STATE DEPARTMENT OF EDUCATION
STATE OF OKLAHOMA

In the Matter of	)	
[Student]	)	DPH No. 2098
DUE PROCESS HEARING	)	

DUE PROCESS HEARING DECISION

PETITIONERS
[Parent names]

REPRESENTATIVE
[Parent Attorney]

RESPONDENT
[School District]

REPRESENTATIVE
[School Attorney]

HEARING DATES	May 23-26, 2016 June 1-2, 2016
HEARING DECISION	August 2, 2016
HEARING OFFICER	Robert Bost

Witnesses
(In order of testimony)

District's Motion to Dismiss

Father
Superintendent
Psychologist

Case

Neurologist
Associate Professor
Psychologist
Speech Language Pathologist
(Parents)
Special Education Teacher (1)
Special Education Teacher (2)
Physical Therapist (Parents)
Director of Special Services
Superintendent
Principal
Father
Mother
Director of Admissions
Physical Therapist (District)
Occupational Therapist (District)
Speech Language Pathologist (District)
School Nurse
Paraprofessional
Special Education Teacher (3)

The [Neurologist's] testimony was by deposition taken on May 12, 2016. I attended as Hearing Officer. The Parents and the District were represented by counsel.

The District objected to the testimony of [the parents'] [Associate Professor], [Psychologist], [Speech Language Pathologist], and [Physical Therapist] citing 34 CFR 300.512 (b)(1). Herein "(at) least five business days prior to a hearing …each party must disclose…all evaluations…and recommendation…that the party intends to use a t the hearing." The hearing officer may exclude any evaluation or recommendation that does not comply with this disclosure provision. In this case, three of the four witnesses provided services to the Student. In addition, the District subpoenaed records from the three service providers. DX 100, DX101, DX102, DX105, DX 107, and DX 108. Other than a specific report prepared for the hearing, the District had all relevant information relating to the testimony of [Psychologist], [Speech Language Pathologist], and [Physical Therapist]. In my opinion the testimony was needed for a fair determination of the issues presented. Burlington v. US Department of Education, 556 IDELR 389; 34

CFR 300.512(b)(2). Accordingly I overruled the District's objection. (It is noted that while the Associate Professor was a very interesting witness; she did not provide any testimony that was not obvious from a review of the records. She also did not prepare any evaluations and recommendations, which could have been disclosed.)

EXHIBITS

Districts Exhibits:

DX	1	Not Offered
DX	2	Not Offered
DX	3	Not Offered
DX	4	Not Offered
DX	5	Not Offered
DX	6	Not Offered
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DX	107	
DX	108	
DX	109	
DX	110	Not Offered

Other than as noted, the District's exhibits were admitted.

Parents Exhibits:

PX	1	Not Offered
PX	2	Not Offered
PX	3	Not Offered
PX	4	Not Offered
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PX	6	Not Offered
PX	7	Not Offered
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PX	75	Not Offered

Other than as noted, the Parents' exhibits were admitted.

Hearing Officer Exhibits

HX	1
HX	2
HX	3
HX	4
HX	5
HX	6

DPH 2098

BACKGROUND

The Student is a [number]-year-old female. She is currently in the [number] grade. She has been diagnosed with Rett Syndrome. This is a debilitating neurodevelopmental disorder, which occurs almost exclusively in females. (For a basic discussion of Rett Syndrome and treatment suggestions see http://www.ninds.nih.gov/disorders/rett/detail_rett.htm.) It is usually accompanied by assorted behavioral abnormalities and even epilepsy. “It is a lifelong disorder. It does not get better over time.” HX 3, p. 7.

PRELIMINARY MATTERS

Prior to the hearing, the District filed a Motion to Dismiss. HX 5. The basis for the motion was that the Student did not live within the District. The District, therefore, was under no legal obligation to serve the Student’s educational needs.

Both the District and the Parents submitted briefs along with numerous exhibits. HX 5. In addition, three witnesses were called on the first day of the hearing to testify concerning residency.

While there may be some doubt concerning the residency of the Parents, they do own property within the District. TR I, p. 157. According to the Father, he resides with the Student in a trailer house located on this property. TR I, p. 156. He does this so the Student can attend school in the District. TR I, pp. 156-157.

With this said, we need to look at a few more facts and the broader picture. The Student has attended school in the District for at least 10 years. In addition, four of the Student’s siblings have also attended school within the District. TR I, p. 170-171.

The District also contends in its motion that it only became aware of the residency problem after receiving subpoenaed documents listing an address that is not in the District.

If we look at Exhibit 17 of the Complaint, the Student’s address is listed as the aforementioned address that is not in the District. Accordingly, at least as of the filing of the Complaint, the District was given information indicating that the Student might not reside within its service area. However, well before the date of the Complaint, the District was aware that there was a question about where the Student resided. An email

sent by the Special Education Director back in 2014 shows me that it was known and one person was asking what they should do about it. HX 6. The outcome of this email inquiry appears to be “ignore it”. In addition, at least three District employees, including the aforementioned Special Education Director, didn’t believe the Student resided within the District. TR I, pp. 174-175, 180. On top of this, the Father testified that all of his checks to the District list the out of District address. TR I, p. 160. As a result, it is inconceivable to me that the District did not know what was going on.

The District cannot now claim that it is not responsible for its actions. Equity demands a hearing. Accordingly, after considering the briefs, the exhibits offered, and the testimony, I denied the motion. TR I, pp. 186-187.

(My decision on the District’s Motion to Dismiss only applies to the current complaint. It is not intended to have any affect on future actions by either the Parents or the District.)

ISSUES

The issues as set forth in the Pre-Hearing Order of May 18, 2016:

1. Were Student’s IEP for 13-14, 14-15, and 15-16 school years appropriate? (This includes related services.)
2. Was Student’s behavior appropriately addressed in the various IEP’s?
3. Was Student’s placement appropriate?
4. Was ESY services considered and/or appropriate?

FINDINGS OF FACT

1. The Student is eligible for special education and related services. DX 31.
2. The Student has Rett Syndrome. DX 31, HX 3.
3. The Student’s IEP’s provide only for a paraprofessional as a related service. DX 31.
4. While the Student can walk, she needs the presence of others to keep her on track and to prevent injury. HX 3, p. 45.
5. While the Student can say a few words and phrases, she is basically non-verbal. TR II, p. 299.
6. The Student’s placement was changed from Full Time to Homebound on 12/14/2015. DX 31.
7. The Student’s placement was changed from Homebound to Half Days on January 28, 2016. DX 17.
8. The Student’s IEP (12/14/2015) states that a FBA will conducted and a BIP prepared. DX 31.
9. The Student’s IEP for the 2014-2015 school year was not signed by the Parents. (They did not attend the meeting) PX 29.
10. The Student’s IEP’s do not provided for PT, OT, or Speech-Language Therapy. DX 17, PX 29, DX 49.
11. The Student attends regular physical education. DX 17.

112. Other findings will be included below as necessary.

(Most of the foregoing facts are supported by testimony of multiple witnesses and/or exhibits.)

CONCLUSIONS OF LAW
and
RATIONALE

The burden of proof, in an action brought under the IDEA, rests with the party seeking relief or the party who files for due process. *Schaffer v, Weast*, 126 S.Ct. 528, 535 (2005). In this case, the burden of proof rests on the Parents.

Appropriateness of IEP's

I have reviewed all relevant IEP's relating to the period March 1, 2014, to the present. The most notable difference is the current IEP is a different format. It contains essentially the same information as the other two IEP's.

As with all IEP's there needs to be measurable annual goals. 34 CFR 320(a)(2)(i). In my opinion, the IEP's contain measurable goals. I do question, whether the goals/expectations are reasonable? Is the Student capable of achieving the goals? Regardless of my opinion, the testimony is that the Student has basically made no progress over the last two years. TR ___. On some days she is capable of certain things but there is no assurance that she can repeat the same thing the next day. TR ___. In the opinion of the Special Education Director testified that the goals, even if the same or similar from year to year, are appropriate. How you go about working on these goals change on a daily basis. What works one day may not work the next. TR III, PP. 551-552.

Anyway the main problem with the IEP's is the area of related services. Other than stating that a paraprofessional will be provided there is no discussion of anything else. The main concern with Rett Syndrome is the regressive nature of the disease and the likelihood that OT, PT, and Speech-Language Therapy will be needed for the Student to maintain basic abilities. The Neurologist classifies the Student's condition as moderate. HX 3, p. 8. She believes the Student needs OT PT and Speech-Language Therapy to maximize potential. HX 3, p. 14. While maximization of potential might be nice, it is not the law. Even so, according to the Neurologist, Rett Syndrome is a brain disorder where things that come naturally to other children must be taught to children with Rett's. HX 3, p. 14. Especially in the areas of communication, which should help the Student's behavior. HX 3, pp. 14, 15. In other words, the Student is frustrated at not being able to tell others her wants or needs and as a result acts out.

There is no evidence on any of the relevant IEP's that related services were considered. The IEP's show the only related service as paraprofessional. Considering the positive evidence offered by the private PT and Speech Pathologist as well as the testimony of Neurologist and Psychologist, I cannot but believe that related services are needed for

providing some educational benefit.

The District would have me believe that related services are not necessary because the Student has the basic skills the services would provide. DX 8, DX 9, DX 10. Strange position when the Student cannot communicate, cannot walk without someone next to her to keep her on track and to prevent falls, and cannot use her hands without the active intervention of an aide.

The current Speech-Language Evaluation states: " At this time, her behaviors are significantly impeding … (the) ability to participate in most age appropriate activities." DX 8.

The current PT Evaluation states: "(Student) is not a candidate for skilled PT at this time due to her adequate level of functional mobility as well as her unwillingness to participate with PT and aggressiveness towards PT." DX 9.

The current OT Evaluation states: "Therapist unable to establish functional school based occupational therapy goals for student due to lack of cooperation and patient is unable to participate in standardized testing for fine motor, visual motor, or visual perceptual skills. (Student) does not tolerate hand over hand instruction needed to address fine motor coordination skills." DX 10.

The Student's IEP for the 2009-2010 school year says Student has "not made significant progress toward her speech and physical therapy goals, and service providers can no longer justify these services." DX 65. (Interesting that the PT now says she has "adequate level of functional mobility…." DX 9.)

Back in 2010, the PT said Student "is able to perform most functional activities at an independent level. She is able to perform transfers as well as ambulate independently. At this time, it is recommended that (Student) be discharged from physical therapy due to lack of participation." DX 67, p. 2. (Not because she can do it.)

Back in 2009, the OT said if Student " begins to show any improvement with behavior and/or functional/purposeful engagement I will consider increasing her services again…." "At this time, I am unable to get her to perform any activity I attempt, she consistently self stimulates by clapping her hands, screams & spits, which allows for non-purposeful therapy sessions." DX 68.

Conduct and not need appears to be the basis for all these evaluations both now and then. I am left with the impression that these people just didn't want to deal with the Student's conduct and accordingly terminated her from their programs. The testimony of the District's PT OT and Speech comes across more like damage control for years of neglect than what the Student needs.

According to the Student's Private Psychologist, when the Student gets frustrated because she cannot communicate, she

engages in disruptive behavior such as spitting. TR I, pp. 227-228. (The Private Psychologist is the only private provider that has visited with the District about the Student's needs. The District has followed most of the Private Psychologist's recommendations.)

According to the Student's Private Speech-Language
Pathologist, the Student uses spitting to control her space. TR II, p. 282. The Student has been using an eye gaze machine since November in her office and believes the Student is making progress, but it will take many years to make good progress. TR II, p. 305. The Student now has an eye gaze machine at home. (The work/existence of the Private Speech-Language Pathologist has not been shared with the District.)

In fairness to the District's Speech/Language Pathologist and PT, the Student's private providers have experienced the same behavioral problems and have not experienced tremendous success. They, however, have not given up on the Student. TR II, pp. 271-322; TR II, pp. 458-517.

According to the Special Education Director, the District has received no requests from the Parents for independent evaluations for PT, OT, and Speech.

Under the IDEA an IEP is required to include a "statement of special education and related services and supplementary aids and services … that will … enable the child … (t)o advance appropriately toward attaining annual goals." 34 CFR 300.320(a)(4)(i).

School districts determine the appropriate methodology to be used to implement a student's IEP. Parents, "no matter how well motivated--do not have a right under IDEA to compel the school district to provide a specific program or employ a specific methodology for the education of their disabled child." *Logue By and Through Logue v. Shawnee Mission Pub. Sch. Unified Sch. Dist. No.* 512,959 F. Supp. 1338, 1351 (D. Kan. 1997), *aff'd,* 153 F.3d 727 (1998); *see also Tucker by Tucker v. Calloway County Bd. of Educ.,* 136 F.3d 495, 506 (6th Cir. 1998)

In addition, where a district makes a good-faith effort to assist a student to achieve the student's goals, the student's "failure to achieve (her) goals does not equate to a failure by the (District] to implement the IEP." *J.K. v. Fayette County Bd. of Educ.,* 45 lDELR 35,5,2006 WL 224053 *6 (E.D. Ky. Jan. 30,2006).

Behavior Plan

An IEP team is required to consider the use of positive behavioral interventions and supports, along with other strategies, designed to address a student's behavior, which impedes his own learning or the learning of others. 34 CFR 300.324(a)(2)(i).

In the Student's IEP (December 14, 2015) the District agreed to obtain a Functional Behavior Assessment (FBA) and prepare a Behavior Intervention Plan (BIP). DX 31, PX 45. These concepts only appear in the area of discipline under the IDEA. 34 CFR

300.530. Even though discipline is not a basis for the current complaint, the District has obligated itself to the agreed to actions. As of June 2, 2016 (the last day of the hearing), the District had not completed either. I assume the only reason the District has not proceeded on this is the current due process complaint.

Since the District has agreed to performing a FBA and preparing a BIP, there is no reason for an extensive discussion. Nevertheless, it is noted that behavior was a constant problem and that the relevant IEP's do have minimal behavioral goals.

Least Restrictive Environment
(Placement)

The law requires that an education be provided to a disabled child in the least restrictive environment with the child participating to the maximum extent possible in the same activities as non-disabled children. 20 USC 1412 (a)(5)(A). The least restrictive environment mandate requires that schools ensure that children with disabilities are, to the maximum extent appropriate, educated with children who are non-disabled and that special classes, separate schooling, or other removals from the regular educational environment only occur if the nature of the disability is such that education in regular classes with the use of supplementary aids cannot be achieved satisfactorily. 34 CFR 300.114(a).

The Tenth Circuit in *LB v. NEBO School District*, 379 F.3d 966,976 (10th Cir. 2004) adopted a test to determine the least restrictive environment for a student which requires the court: (1) to determine whether education in a regular classroom with the use of supplemental aids and services, can be achieved satisfactorily; and (2) if not, to determine if the school district has mainstreamed the child to the maximum extent appropriate. *Id*., relying on *Daniel R.R. v. Ed. of Educ. (Daniel R.R.)*, 874 F.2d. 1036, 1048 (5th Cir.1989). In determining whether the first prong of the *Daniel R.R.* test has been met, the courts consider the following: (l) the steps the school district has taken to accommodate the child in the regular classroom, including the consideration of a continuum of placement and support services; (2) a comparison of the academic benefits the child will receive in the regular classroom with those the child would receive in the special education classroom; (3) the child's overall educational experience in regular education, including non-academic benefits; and (4) the effect on the regular classroom of the disabled child's presence in that classroom. *Id*.

In determining the educational placement of a student with a disability, the placement decision is to be made by the Student's IEP team. 34 CFR 300.116(a)(l). When determining LRE, the IEP team must give consideration to any potential harmful effect on the student or on the quality of services that the student needs. 34 CFR 300.116(d).

Prior to December 14, 2015, the Student was full time. Most of this was in a special education room. She did have PE with her peers. On December 14, the Student's placement was changed to homebound. The Mother agreed to this change. DX 31, PX 45. According to the Special Education Director, the reason for this change was concern

for the medical condition of the Student. TR III, p. 632. The Student was experiencing an increase in seizures, including several that required emergency transport. TR III, p. 580.

The Neurologist, after conducting a three day test in December 2015 determined that the Student was not actually having seizures but rather abnormal brain activity or episodes, which might appear as seizures. HX 3, pp. 10-11. While of concern, these episodes are not life threatening and unless the Student stop breathing for more than 90 seconds, she does not require emergency transport. HX 3, p. 12. She sent her findings to the District. DX 26. The District had this information when it met on December 14, 2015.

While after the fact it may be easy to say that sending the Student to the Emergency Room on Dec 2, 2015 was not needed. I will not fault the District for being overly concerned about the Student's health. From the testimony, it is clear that the Student was in distress. The Parents position was she was overly tired and just needed to sleep. The Student was not responsive and presented symptoms that something was wrong. It was reasonable for the District to call an ambulance. This event was part of the reason that the District asked for an IEP meeting and placed the Student on Homebound until her medical condition could be evaluated. It is noted that the District asked for medical information on the Student numerous time. For whatever reason, the Parents repeatedly refused to provide any medical evaluations. They did provide the letter from the Neurologist probably because it stated she saw "no reason for (Student) not to attend school." HX 3, p. 9.

The Parents position was that because of the Neurologist's letter, the Student should be on full days. This, however, is an IEP team decision. The letter from the Neurologist is only one factor to be considered by the team in making its placement decision. The IEP team was not bound by it. The testimony was that the Student was having an increase in seizures and that the team was concerned with the Student's health. This is a reasonable concern.

The semester was about over, so any harm was negligible. The fact that she was out of school until February 24, 2016 is of concern. The IEP team on January 28, 2016 met and placed the Student on half days beginning in February. This was to be temporary to work the Student back into school. Again this was the call of the IEP team and does not seem unreasonable for a short period of time. No further consideration to the Student's placement was given due to the filing of the current complaint and the provisions of stay put. The Parties had the authority to agree to return the Student to full day regardless of stay put.

Full day now seems appropriate.

ESY

The Fourth Circuit Court of Appeals discussed the issue of ESY services in *MM v.*

School District a/Greenville County, 303 F.3d 523 (4^{1h} Cir. 2002). The court held that ESY services are required only when regression will substantially thwart the goal of meaningful progress. Because all students whether disabled or not may experience some regression during lengthy breaks from school, the mere fact of likely regression is not a sufficient basis to establish eligibility for ESY services and/or a denial of FAPE. *MM* at 537-538; *see also, JH v. Henrico County School Board,* 326 F.3d 560, 566 (4^{1h} Cir. 2003).

ESY is essentially to prevent regression. With Rett Syndrome, regression is a natural part of the condition. In the past, when the Student did receive ESY, it was only for related services. TR III, p. 553. Since all of the related service providers had effectively discharged the Student, no ESY was provided for the 2013-14, 2014-15, or 2015-16 school years. If related services had been provided and I believe they should have been, under the District's own procedures, they should have provided ESY. There is nothing in the record to show that this topic was actually discussed at any IEP meeting. While the Parents may have been involved in the IEP's meetings that removed services back in 2009-2010, it is a yearly determination.

Other Concerns

The Parents did not sign the May 2014 IEP. PX 29. The District argues that it attempted numerous times to get the Parents to attend. Finally the IEP team met and signed off on the IEP. This was then provided to the Parents by Written Notice. DX 47, PX 30. The IEPs for the previous and following years are essentially the same. They were both signed by the Parents. DX 49 and 31 respectively.

IEP team meetings can be conducted without parent participation, however, attempts to contact the parent and encourage participation need to be documented. 34 CFR 300.322(d). Other than an Invitation to Meeting (DX 45) and Written Notice to Parents (DX 47) there is nothing other than the testimony of the Special Education Director showing what efforts the District took to ensure the Parents were part of the decision. However, any significance this has is lessened by the fact that the IEP's before and after this IEP are essentially the same, and are both signed by the Parents. The Parents offered nothing contesting the IEP or offering reasons why they did not attend.

The law states that a procedural violation must "(s)ignificantly impede the parent's opportunity to participate in the decision-making process …." See 34 CFR 300.513(2). While it is unfortunate that the District didn't do more to involve the Parents in this particular IEP meeting, there is no evidence showing that it was detrimental or that the Parents complained about it in a timely fashion.

The Parents were concerned that her teachers were not qualified and that most of the teaching was done by the paraprofessional. The Parents presented no evidence showing that the Student's teachers did not meet State requirements. While a paraprofessional was with the Student at all times and may have done most of the

hands on work,
there was no evidence showing that the Student's teacher was not involved.

The Parents were also concerned about the use of assistive technology. A review of the evidence shows that the District had tried various things in an effort to assist the Student in communicating. The District had tried sign language, it had tried using picture books, it had tried an i-Pad, it had tried switches, and it had tried Smart Boards. The only one that currently is of any help to the Student is the Smart Board. The Student's Private Speech-Language Therapist has had some luck with an eye gaze system. The Student now has such a system at home and it appears promising. It is something the District needs to consider for use with the Student.

Other than not using this relatively new devise, the District has tried to provide the Student with various forms of assistive technology to help the Student benefit from her education.

The Parents seemed to want to make something out of academics or the lack thereof. Based on the Student's medical condition, academics is the least of her problems. Being able to move and somewhat able to take care of herself seems more important. The Student is not even toilet trained. The District has even followed the request of the Student's Psychologist with no success. Being able to move and communicate seem far more important to me than the ability to add. Education is about more than academics. It is about preparing a student for life; being able to care for themselves or assisting others in caring for themselves. The testimony does show that the District at least did some academics with the Student with very limited success. As the testimony shows, the Student may be able to correctly do simple tasks but not consistently. TR VI, p. 1219.

Three other items bear mention. Apparently there was a recliner in the special education room that had a strap across it. The Mother saw the Student in the chair with the strap fastened. She told the District she didn't like it. The District removed the chair. The Mother on another occasion saw the Student strapped in a "pony walker". She did not think the devise was being used correctly, so she took it home. Finally the District uses medical masks on the Student to keep her from spitting on others. The Psychologist testified that she uses them to control spitting. TR I, p. 195. Any significance these three items have is minimal.

FAPE

Under the IDEA, FAPE is defined as "special education and related services that …" are "provided at public expense …; meet the standards of the state educational agency; … include an appropriate preschool, elementary, or secondary school education …;" and "are provided in conformity with an individualized education program ...". 20 USC § 1401(9). FAPE consists of "educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction." *Board of Educ. of Hendrick Hudson*

Central School Dist. v. Rowley (Rowley), 458 U.S. 76, 102 S.Ct. 3034, 3042, 73 L.Ed.2d 690 (1982).

"[Any] deficiency in the IEP process must result in prejudice to the student or his parents before a court may find that the IDEA was violated." Logue v. Unified School District No. 512, 153 F. 3d 727, 1998 WL 406787 (unpublished) (10th Cir. 1998) (citing *O'Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692 (10th. Cir. 1998). Technical deviations are insufficient. Thus, if a student is receiving personalized instruction with sufficient supportive services to allow the student to benefit from the instruction, then a student is receiving FAPE. *Rowley* at 3042 and 3049.

I agree with the Parents that a 30 minute observation proves nothing. Likewise, I am not convinced that the District has met its obligation to provide related services.

Compensatory Education

Compensatory education is not a remedy expressly identified in the IDEA, nevertheless, courts and hearing officers are empowered to "grant such relief as (they) determine is appropriate." 20 U.S.C. §1415(i)(2)(C)(iii); 34 CFR § 300.516(c)(3). See also, *Burlington Sch. Comm. v. Massachusetts Dept. of Educ.,* 471 U.S. 359, 369, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985). As such, it is an equitable remedy that is available to help compensate a student that has been denied FAPE. *Garcia v. Board of Educ. of Albuquerque Public Schools,* 520 F.3d 1116, 1129-1130 (10th Cir. 2008).

The amount of compensatory education to be provided is determined on a case-by-case basis. *Reid, 401* F.3d 516 (D.C. Cir. 2005). Compensatory education is an equitable remedy, not a contractual one. *Id.*

In determining the amount of compensatory education, some courts have used a day for day approach. Manchester Sch. Dist. v. Christopher B.,19 IDELR 389 (D.N.H. 1992); and Marple Newton Area Sch. Dist., 33 IDELR 115 (SEA PA 2000). But see Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt, 49 IDELR 159 (D.D.C. 2008). Other courts have held that a student with disabilities is entitled to only so much compensatory education as is required to provide him with an appropriate education. Parents of Student W. v. Puyallup Sch. Dist., 21 IDELR 723 (9th Cir. 1994).

A hearing office must also consider compensatory education in terms of the equities involved. *Parents of Student W v. Puyallup Sch. Dist.,* 31 F.3d 1489, 1497 (91h Cir. 1994). This can include consideration of residency; failure to comply with reasonable requests for medical documentation; and failure to share information from the Private PT and Private Speech-Language Pathologist.

The Parents didn't quantify anything. There was no evidence where they thought the Student should be. Their whole case appears based on the idea that the District didn't do what it was supposed to so they are entitled to something. What this something is other than residential placement is unknown.

While, residential placement is the remedy requested by the Parents, I am not convinced by the evidence that it is appropriate. The only evidence the Parents presented was the testimony of the director of admissions for Heartspring and a brochure of their services. The testimony showed that admission is not guaranteed and that they have never had anyone with Rett Syndrome. Residential care is a very restrictive environment. It should only be used in special circumstances where less restrictive environments just will not work.

DECISION

Considering the testimony, the exhibits, and the foregoing discussion, it is the decision of the Hearing Officer that:

1. The District conduct independent evaluations for Physical Therapy, Occupational Therapy, and Speech-Language Pathology. In this regard the Parents are directed to sign all necessary consent forms to both conduct the evaluations and provide them to the District.

2. The District incorporate the findings of the independent evaluations into the Student's IEP.

3. The District conduct an FBA on the Student and prepare a BIP as agreed to in the Student's IEP.

4. The Student be returned to full days.

5. The Student entitlement to related services provided by the District will be extended for two years, contingent upon findings of the independent evaluations and upon a continuing need for the services.

6. If related services are determined to be appropriate, an additional three months of ESY eligibility will be added to the Student entitlement. Again, this is contingent upon the Student's need.

CONCLUDING STATEMENT

Unless appealed, this decision is binding upon both parties. Either party may appeal this decision by filing a written request with the Special Education Section, State Department of Education, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, 73105, within 30 days of the receipt of this decision.

Robert K. Bost

ROBERT K. BOST
Hearing Officer