disorder. (Ex. S33, Tr. at 586.)

2. In January 2015, Student attempted suicide. After release from the hospital emergency room, Student spent a week at a mental health facility. Student's depression and associated isolative behaviors continued. In March 2015, Student withdrew from school. Parents enrolled Student at a wilderness program in another state. Student spent eleven weeks at the wilderness program. (Tr. at 586-87, Ex. S33 at 1.)

3. In late May 2015, on the advice of a therapist and an educational consultant, Parents enrolled Student in a residential treatment center for adolescents in another state. (Tr. at 588; Ex. S12.)

4. On average, students stay at the residential treatment center between 8 to 10 months. The center provides a very structured environment and, during their stay, students benefit from daily group therapy, weekly individual and family therapy, small class size, outdoor experiences and education, individualized learning and therapy pursuant to an individualized master treatment plan. (Ex. S12; tr. at 463-67).

5. In early November 2015, Parents and the District entered into a mediated settlement agreement regarding Student's education. The parties agreed that terms of the settlement were confidential. However, as part of that settlement, the District was obligated to evaluate Student, to make an eligibility determination and, if Student was determined eligible for special education, to develop an IEP and make an offer of FAPE by November 30, 2015. (Tr. at 609-15.)

6. On November 19, 2015, the District issued a Notice of Team Meeting to Student and Parents, for a meeting at 1:00 p.m. on November 24, 2015. The Notice advised that, at the meeting, the team would review existing information about Student, decide whether Student was eligible for special education, and if so, develop an IEP and consider Student's transition needs.<sup>5</sup> (Ex. D1.)

7. On November 24, 2015, the District convened a team meeting. Attendees included: Jennifer Spencer-Iams, Director of Student Services for the District; Michael Miller, school psychologist; Trevor Menne, special education teacher; Stephen Davala, teacher; Catherine Smith, teacher on special assignment; Saskia Dresler, school principal; Mother; Father; Sonya Fischer, Parents' attorney; and Joel Hungerford, counsel for the District. In addition, Brandon Andrus, Student's therapist at the residential treatment center, and Sydel Morris-Greco, Principal at the residential treatment center, provided input via videoconference. (Exs. D3 and D7.)

8. After making introductions, reviewing the agenda and providing Parents with the

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<sup>5</sup> In this context, "transition needs" refers to Student's transition from high school to postsecondary education. Because Student would be 16 or older while the IEP is in effect, the law required the IEP team to consider Student's postsecondary goals and the transition services needed to assist Student in reaching those goals. 20 U.S.C. § 1414(d)(1)(A)(i)(VIII).

Procedural Safeguards Notice, the team reviewed and discussed Student's evaluation results.<sup>6</sup> Thereafter, the team addressed Student's eligibility for special education services. After much discussion, the team agreed that Student met the criteria for special education eligibility in the category of Other Health Impairment. All team members signed the Statement of Eligibility. (Exs. D3 and D7.)

9. After determining Student's eligibility, the team received input from Ms. Morris-Greco about Student's education and curriculum at the residential treatment center. Ms. Morris-Greco reported, among other things, that Student was doing well academically; that Student needed to make up one quarter of a credit to be on track for graduation from the residential treatment center; and that the fall term ended on December 18<sup>th</sup> with the next term beginning on January 4<sup>th</sup>. (Ex. D7 at 1.)

10. The team also heard from Mr. Andrus regarding Student's therapeutic supports and progress at the residential treatment center and his/her needs when transitioning to the next school. Mr. Andrus reported, among other things, that Student was very resistant at first to the therapeutic process, but now saw the value. Mr. Andrus also reported that Student needed solid supports, close relationships with others, emotional safety and structures in place at home to successfully transition to the next school and stay engaged. Mr. Andrus recommended that Student shadow a student at the next school and that Student select a new therapist. Mr. Andrus reported that Student needed progressive steps to transition and 8 to 10 days to stabilize before the next academic placement. Mr. Andrus also advised that Student needed certain classroom accommodations, such as copies of notes before the lesson, the opportunity to break up assignments into smaller parts, the use of a fidget to help maintain focus, and the use of peer teaching techniques. Mr. Andrus added that Student needed a challenging curriculum and academic environment. (Ex. D7; tr. at 77-80, 158.)

11. After receiving this input from staff at the residential treatment center, the team developed Student's IEP. The team discussed Student's present levels of academic and functional performance. The team considered the Special Factors and determined that none applied. The team discussed transition planning (in the context of Student's transition from high school to postsecondary education). The team agreed on the goal of Student attending a four year university to study engineering. The team next discussed Student's academic and functional goals and objectives, and agreed upon specific goals in the areas of self-management and study skills. After that, the team discussed and agreed upon the nature and amount of Student's specially designed instruction and the supplementary aids/services and accommodations. The team identified the following accommodations for Student in all classes: (1) break large assignments into smaller chunks; (2) provide lecture notes before a lesson is delivered; (3) preferential seating to minimize distractions; (4) if needed, provide a quiet place to take a test/quiz or complete work; (5) include regular reflection of learning with peers as part of classroom learning activities; (6) allow Student the ability to have a personal item at the desk to fidget with; (7) allow Student the ability to take a photo of notes in class; and (8) have available

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<sup>6</sup> In preparing his evaluation report, Mr. Miller reviewed Student's file, which included information on Student's medical conditions, along with reports by Arden Weintraub, M.D., a psychiatrist at the residential treatment center, and Joshua J. Cluff, PsyD. In addition, Mr. Miller conducted telephone interviews with Mr. Andrus, Ms. Morris-Greco and Student. (Tr. at 427-28; Ex. S6.)

a trusted adult for Student to check in with when needed. (Tr. 1 at 81-83; Ex. D4; Ex. D7.)

12. The team reached consensus on the IEP at about 3:40 p.m. Thereafter, the team discussed Student's placement options. The team considered three options: a general education class with support at a comprehensive high school; a general education class with support at an alternative high school; and a special school. The team discussed the benefits of each option, the possible harmful effects on the student and/or the services to be provided for each option and the modifications and services associated with each option. Parents advised that Student did not wish to return to West Linn High School. Parents also expressed concern that the alternative high school, Arts and Technology High School (ATHS) did not offer advanced math classes, which Student would need to pursue engineering. District staff noted that Student could take advanced math classes at another school, or have individualized instruction. Parents also expressed their desire at the time that Student remain at the residential treatment center at least through the end of the fall term, if not longer. District staff rejected the special school placement option as being too restrictive for Student's needs. (Exs. D5 and D7; tr. at 83-84, 100-106.)

13. As further discussion ensued on the placement options, Parents' attorney asserted that the IEP was not complete because it did not include a plan to transition Student from the residential treatment center to the general education setting. Parents asserted that Student was not yet ready to make the transition from the structured, residential setting to general education classes in a public high school. District staff advised Parents that the District was obligated to make an offer of FAPE by December 1, 2015. District staff also advised Parents that, based on Student's agreed-upon IEP, the residential treatment center was not the least restrictive environment for Student. (Ex. D7.)

14. At one point during the discussion, Parents placed a call to Mr. Andrus. Parents sought additional information regarding Student's readiness to leave the residential treatment center for the general education setting. Mr. Andrus reported that if Student were to leave the residential treatment center by December 1, 2015, s/he would be at risk of regressing and withdrawing from peers and family due to a lack of practice and application of his/her newly learned mood management and social skills. Mr. Andrus added that transitioning by December 1<sup>st</sup> would be detrimental to Student. (Ex. D7; tr. at 89, 160-61.)

15. District staff advised Parents during the meeting that the District often has transition plans in place for students who are leaving a therapeutic setting. Ms. Spencer-Iiams suggested a step-up program for Student, and noted that parents often choose to continue with a mental health placement or support until the time is right to transition a child back to school. She added that the District would support Parents with this plan. Parents maintained that Student was not ready to leave the residential treatment center by December 1, 2015. Because of this, they disagreed with the placement determination (general education class with support at ATHS). Parents also restated their belief that transitioning Student as of December 1<sup>st</sup> would be detrimental to Student and prevent Student from accessing his/her education. (Ex. D7; tr. at 92-94, 121-23.)

16. The following day, Parents filed the due process complaint at issue. Parents alleged that the District's offer of FAPE to begin in a general education setting as of December

1, 2015 would be detrimental to Student without appropriate transition planning.<sup>7</sup> (Complaint.)

17. Also on November 25, 2015, the District issued a Prior Notice of Special Education Action, informing Parents and Student that “upon team agreement that [Student] is eligible for special education services under the category of Other Health Impairment, the district is ready to provide special education services in accordance with the Individualized Education Plan (IEP) developed on 11/24/15.”<sup>8</sup> (Ex. D8 at 2.) The November 25, 2015 Prior Notice also stated, in pertinent part, as follows:

**This action is proposed because:**

The team determined that [Student] meets the criteria for special education services, the team developed an IEP, and the team determined an appropriate placement.

\* \* \* \* \*

**Other options considered were:**

Parents are not in agreement with the placement determination. Parents have requested placement at a residential boarding school [].

**We rejected these options because:**

Team carefully reviewed [Student’s] needs in determining [his/her] IEP. All of [Student’s] areas of specially designed instruction and accommodations can be appropriately implemented at district’s alternative high school. In addition, [Student’s] current outside mental health therapist provided a description of what structures and supports would be most beneficial for [Student] (such as smaller setting, personalized relationships with teachers, smaller class sizes, rigorous academic content). The district’s alternative high school can provide these important elements for [Student].

**Any other factors considered by the team:**

Parents want district to place [Student] at a residential boarding school in [another state], where parents had unilaterally placed [Student] several months previously where [s/he] is still attending. District does not believe this placement would align with meeting [Student’s] IEP in accordance with the principles of least restrictive environment. The district is happy to work with the parent and their current private school to develop a transition plan for [Student] that could include, but is not limited to, shadowing a student at the new high school, arranging for

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<sup>7</sup> The complaint alleges, in pertinent part, as follows: “It is imperative that [Student] need[s] for transition planning and the consequences be included in [his/her] Present levels of Educational and Academic Performance” and “The offer of FAPE to begin in a general education setting to begin 12/1 would be detrimental to the child without appropriate transition planning. Not providing appropriate transition planning would most likely result in [Student] not being able to access education.” (Complaint at 3.)

<sup>8</sup> The Services summary section of the IEP lists November 24, 2015 as the “starting date” and November 22, 2016 as the “ending date.” (Ex. D4 at 17-18.)

video conferencing with the new high school's teachers, assigning a buddy student to help [Student] feel welcome, starting with a shortened school schedule, etc. Finally, the parents have not signed a Consent for the Initial Provision of Special Education Services, so the district is unable to provide any special education services at this time. We stand ready to implement services upon receipt of this consent.

(Ex. D8 at 2.)

18. On December 9, 2015, Parents met with District personnel for a resolution session. During the meeting, the group discussed steps to transition Student from the residential treatment center to the general education setting. The discussion included strategies suggested by Mr. Andrus during the November 24, 2015 IEP meeting. (Ex. D9.) In a December 16, 2015 letter to Parents' counsel, District counsel documented the proposed transition plan developed at the resolution session:

1. Provide [Student] with the opportunity to share [his/her] opinion about the placement options that the IEP team discussed as appropriate to meet [his/her] needs in accordance with LRE, including the Comprehensive High School with Support (either West Linn or Wilsonville) or the Alternative High School with Support (Art Tech);
2. Allow [Student] to visit the selected school;
3. Provide opportunity for [Student] to shadow a student at the selected school;
4. Provide [Student] the opportunity to meet with key staff members, including principal, special education teacher, and counselor;
5. Provide [Student] the opportunity to meet with the school counselor where they can review [Student's] strengths and reassure [him/her] that the team believes in [Student] and believes this school will be a great fit for [him/her].
6. Familiarize [Student] with the range of supports and resources available to [him/her] at the new school;
7. Have [Student] start with a full day to communicate with [him/her] that we believe in [him/her];
8. Have staff check in with [Student] frequently over the first several weeks of [his/her] enrollment to allow [him/her] to ask questions, and develop closer relationships with the adults at school; and
9. Contract with [Student's] current therapist at [the residential treatment center] for up to 6 hours of therapeutic support so that [Student] can have the

opportunity to process the changes/transition with a strong familiar relationship. This can occur via phone, video conferencing, or other electronic means.

(Ex. S8.)

19. On or about January 11, 2016, Parents advised District counsel that they agreed with the transition plan in principle, although they asked that the provision allowing up to six hours of therapeutic support be changed from Student's therapist at the residential treatment center to a current therapist or other licensed mental health provider of Parents' choice. On January 15, 2016, Parents requested an IEP meeting as soon as possible to incorporate the transition plan and begin the transition. (Exs. D10, D12, and D13.)

20. On January 19, 2016, the District proposed adding the transition plan to Student's IEP via written amendment, as allowed under the OAR 581-015-2225(2)(a) and the IDEA regulations. That same date, the District issued a revised IEP services summary<sup>9</sup> and a Prior Notice of Special Education Action proposing to change Student's IEP. (Exs. D12, D13 and D14.) The January 19, 2016 Prior Notice stated, in pertinent part, as follows:

**This action is proposed because:**

Parents have requested that the transition supports that the district had previously discussed (at the IEP meeting on 11/24/15 and had formally recorded in a letter on 12/16/2015 from Joel Hungerford) be added to the IEP. Additionally, on 1/15/16, the parents' attorney contacted the district's attorney via email stating, "We need an IEP ASAP to incorporate the transition plan and begin transition.

**This action is based on the following evaluation procedures, test, records or reports:**

Parental request to revise the IEP to include "Transition Plan" as communicated by their attorney. The contents of the transition plan are based on input from [Student's] current therapist, parents, and WLWV school personnel. On 12/16/15, the district's attorney (Joel Hungerford) sent a settlement proposal to the parents' attorney (Sonya Fischer) that included a proposed transition plan based on information that was shared with the district during the 11/24/15 IEP meeting and the 12/9/2015 resolution meeting. On 1/11/16 MS. Fischer sent a counterproposal to Mr. Hungerford requesting a single edit to the proposed transition plan (i.e. changing the named therapist to the "current" therapist).

(Ex. D12 at 2.)

21. Parents declined to sign the proffered Agreement To Change An Individualized Education Program Without Convening and IEP Team Meeting. They asked that the District "revise the service summary sheet to reflect that the implementation of the transition plan will

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<sup>9</sup> The revised services summary included, as a line item under Supplementary Aids/Services; Accommodations, the following entry: "Transition plan to support move from parentally placed private school to IEP selected appropriate placement" during the first two weeks of attending the new school. (Ex. D14 at 4.)

occur at [the residential treatment center] and WLWV.” (Exs. D13 at 1 and S10.) Parents also asked that the District cover Student’s tuition at the residential treatment center for the months of December and January. (*Id.*)

22. Student completed the program and graduated from the residential treatment center on January 27, 2016. Thereafter, Student returned to Oregon and Parents enrolled him/her in a private Catholic college preparatory school. (Tr. at 184-86, 567, 577.)

23. The services and supports identified in the plan to transition Student from the residential treatment center to the general education setting, *i.e.*, giving Student a voice in the school selection, and the opportunity to visit the school, to shadow a student, to meet with key staff members, to meet with a counselor and to learn about the supports and resources available at the selected school, are services and supports available to any student transferring to the District or changing schools within the District. (Tr. at 92-94, 105, 449-50, 545-48.) Because these supports and services are available to any student transitioning from one school setting to another, regardless of whether the student is on an IEP, the District generally does not set them out in an IEP. (*Id.* at 122-25, 450.)

24. In the opinions of Ms. Spencer-Iiams, Mr. Miller and Mr. Menne, Student’s November 24, 2015 IEP was appropriately designed to enable Student to access his/her education. The academic and functional goals (in the areas of self-management and study skills) were appropriate and reasonable in light of Student’s present levels of performance, and the specially designed instruction and supplementary services were appropriate and reasonable in light of the identified goals. Similarly, in the opinions of Ms. Spencer-Iiams, Mr. Miller and Mr. Menne, Student’s placement (in the general education class with support) was the least restrictive environment in which Student’s IEP could be implemented. (Tr. at 102-06, 127, 453-54, 551-53.)

## CONCLUSION OF LAW

The District’s November 24, 2015 IEP was reasonably calculated to enable Student to receive educational benefits and did not require inclusion of a plan to transition Student from a residential treatment center to the general education setting.

## OPINION

The burden of proof in an administrative hearing alleging violations of the IDEA, 20 U.S.C § 1400 *et seq.*, is properly placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). In this matter, Parents filed a due process complaint asserting that Student’s November 24, 2015 IEP denied Student a FAPE because it did not include a plan to transition Student to the general education setting.<sup>10</sup> As a remedy, Parents seek reimbursement of tuition

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<sup>10</sup> As noted above, this proceeding is limited to the issue of whether the lack of a transition plan in the IEP resulted in a denial of FAPE. Because the due process complaint did not include allegations related to educational placement, I decline to address the claims made in Parents’ post-hearing brief that the November 24, 2015 placement decision was unilateral and/or that Student’s residential treatment center

and expenses for Student's private placement from December 1, 2015 until Student transitioned to his/her placement in the general education setting. The burden rests on Parents to prove the allegations in the complaint and the remedies sought.

In administrative hearings, a party who bears the burden must establish each fact or position by a preponderance of the evidence. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Cook v. Employment Division*, 47 Or App 437 (1980) (in absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

Under the IDEA, all children deemed eligible for special education have a right to a free and appropriate public education. 20 U.S.C. §1412(1). A FAPE is defined under the IDEA as special education and related services that: (a) have been provided as public expense, under public supervision and direction, and without charge; (b) meet the standards of the State educational agency; (c) include an appropriate preschool, elementary, or secondary school education in the State involved; and (d) are provided in conformity with the individualized education program required under §1414(a)(5) of the IDEA. 20 U.S.C. §1401(a)(18); *Amanda J. v. Clark County School Dist.*, 267 F3d 877, 890 (9<sup>th</sup> Cir. 2001). In determining whether a district provided a student with a FAPE, the inquiry is twofold: (1) whether the district complied with the procedures set forth in the IDEA; and (2) whether the IEP developed through the Act's procedures was reasonably calculated to enable the child to receive educational benefits. *Board of Educ. of Hendrick Hudson School District v. Rowley*, 458 US 176 (1982) (*Rowley*).

An IEP must include the following components: (1) a statement of the child's present levels of academic achievement and performance; (2) a statement of measurable annual goals; (3) a description of how the child's progress toward the goals will be measured; (4) a statement of the special education and related services to be provided to the child; (5) an explanation of the extent, if any, to which the child will not be participating in general education; (6) a statement of individual appropriate accommodations necessary for standardized assessments; and, once the child is 16, (7) a statement of appropriate measurable postsecondary goals and the plan and transition services needed to assist the child in reaching those goals. 20 U.S.C. §1414(d)(1)(A)(i)(I) - (VIII).

In this case, Parents do not claim that Student's IEP is missing one of the above required components. It is evident from the hearing record that the November 24, 2015 IEP satisfies the requirements of 20 U.S.C. §1414(d)(1)(A)(i). Parents also do not claim a procedural violation of the IDEA. Instead, Parents claim that, in addition to the required provisions listed above, Student's IEP should have included a plan to transition Student from the residential treatment center to the general education setting. More specifically, Parents assert that the IEP should have provided for Student to remain at the residential treatment center through at least January 2016

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qualified as the least restrictive environment for the period between November 25, 2015 and January 30, 2016. OAR 581-015-2360(2).

before transitioning to the District. Parents further assert that insofar as the November 24, 2015 IEP and the District's offer of FAPE contemplated a December 1, 2015 start date for Student at a District school, the IEP and offer of FAPE were inadequate because Student was not, at that time, emotionally ready to leave the therapeutic setting of the residential treatment center. Parents contend, in essence, that in the absence of specific provisions in the IEP acknowledging Student's need to remain at the residential treatment center for a period of time before transitioning to the District, Student's IEP was not reasonably calculated to enable Student to receive educational benefits.

The District, on the other hand, maintains that it had no legal obligation to include in Student's IEP a plan for transitioning Student to the general education setting. The District asserts that in formulating Student's IEP, it complied with the procedures set forth in the IDEA. The District notes that Parents meaningfully participated in the IEP formulation process and, during the team meeting, had no objections to the IEP itself (the present levels, goals, services, assessments, postsecondary goals and transition, etc.). It was only during the placement determination phase that Parents raised an objection to the general education setting. The District further contends that: (1) it was obligated under the mediated settlement agreement to make an offer of FAPE by November 30, 2015; and (2) the offer made was reasonably calculated to enable Student to receive educational benefits in the least restrictive environment. The District also argues that although it would have been ready to begin providing services under the IEP immediately (had Parents signed the consent form for initial provision of special education services), the IEP did not obligate Parents to withdraw Student from the residential treatment center by any particular date. Consequently, the District asserts that the November 24, 2015 IEP did not deny Student a FAPE.

For the reasons that follow, I agree with the District. Parents have failed to show that the challenged IEP denies Student a FAPE. In fact, Parents' challenge to the offer of FAPE is premised on a false assumption, *i.e.*, that the November 24, 2015 IEP *required* Student to withdraw from the residential treatment center immediately and enroll in the District on December 1, 2015.<sup>11</sup> Although the District was contractually obligated make an eligibility determination, formulate an IEP and make an offer of FAPE by November 30, 2015, Parents were not required to accept the offer and/or to enroll Student in the District by that date. Indeed, although the District would have been ready, there is nothing in the IEP that required Student to transition from the residential treatment center to the general education setting as of December 1, 2015.

There is also nothing in the IDEA itself that would have required Parents to immediately withdraw Student from the residential treatment center upon formulation of the IEP. The IDEA focuses on a school district's obligations to students and their parents, and not parents' obligation to send children to school. In this case, while the District was required under the Act to offer to

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<sup>11</sup> In their post-hearing brief, Parents argued as follows: "It can be reasonably deduced that the District failed to offer a FAPE in good faith based on the simple fact that either they were requesting a child be transferred to a brand new school without initiating any type of transition and involvement from the student of this plan or because they were proposing a transition plan that was not humanly possible to initiate let alone complete *by their required 12/1/2015 start date.*" (Brief at 36, emphasis added.)

provide special education and related services in accordance with a newly developed IEP “as soon as possible,” *see* 30 CFR §300.323(c)(2),<sup>12</sup> Parents were not similarly obligated to act. As Ms. Spencer-Iiams advised during the IEP meeting, restated in the November 25, 2015 Prior Notice,<sup>13</sup> and confirmed in her testimony at the hearing, Parents had the option to defer Student’s enrollment and implementation of the IEP until such time as Student was emotionally ready to leave the therapeutic setting. Accordingly, Parents have not shown that the District’s offer of FAPE *required* Student to begin in the general education setting as of December 1, 2015.

Parents also have not established the necessity of including in the IEP the plan to transition Student from the residential treatment center to the general education setting. A preponderance of the evidence establishes that the District offers transition services and supports to all students transferring to the District from other schools or academic settings. Any student transferring to a District high school has a voice in the school selection, and may visit the school, shadow a student, meet with key staff members, meet with a counselor and learn about the supports and resources available at the selected school. These services and accommodations are not unique to Student, and are not limited to those students who transition from a therapeutic setting to general education. Therefore, there is no need to mention or specify these transition services and supports in Student’s IEP.

Furthermore, even though it was not required to do so, the District did offer to include, as an amendment to the IEP, a transition plan to support Student’s move from the therapeutic school to the selected District school. The transition plan incorporated the strategies suggested by Mr. Andrus during the IEP meeting, services and accommodations to which Parents previously agreed were appropriate. Parents nevertheless declined the proposed IEP amendment based on their desire that Student continue at the residential treatment center through the end of January 2016.

In sum, on this record, Parents have not established that November 24, 2015 IEP was

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<sup>12</sup> 34 CFR §300.323 addresses when IEPs must be in effect. As pertinent here, the regulation states:

(c) Initial IEPs; provision of services. Each public agency must ensure that--

(1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and

(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

<sup>13</sup> As set out above, the November 25, 2015 Prior Notice included the following commentary:

The district is happy to work with the parent and their current private school to develop a transition plan for [Student] that could include, but is not limited to, shadowing a student at the new high school, arranging for video conferencing with the new high school’s teachers, assigning a buddy student to help [Student] feel welcome, starting with a shortened school schedule, etc.

(Ex. D8 at 2.)

substantively inadequate, *i.e.*, that it did not include sufficient support services to enable Student to receive an educational benefit. The testimony of the District's special education experts, Ms. Spencer-Iams, Mr. Miller and Mr. Menne, persuasively establishes that Student could access his/her education, and experience academic success, with the services and supports set out in the IEP. For this reason, Parents' request for relief, in the form of reimbursement for tuition and expenses at the residential treatment center for the period of December 1, 2015 through January 27, 2016, is denied.

## **ORDER**

Parents' request for relief, pursuant to the due process hearing request dated November 25, 2015 is **DENIED**.

Alison Greene Webster

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Senior Administrative Law Judge  
Office of Administrative Hearings

## **APPEAL PROCEDURE**

**NOTICE TO ALL PARTIES:** If you are dissatisfied with this Order you may, within 90 days after the mailing date on this Order, commence a nonjury civil action in any state court of competent jurisdiction, ORS 343.175, or in the United States District Court, 20 U.S.C. § 1415(i)(2). Failure to request review within the time allowed will result in **LOSS OF YOUR RIGHT TO APPEAL FROM THIS ORDER**.

**ENTERED** at Salem, Oregon this 9th of March, 2016 with copies mailed to:

Jan Burgoyne, Oregon Department of Education, Public Services Building, 255 Capitol Street NE, Salem, OR 97310-0203.