

STATE OF RHODE ISLAND  
DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

ACF, BY AND THROUGH HER PARENTS,  
DR. C. AND DR. F.

V.

LL22-15

PROVIDENCE SCHOOL DEPARTMENT

**DECISION**

This decision is issued pursuant to the Individual with Disabilities Act (“IDEA”) (20 U.S.C. § 1400 et seq.), state special education law (R.I. Gen. § 16-24-1 et seq.) and the regulations promulgated under these enabling statutes.

Parents, Drs. C. and F.<sup>1</sup> filed a due process complaint which was received by the received by the Rhode Island Department of Education (“RIDE”) Office of Student, Community and Academic Supports (“OSCAS”) on August 22, 2022. The undersigned hearing officer was assigned to this matter by RIDE on October 13, 2022. Pursuant to State and Federal Law, the due date of the decision was November 5, 2022, 45 days following receipt of initial request.

Due to scheduling issues, and the late appointment of the hearing officer, the parties initially stipulated to continue the due date until December 5, 2022. After conducting two hearings on November 9 and 10, the parties asked for additional time to attempt a resolution. That has been unsuccessful. Two additional hearings were conducted on February 2 and 6. The parties agreed to additional extensions of time, first to January 31, 2023, then March 1, 2023, and finally April 1, 2023. Briefs were filed on March 14.

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<sup>1</sup>The pseudonyms used herein for the family track those used in their brief. The actual names of the parents and student will be set forth in a Lexicon which will be separately attached to maintain privacy.

## **SUMMARY OF THE CASE:**

ACF is a 20-year-old woman, born on June 9, 2002, who is currently attending a residential school placement at Walden Street School in Concord, Massachusetts. She, along with her younger sister, were adopted by Drs. C. and F.<sup>2</sup> in 2010. While married at the time of the adoption, the parents subsequently divorced but maintain joint custody, and continue to cooperatively remain involved in ACF's life and education.

ACF's childhood was marred by abuse, and she was placed in a number of foster homes prior to her adoption. As a young child, she presented with developmental delays, and began to receive physical therapy and speech and language therapy, which continued throughout her education.

She was enrolled in the Providence Public Schools starting in the second grade. By 2011, her behavior both at home and school resulted in hospitalization at Bradley. Upon her discharge, ACF's parents researched appropriate placements for their daughter, settling on Sandhill Residential Treatment Program in New Mexico.

While at Sandhill in 2013, ACF was evaluated by Russel Hyken, an Educational Diagnostician/Certified School Psychological Examiner, who performed a "Psycho-Educational Test Results and Analysis". This report was purportedly done at the request of the parents, the Sandhill School, and the RI Department of Special Education.

In his conclusions, Dr. Hyken diagnosed ACF with Post Traumatic Stress Disorder, Reactive Attachment Disorder, and ADHD, and qualified her for special education services under the "emotionally disturbed" classification. She also had some learning disorders related to

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<sup>2</sup> Both parents are accomplished medical doctors, but the details of their specialties will be kept general to protect their privacy.

written language and math. (Exh.1)

As to the Reactive Attachment Disorder, Dr. Hyken found ACF had persistent issues with responding in a developmentally appropriate fashion to social interactions, difficulty forming age-appropriate relationships and/or correctly perceiving relationships. At school, she had difficulty trusting staff resulting in emotionally dysregulated episodes. The constant change in caregivers at a young age most likely led to a disregard for her emotional needs. Finally, she regularly experienced feelings of dejection, anxiety and depression, which formed the basis of an anxiety disorder secondary to her RAD.

According to Dr. F., ACF left Sandhill after two and one-half years due to a lack of progress. She next attended the Walker School in Massachusetts for two years, which again Dr. F. stated without contradiction was a placement agreed to by Providence.

In 2016, ACF began to attend the Pelham School in Massachusetts, run by the Justice Resource Institute. This placement was memorialized in a settlement agreement which will be discussed below. After two years, ACF transferred to her current placement at Walden, which is also run by Justice Resource Institute.

What happened next was precipitated by the District's determination that ACF had achieved all of the requirements for graduation, and decision to terminate the Walden placement. The District attempted to schedule an IEP meeting in the spring and summer of 2022 to discuss providing transition services in-district, but none took place. Then on July 26, 2022, the District informed the parents of the need to have an IEP meeting on August 30, to discuss the District's intention to terminate payment to Walden, effective August 31, 2022. The parents opposed this plan and filed a due process complaint. ACF is not a named party individually and was not present at any hearing. In fact, there is some question as to exactly how much awareness ACF

has of the specifics of the parents' actions in requesting the hearing. The parties agreed on their own accord that the District would continue payment to the Walden School during the pendency of this hearing.

The parents' complaint makes the following claims:

1. Providence has attempted to exit ACF from special education and change her placement by purportedly graduating her, without prior written notice or convening the IEP team at a mutually agreeable time.
2. Providence has attempted to change ACF's placement by declaring that it would no longer pay for said placement after August 31, 2022, and without making any further provision for changing ACF's placement or IEP. Providence attempted this change in placement without prior written notice or convening the IEP team at a mutually agreeable time.
3. Providence has attempted to graduate ACF even though she has not met the substantive requirements for a regular high school diploma in Providence.
4. Providence has pre-judged ACF's placement.
5. Providence has continued to fail to provide ACF's representatives with copies of her complete school record.
6. Providence failed to appropriately evaluate ACF, and thus failed to identify her as a child on the autism spectrum. As a result, Providence failed to offer her a FAPE.
7. Providence has failed to provide ACF with adequate transition assessment and services.

The remedies sought are that Providence be ordered to:

1. Continue Anna's placement at Walden Street School;
2. Continue to maintain Anna as a special education student;
3. Rescind any purported "graduation";
4. Provide Anna's complete educational records forthwith;
5. Conduct an IEP at a mutually agreeable time to discuss Anna's educational planning and placement, with the participation of appropriate state agencies;
6. Provide Anna with FAPE, including but not limited to transition assessments and adequate transition planning;
7. Award of attorney's fees;
8. Any other relief that this hearing officer deems appropriate.

The Providence School District has generally denied these claims, and stated:

1. ACF completed all her graduation requirements in June 2021.
2. The parties agreed to allow her another year in order to work on her transition goals.
3. Furthermore, it was discussed that ACF would remain at her residential placement through August 2022.
4. ACF was presented a diploma in June 2022. This matter was not filed until August 2022.
5. ACF received no academic instruction during the 21-22 school year. All of her time was spent fulfilling transition goals.
6. Numerous IEP meetings were scheduled to review the “Summary of Student Performance.” However, the parents were never available to attend any of the meetings scheduled during the summer of 2022.
7. ACF is a student who is average academically and wants to attend college.
8. This matter has nothing to do with whether ACF has completed her high school requirements and everything to do with the fact that the parents do not want her home and have not been able to obtain any support from BHDDH to place her residentially in Rhode Island.

### **PRELIMINARY ISSUES:**

Prior to and during the hearing various procedural matters were raised by the parties.

#### **1. Sequestration of witnesses**

Prior to the hearing commencing, the District asked that Dr. Potemri be sequestered during the testimony of other witnesses. While it is this hearing officer’s understanding that it is not uncommon for witnesses to due process hearings to be sequestered, I declined to order that Dr. Potemri be subject to that rule.

Parents’ attorney pointed to Federal Rule 615, as well as the cases of Morvant v. Const. Aggregates Corp., 570 F.2d 626 (6th Cir. 1978), and United States v. Burgess, 691 F.2d 1146 (4th Cir. 1982). These cases, as well as some from the Circuit Court which would govern any appeal of this decision, *see, e.g.*, United States v. Lussier, 929 F.2d 25 (1st Cir.1991), hold that it

is within the trial court's discretion whether to exclude an expert witness. However, Courts have cautioned that such discretion not be abused, particularly when excluding an expert witness. I find particularly persuasive on this point the case of Sanchez v. Dist. of Columbia, 102 A.3d 1157 (D.C. Cir. 2014), where the Court reversed the conviction of a defendant on the basis that she was prejudiced by the trial judge's refusal to allow her expert witness be present during testimony of the government's case.

[I]t is worth pointing out that in applying Rule 615 of the Federal Rules of Evidence (discussing the exclusion of witnesses), federal courts have relied upon a well-established distinction between factual witnesses and expert witnesses: "We perceive little, if any, reason for sequestering a witness who is to testify in an expert capacity only and not to the facts of the case. . . . [T]he presence in the courtroom of an expert witness who does not testify to the facts . . . hardly seems suspect and will in most cases be beneficial, for he will be more likely to base his expert opinion on a more accurate understanding of the testimony as it evolves before the jury." . . . Furthermore, under Rule 615, a party is entitled to show that his expert is "essential to the presentation of the party's cause" and therefore should not be excluded from the courtroom: "[W]here a fair showing has been made that the expert witness is in fact required for the management of the case, ... we believe that the trial court is bound to accept any reasonable, substantiated representation to this effect by counsel."

Id. at 1161 (*citations omitted*).

In this matter, the parents have made a compelling argument that their expert needed to hear all of the evidence in the case, and particularly the testimony of District employees and experts. They proffered that the district's records are sketchy, and incomplete. They noted that there is no written expert report being submitted by the District and anticipate that the District's witnesses will attempt to "fill in the record" though testimony. Since, I thought that it may have been an abuse of my discretion to not exempt the parents' expert from the rule on sequestration, Dr. Potemri was permitted to sit in and listen to all of the testimony in the hearings.

## *2. Access to the hearing and testimony by zoom video*

In this case, the parents asked for various witnesses to attend and testify by remote hearing. I expressed a preference for in person testimony but permitted out of state witnesses to testify by zoom. Dr. Potemri chose to testify in person, although she was permitted to monitor the proceedings by remote. The parents as parties were required to testify in person, unless an unexpected situation arose which required that a witness be permitted to testify remotely.

## *3. Subpoena of witnesses*

The parties at various times also requested that the hearing officer issue subpoenas in this case. There is no statutory or regulatory basis under either Rhode Island or Federal special education law that gives this hearing officer the power to issue a subpoena. Special education regulations provide for the appointment of due process hearing officers under §300.511, and nothing in that section explicitly mentions the issuing of a subpoena. While some states have adopted additional special education regulations providing hearing officers with subpoena power, Rhode Island has not.

It has been argued that R. I. Gen. Laws § 16-39-8 provides this hearing officer with subpoena power. That section, however, does not mention special education due process hearing officers. It is my opinion that the section's reference is to hearings conducted under Chapter 39 only. Special education due process hearing officers are appointed pursuant to the IDEA, not Rhode Island law.

In any event, it appeared that the subpoenas ultimately proved unnecessary as all witnesses each party sought to present did testify, and all of the school records have been provided, to the extent that they exist.

#### ***4. Guardianship of A. Doe***

Initially, Dr. F. testified that she and Dr. C. had full guardianship over ACF (Tr. at pp. 101-3). When eventually provided the actual certificate of appointment (Hearing Officer Exh. 2), it qualified Drs. C. and F. as limited guardians for the purpose of “Health Care, Residence and relationships”. The District argued that as a result of the parents’ failure to obtain full guardianship, and specifically for educational purposes, that the parents have no standing to bring this complaint.

Full legal guardianship is not the sole manner by which parents of student who reach the age of majority (18 in Rhode Island) may continue to represent their children’s interests. There exists under the Federal Regulations, § 300.520(b), which provides:

Special rule. A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.

In its post-hearing brief, the District has asserted that it sought a subpoena for the probate records, but was denied. A subpoena is not necessary for such records since probate records are public. In any event, the District has indicated it will address the issue of guardianship at a later date.

#### ***5. Settlement agreement of November 14, 2016***

Towards the end of testimony on the first day of hearing, it was noted that the report of Dr. Osowiecki mentioned that ACF’s placement at Walden was pursuant to a “legal agreement between Providence Public Schools and her parents”. (Exh. 146, Tr. at 168) At the end of the last day of hearing, the parties mentioned that there was a settlement agreement between the parties regarding the placement of ACF at a residential facility out of state. Initially, the



testimony was that there was an agreement to place ACF at Sandhill School in New Mexico in 2012. What both parties provided to the hearing officer was a settlement agreement dated November 14, 2016, regarding placement at the Pelham School in Massachusetts, run by the Justice Resource Institute.<sup>3</sup> (Tr. at 673-5) The agreement provides that ACF “remains eligible for” an IEP under the IDEA. Of note, the parents agreed to pay a portion of the tuition at Pelham. It provided that at any time the parties could request an IEP meeting to determine placement, but that Pelham would be considered as the “stay-put” placement. Besides other typical settlement provisions, the final important note is that the parents waived all claims, including compensatory education, against the District up to the date of the agreement.

Unfortunately, the parties have not provided the hearing officer with any agreement regarding ACF’s current placement at the Walden School.<sup>4</sup> There was testimony from Dr. F. that her daughter was moved to the Walden residential program, which is also part of Justice Resource Institute, so she could make more substantial progress and be with some older kids. (Tr. at 42) This probably occurred in the summer of 2018, after ACF’s ninth grade.

**TESTIMONY OF WITNESSES:**

The following witnesses testified at the hearing: For ACF, Dr. F. testified, and Dr. Pamela Potemri, an expert in special education transition. The District called Dr. C, Katherine Cipriano, the clinical director of the Walden School, a licensed mental health counselor and the clinician for ACF for most of her time there; Dr. Dana Osowiecki, a clinical neuropsychologist and an expert in neuropsychology, who performed an extensive and detailed evaluation of ACF in May and June of 2022 (Def. Exh. D); Julie Lombardi, a District employee and expert in

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<sup>3</sup> This document was attached to both party’s briefs and will be made hearing officer exhibit 1.

<sup>4</sup> In their brief, parents reference an exhibit 10, but no such exhibit was offered at the hearing.

transition services; Deborah Pfefferle, a District social worker; and Dr. Jennifer Connolly, the Executive Director of Specialized Instruction in Exceptional Student Services for the District, and an expert in special education. Approximately 80 exhibits were introduced.

**Dr. F.**

Dr. F. testified about ACF's early life. She suffered significant abuse at a very young age and then multiple foster home placements. By the time she was attending elementary school, her violent behaviors required one-to-one support. She exhibited the same physical aggression at home which required daily restraints. The needs of monitoring ACF resulted in Dr. F. making significant changes to her work schedule. By 2011, ACF was admitted to Bradley Hospital, and after a number of months was discharged under the condition that she would not be home, that she would go into residential treatment. Dr. F. was told of ACF's diagnosis of Reactive Attachment Disorder, which she understood to mean that ACF was not able to form emotional connections with other people, and that manifests with a lot of different behaviors such that she only has transactional relationships. She can be incredibly violent. She lacks empathy; she doesn't have the capacity to feel and understand love. Significantly, Dr. F. recalls being told that ACF's behaviors were such that she would never be able to live at home.

Unwilling to accept that diagnosis, the parents researched residential placements, finding the Sandhill School in New Mexico. Dr. F.'s testimony that Providence Public Schools agreed to pay for the placement was uncontradicted by the District. (Tr. at 25) After two and one-half years, ACF transferred to the Walker School in Massachusetts, where she was again evaluated. Her behaviors were such that a residential placement continued to be recommended. (Exh. 3) Hoping that their daughter could come home at some point, Dr. F. quit her job and Dr. C. changed her work schedule. But this was to no avail, as ACF then transferred to another

residential placement at Pelham School on August 26, 2016. This resulted in the November 14, 2016, settlement agreement referenced above.

Throughout these private placements, the District remained involved in the IEP process for ACF. Penelope Pare was the District's out-of-district liaison for the entire time of ACF's placement until recently.

While at Pelham, ACF did have home visits, although some were cancelled if she were violent. Since ACF had reached the age of 14, there was discussion of transition. (Exh. 4a) When the prospect of college was raised, it did not seem realistic. Instead, it appears the discussion focused mainly on ACF's future living arrangement with the expectation that it would be in a group home in Rhode Island.

While at both Pelham and then Walden, all of the clinical and educational staff who attended the IEP meetings were from the residential placement, although Ms. Pare would attend for the District. (*See e.g.*, Exhs. 4, 25, 57) These IEPs were prepared by Walden staff on Massachusetts state forms. Dr. F. recalled some discussion about waiving foreign language requirements, but not any discussion of waiver of other requirements such as a senior project. There was some discussion with the IEP team about whether ACF could do algebra level work or was being graded on effort.

In the fall of 2018, Ms. Pare began contacting the parents to prepare an application for BHDDH.<sup>5</sup> On or about on November 15, 2018, an IEP was prepared for ACF for the period of November 15, 2018, to November 15, 2019. (Tr. 61; Ex. 24.) There are references to modifying the curriculum to align with Massachusetts core curriculum and state testing. The IEP's

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<sup>5</sup> This stands for RI's Department of Behavioral Healthcare, Developmental Disabilities and Hospitals.

Transition Planning form continued to state that ACF, “will need to continue to explore her interests in becoming an artist, working with animals, and babies as possible career choices. [ACF] will need clinical support to further practice pro-social and relationship skills to make her successful in the community.”

Dr. F. testified that Ms. Pare talked to her in 2018 about what supported living arrangements or residential services for ACF would look like. She was told that it would be a group home where she could live with some small degree of independence, but still have staff available 24/7 to make sure that she was staying safe.

By February of 2019, Ms. Pare was assisting the parents in submitting the application to BHDDH. In the meantime, ACF in August of 2019 moved to a smaller residential placement at Walden. The move did not go well, as ACF had a number of behavioral outbursts.

Dr. F. talked about getting ACF out in the community more and expressed that she has difficulty with social interactions. Dr. F. was particularly concerned for her daughter’s safety as she was willing to walk away with any adult.

On November 18, 2019, the parents were informed that the BHDDH application was denied. Despite this rejection, the IEP team discussion continued to be that ACF would transition to a group home. There was discussion of appealing the BHDDH decision.

On February 20, 2020, there was an IEP meeting at Walden where ACF’s continued eligibility for special education services was discussed. Dr. F.’s recollection was that Ms. Pare mentioned that the ACF was eligible for services until her 22<sup>nd</sup> birthday, or sooner if she were stable and appropriate living arrangements were lined up. There was no discussion of the impact on eligibility for services after receiving a high school diploma.

At an IEP meeting in March of 2020, the team discussed vocational services through the

Office of Rehabilitation Services (ORS), but that ACF would need to be resident in Rhode Island to qualify. Shortly thereafter, the COVID-19 pandemic hit, and ACF went home for about five weeks. As doctors, both parents were on the front line of fighting the disease, and the home stay was not going well. Throughout this process the team at Walden continued to assure the parents that ACF would qualify for BHDDH services and would be able to transition to a group home in Rhode Island. (Tr. at 100)

Throughout the early months of the pandemic, ACF's behaviors regressed. Any discussion of exiting Walden in June of 2021 was not realistic until ACF was able to get out more in the community. In December of 2020, Ms. Pare talked to both parents and indicated that ACF would probably need another year to compensate for the difficulty of the past months.

Although there was uncertainty over ACF's eligibility for a diploma, the IEP team agreed to allow her to participate in a ceremony to achieve a "Certificate of Completion" (Exh. 170)

Beginning in 2020, ACF began doing chores around Walden to begin a work like experience. By 2021, she was able to take a supermarket job.

In July of 2021, Dr. F. had her last home visit with ACF. An incident occurred driving home which made Dr. F. feel extremely unsafe. She has been able to visit her daughter at school.

Sometime in February of 2022, Ms. Pare suggested that a neuropsychological evaluation be done to assist in the BHDDH application process. The District agree to pay Dr. Osowiecki to do the evaluation. As part of the evaluation, a determination of whether ACF was on the Autism Spectrum was to be done.

In late spring of 2022, Dr. F recalled an IEP meeting which Dr. Connolly attended, where exiting ACF from Walden was discussed. Dr. Connolly mentioned that ACF was eligible for her

diploma from Providence, and that she would be done at Walden in June. The parents were shocked and explained that the neuropsychological evaluation had not been done, that there was still uncertainty as to ACF's diagnosis, that the BHDDH appeal was still pending. They expressed concerns about preparing to bring ACF home in only a month, that the Walden clinicians had been stating for some time that ACF would qualify for group home placement, and that if ACF went home she may end up in jail. They pleaded for more time to prepare. Dr. F. recalled that at some point Dr. Connolly mentioned that ACF could have until the end of August 2022.

In July of 2022, the parents received another denial from BHDDH for eligibility. There is still an appeal pending. In the meantime, no IEP meetings were held to discuss either Dr. Osowiecki's report or a transition plan. The parents became panicked trying to find housing arrangements for ACF. They would want her to live with them but did not feel it was safe.

On cross-examination, Dr. F. was asked about why she felt ACF was not ready to graduate. She mentioned that she had not done any language courses or a senior project. She referenced deficiencies in math and history. When asked if she had put any of these concerns in writing, she was unsure. She referenced that she understood that even with the awarding of the diploma, ACF would receive another year of transition services.

Dr. F. was directed to various reports that indicated the goal was to transition ACF back home. Dr. F. continued to reference an incident involving molestation of a relative but produced no records of that. It was unclear whether the report done at Pelham (Exh. 3) in 2016 was commissioned by the parents and not the school. It was suggested that this report was used by the parents to help convince the District to agree to the out of district placement in November of 2016.

Dr. F. was directed to various IEPs, goals and objectives and report cards. When asked if she ever rejected any of these, she could not produce any evidence that she did. Many of the transition notes indicate a goal of having ACF return home. She was shown an email from June of 2020 indicating that ACF's anticipated graduation was a year away.

**Dr. Potemri**

Dr Potemri is owner and founder of Connecticut Coastal Academy, a private special education school in Connecticut, and a career and vocational community-based event center. The school services grades 7 through age 22 with the focus on transition. Its population are students with trauma in their background, and with language-based learning disabilities. The population includes students with reactive attachment disorder and post-traumatic stress disorder. It runs a clinical day school.

Dr. Potemri testified that special education transition involves a coordinated set of activities and is an ongoing activity starting at age 14. Transition planning involves consider education and training, independent living, and community involvement, and starts with assessment, and assessment is an ongoing process.

Transition starts at age 14 with assessing the student's interests, learning styles, functional abilities and some idea of what they want to be when they grow up. At 14, transition is very general, but the discussion is ongoing every year. The closer you get to a student exiting, the clearer the plan becomes, and you identify what activities the child needs to participate in, and assess their level of functioning.

Dr. Potemri testified that transition goals must also be based on comprehensive assessments. Observation can be an assessment, but it should not just be clinical notes. There needs to be a baseline with criteria for doing the observation, and then when you do subsequent

evaluations, you have that to refer back to and report on progress.

Employment and living situations must be in the transition planning. Unless the assessments tell you that a child is proficient in these areas, a goal must be developed in those areas. Interest inventories are key to establishing realistic transition goals. Dr. Potemri testified that part of the process of transition would involve bringing a level of realism to the student's goals. A student may set forth a goal that is not necessarily realistic, but interest inventories can help identify goals that are related.

Dr. Potemri testified that IEP goals should correspond to transition goals. For example, if the student's goal was to go to college, transition planning would need to consider whether the student was doing the coursework needed for college. Dr. Potemri testified that transition involves not only assessing the student but bringing them to a level of awareness so that they understand why they are being asked these questions, what it means in the bigger picture.

Dr. Potemri observed that while a report card may reflect that a student is passing a course, that document does not provide key information such as academic rigor, or how the curriculum has been modified. Modifications of curriculum should be in the IEP; otherwise, parents may be misled as to whether the child is in fact prepared for college.

Dr. Potemri testified that to be exited from special education, a child must be making enough progress towards transition goals, not just completing the coursework necessary for a regular or alternate diploma. The decision to give a student a regular or alternate diploma is an IEP Team decision. Before graduating a student with a regular diploma, there needs to be a determination as to whether the child has met the requirements. The decision to waive a graduation requirement is an IEP Team decision, that should be documented.



Dr. Potemri noted that ACF was not given the opportunity to complete a senior project, and the records did not reflect that that requirement was waived. It is common for a student to complete high school graduation requirements, but not accept a diploma because they still need transition services. Dr. Potemri testified that under the special education regulations, a prior written notice is required before graduating a student.

In Dr. Potemri's opinion, ACF did not receive transition services and planning that would comply with the provisions of the IDEA. There was no comprehensive transition assessment involving all of the components of transition planning. The IEPs gave some subjective narratives on what ACF's performance levels were, but no measurement of proficiency based on assessment around transition. It was unclear what tool was used to arrive at the transition goals, or how progress was being monitored. The transition goals were focused only in one area, and that was the social-emotional piece. The activities in ACF's so-called transition year did not include any record of assessing her ability or skill in the activities in which she participated.

Dr. Potemri testified as to the appropriateness of the Transition Planning Form for ACF's 2021-2022 IEP. When asked if ACF's on-campus jobs were enough to affect a transition, Dr. Potemri pointed out that there was no record of any assessment of her ability or skill, or how they tied into the overall vision referenced in the Transition Plan. If ACF's functional living skills had been assessed, that data could have been used to support the application for adult services at BHDDH.

Dr. Potemri testified that ACF did not make sufficient progress on her IEP goals to warrant exiting her from special education. Dr. Potemri testified that the goals that were in the 2021-2022 IEP were not measurable. The Career Development Plan would have been a good guideline for ACF's transition planning, but it appeared not to have been completed.

Dr. Potemri testified that she had asked for evidence that transition assessments were done and got none. In her opinion, ACF had not met graduation requirements.

Dr. Potemri testified that it was inappropriate for Providence administration to make unilateral decisions about issuing a diploma, especially when requirements were not met, and before reviewing the neuropsychological evaluation. Dr. Potemri attended a May of 2022 meeting with the parents and the school, and it was agreed that no determination would be made until after the neuropsychological evaluation was complete and the results reviewed.

Dr. Potemri testified that the first thing that must be done to bring Providence into compliance with the IDEA is to complete a comprehensive transition assessment. Once the evaluation is done, the IEP Team should consider new goals, and also submit a new application to BHDDH with the neuropsychological evaluation. Dr. Potemri criticized the transition planning for not having a backup plan in the event that ACF did not qualify for BHDDH services.

Dr. Potemri testified that she believed that ACF needed residential support and care, and to go from one extreme to another is not appropriate. There were concerns for ACF's safety. The records reflected that there had been a previous history of sexual abuse by ACF, and there were further concerns about her ability to make safe choices. Dr. Potemri also noted that when there was an attempt to put ACF in a less restrictive residential setting, there were incidents and concerns that required a return to a more restrictive residential setting.

Dr. Potemri testified that merely sending ACF home from Walden would not be appropriate. There instead should be assessment of her ability to function within less restrictive settings. Returning ACF home is a process, and assessments should be done along the way to ensure that it is appropriate to take the next level. If one moves too quickly to a less restrictive

environment, it can impact her ability to progress therapeutically.

Dr. Potemri did not conduct an in-person formal evaluation of ACF. Potemri did not observe ACF. Potemri never met and never interviewed ACF. Potemri testified that she is not aware of the fact that: ACF takes Uber; ACF goes to Dunkin Donuts alone; ACF takes a train ride with another student.

**Dr. C.**

Dr. C. was called by the District and questioned about the guardianship. ACF did attend the court hearings, and it is unclear why the guardianship is worded in what appears to be a limited way. Dr. C. testified that ACF has exhibited violent behavior at home, such as physically threatening people and being physically aggressive with her younger sister, including shoving. Dr. C. testified that ACF has come home for periods longer than a weekend, but for vacations. Dr. C. testified that no Walden clinician has ever told her that ACF is ready to come home.

After June of 2021, ACF did not have report card grades, she was going to continue to work on transitioning and life skills. In June 2022, Ms. Pare came to Dr. C's house and gave ACF her diploma, which she seemed happy to accept. When ACF does go home, she stays at Dr. C.'s house. Dr. C. testified that the family has never accessed any home-based services. Nor has ACF ever run away from home. Since she has been at Walden, she has never done any harm to anyone in her household. While she has gotten aggressive with her sister, some of it is typical teenage behavior. The police have never been called. ACF does come to Dr. C.'s home about 3 out of 4 weekends a month. She has taken the train back twice with another student. When she came home over winter break, she was fine. The family has not located any permanent housing for her.

## **Testimony of Dr. Dana Osowiecki**

Dr. Dana Osowiecki is a clinical neuropsychologist and is an expert in neuropsychology. She was asked by the District, with the support of the parents, to conduct a neuropsychological evaluation of ACF. (Exh. D) The reason for the referral was to assess ACF's diagnosis and to assist the transition process. The only parent to participate was Dr. C.

In addition to interviews with ACF and Dr. C, Dr. Osowiecki reviewed District records. These included a July 2021 Psychological Evaluation and a December 2018 Education Evaluation from Walden, Dr. Rich's 2016 Comprehensive Assessment, the Psycho-Educational Evaluation from Dr. Hyken in 2013, various IAPs from Walden from 2018 through January of 2022, and records pre-dating the Sandhill placement including from Bradley hospital.

In terms of intelligence, ACF has consistently been in the average range. Behavioral concerns involved social interactions, boundaries and regulating emotions. ACF can be verbally reactive, with outbursts of yelling and saying inappropriate things. She has needs for pragmatic language skills which regulate social interactions. There was no evidence of physical aggression.

ACF is small and slender, with an intense personality. She craves attention and can be very direct. She seemed to have a strong need to be in the right. She is cooperative and worked hard. During the course of the very demanding evaluation, she was fully engaged and participated appropriately.

At the end of the evaluation, Dr. Osowiecki diagnosed ACF with high-functioning autism. When this information was shared with ACF, she was very emotional and difficult to calm down. She was not happy with the diagnosis. She feared telling other people and that it would be embarrassing.

In addition to the ASD diagnosis, Dr. Osowiecki noted that ACF has a history of Reactive Attachment Disorder and trauma, which contributes to her anxiety. Her report was provided to the District on August 16, 2022. (Tr. at 483)

When asked about the long history of ACF's residential placement, Dr. Osowiecki was perplexed that there had not been a plan to transition ACF earlier. Usually, such restrictive placements are limited to students who present an imminent risk of harm, not because of the types of verbal and emotional behavior ACF exhibits. Dr. Osowiecki does not believe that ACF needs a residential placement. Accordingly, ACF would benefit from a transition day program through the District. She is able to navigate transportation, interact in a work environment and attend a community college.

Although on the autism spectrum, Dr. Osowiecki does not believe ACF will qualify for BHDDH services because of her intellectual and clinical presentations. Nor would she be eligible for a group home.

When asked if she were recommending that ACF go home "today," Dr. Osowiecki responded: "No. Typically, when we're transitioning students, which does occur frequently, there is usually a plan that is usually completed over several weeks. Like, preparing visits. So I wouldn't expect it to be tomorrow." (Tr. 525.)

**Testimony of Katherine Cipriano:**

For most of ACF's time at Walden, Ms. Cipriano was her clinician. While both parents are involved with ACF's program, Dr. C. Doe is the primary point of contact. She goes home quite regularly to Dr. C.

When asked to describe a typical day for ACF, Ms. Cipriano testified that:

ACF has completed her requirements for high school diploma, she has followed an individualized schedule that includes doing some on-grounds type of vocational training

and jobs, such as delivering packages, caring for the dogs that are on site, doing helper tasks for staff that we are assigning to her. She also has a volunteer job that she does access twice per week. So she might be leaving during a school day to go to that commitment at 2:00 o'clock. Let's see. Does engage in her enrichment or life skills class. That really is targeting independent life skills, so she does engage in that course. And she also has some independent work that that addresses different tasks, like budget, money management, etc.

(Tr. at 403-4) This has been her schedule for the past year.

ACF is allowed to leave campus on her own. She currently has a volunteer job at a local library where she walks unsupervised. She goes to a coffee shop alone and with money.

ACF is not someone she would describe as aggressive and has not needed to be restrained. She has not successfully run away and is not a physical threat. While she has issues with boundaries with others, she does not pose a physical threat to anyone.

Ms. Cipriano testified that a report from February 16, 2022, stated: "Given the aforementioned deficits, ACF meets a residential level of care. ACF meets the structure and consistency of a residential placement in order to maintain safety and learn skills that promote adaptive functioning long term." (Ex. 127) Further along, the report reads:

It will be important that ACF's parents begin to take greater ownership in navigating moments of conflict and in providing meaningful and impactful consequences following instances of maladaptive behavior. This shift in responsibility will promote a sense of safety and containment within the primary care giver's relationship, which will be critical leading up to ACF's discharge from the program and decrease in external supports.

### **Testimony of Julie Lombardi**

Ms. Lombardi's current position is executive director of student supports, where she oversees transition for the District. Previously, she was director of the transition program. She also works on the State transition team, which develops state-wide goals that are shared by school districts. She is not, however, part of the out-of-district transition team and had never had any previous involvement with ACF.

She conducted an observation of ACF, along with Ms. Pfefferle and Dr. Connolly, at Walden on December 5, 2022. First, they were brought to an English class, but ACF was not participating; she had her own work which consisted of a binder of sheets. No transition person was assisting her, so she then opened a Chromebook to work on a recipe. She was quiet and well-behaved.

After reviewing the reports of Dr. Potemri and Dr. Osowiecki as well as some recent progress reports, Ms. Lombardi stated that all of the transition services and testing could be done by the District in its Transition Academy as a day student. There are students in the program who are lower functioning and with worse behaviors that perform well. It is run during school hours with one day in class, and the others out in the community. There are counseling and vocational supports. She will have access to work sites, and support for college classes such as at CCRI.

When asked whether ACF was receiving transition services at Walden, Ms. Lombardi was able to identify a great deal of transition work in the past year. (Tr. at 569; Exh. 123) She also mentioned that during her observation of ACF, she was not given permission by the parents to have any interaction with her. (Tr. at 572)

With regard to independent living, Ms. Lombardi testified that the school's goal is to assist the parents and student with connecting to agencies like ORS and BHDDH, but ultimately it is up to the family. (Tr. at 575) The District has provided ACF and her parents with assistance in this area, including helping filling out applications for ORS (Exh. F) and BHDDH (Exh. G).

### **Testimony of Deborah Pfefferle**

Deborah Pfefferle has a master's in social work and a special education administrator certificate. She has been employed as a social worker by the District for over twenty years, and

currently manages out of district day programs. Prior to that, she managed adult psychiatric programs and been a clinical therapist.

About the Walden observation, Ms. Pfefferle was surprised that the building was unlocked and no one seemed to know they were coming. She observed that ACF was sitting politely and respectful. At one point while ACF was waiting for assistance from staff for her work, ACF was able to assist a classmate with her work. She was polite and exhibited no behaviors at all.

In reviewing the doctors' reports as well as school reports, Ms. Pfefferle stated emphatically that she did not believe ACF belonged in a residential placement:

Based on my professional experience, first of all, I've worked with several kids with reactive attachment disorder, as well as students with autism. I think we've really restricted her ability to experience things. And students like ACF, the way she was presenting, based on the documentations, there's nothing that clearly indicates that she is so violent. Does she have aggressive incidents? Yes. Is it to the point where we need to lock her up? No.

(Tr. at 588). She was concerned that the longer ACF remained in the residential program, the harder it will be for her to pull back. In her opinion, ACF has the ability to live alone, go to college, and get a driver's license.

Ms. Pfefferle stated it was "so wrong" to have ACF locked up in a residential facility, and that it was doing her harm. She has not been given the chance to be as independent as possible. She stressed that ACF should be making the decisions about going to college and getting a driver's license.

Ms. Pfefferle has a number of out-of-district students who access the Transition Academy, and she feels that ACF would benefit from it. She will have job support and be exposed to professional people and different opportunities.



Recognizing the concerns of a student with Reactive Attachment Disorder, Ms. Pfefferle stated that ACF should not be removed from Walden immediately but that some planning needed to be involved. There is a concern as to where ACF will be living. It is the District's responsibility to assist a parent in that regard, but ultimately it is the parent's responsibility, and if they are not capable, the responsibility of DCYF. Since ACF was never in state care prior to her 18<sup>th</sup> birthday, she cannot be placed there now.

When asked about the BHDDH application for a residential adult program, Ms. Pfefferle felt it was a waste of time; that ACF would never qualify since she does not have severe mental health issue such as aggressive behaviors. She would also not be afforded the opportunities to go out and get a job and experience life to the fullest. While there is also a BHDDH program for developmental disabilities such as autism, it depends on the severity and its impact on daily living functioning.

### **Testimony of Dr. Jennifer Connolly**

Dr Jennifer Connolly has been the Executive Director of Specialized Instruction in Exceptional Student Services the District since July of 2021. Previously, she was a Director of Special Education in Warwick from 2014. Since she graduated college in 1995, she has worked extensively with special needs students in agencies that service students with autism. She has worked in the special education classrooms in New York, Massachusetts, and Rhode Island. She has experience working with children with Reactive Attachment Disorder.

Dr. Connolly first became aware of ACF in December of 2021. As the case was presented to her, it appears that ACF had already graduated, but was remaining in a residential facility because she had nowhere to return to live. In reviewing the matter, she noted her confusion since ACF was of average intelligence with no intellectual disability. She was

confused by the arrangement she was told in which the District agreed to a residential placement in New Mexico. If parents are unable to maintain a child at home, the typical arrangement would be for the child to be placed in DCYF custody.

In a meeting in March of 2022, Dr. Connolly informed the parents that she did not believe that ACF belonged in the Walden School. The notes from that meeting are difficult to read. (Exh. 130) Dr. Connolly's recollection was that ACF was working 8 hours per week, going to coffee and other shops. She was working on independent living skills course, meeting goals 80% of the time.

There was discussion that ACF had graduated in June of 2021, but that the District had agreed to continue transition services until June of 2022 to give the parent more time to get her set up her next residence. To the extent that ACF needed additional transition services, she could access that on-site at the District. Since she had graduated, ACF would no longer have an IEP, but could access accommodations in college or work through a 504 plan. There is a reference to "find funds", that Dr. C. stated "no way", and "If no social security, find new diagnosis".

Dr. Connolly stated that the District requested an evaluation report from Dr. Osowiecki to assist in the transition. She stated that the parents were not communicative and gave no indications of what their plans were.

Dr. Connolly mentioned that a summary of performance for ACF was done by Walden, which is the final document given to parents when services terminate due to graduation. (Exh. I) The form is dated July 23, 2021, but apparently no meeting with the parents to discuss this was able to be held. Dr. Connolly set many emails to the parents and the Walden School staff stressing the importance of meeting prior to August 31, 2022, since that is the date the District would cease paying for the placement. Neither the parents nor the school were cooperative, and

ultimately she set a firm meeting date for August 30. That never occurred since the parents filed this due process complaint.

In reviewing Walden reports and in conversations with their staff, Dr. Connolly understood that ACF was already being transitioned to go home; she would go home most weekends and go on family vacations. The family was arranging for clinician appointments outside of a residential placement. ACF quit her job because she thought she was heading home. It seemed that everything was done but find living arrangements.

In reviewing ACF's file, Dr. Connolly noted that the behaviors were verbal, and typical of kids with Reactive Attachment Disorder or Autism Spectrum Disorder, and teenagers in general. She criticized what she saw as Walden's approach to any behavior issue as "see she can't do this", instead of a teachable moment to focus on increased independence.

There were only four physical restraint reports in the many years of files from Walden, and none seemed serious. ACF has average intelligence and is quite capable, which is significant given her restrictive setting since age 9.

Dr. Connolly described her impressions of the December 5 visit. The security seemed lax, and they were unprepared for the visit. ACF was still following a student group, but she was not participating in any education. She had her own binder of work to do. When she stated she had nothing to do, the staff didn't really seem prepared to help her.

When she met with the program director, Dr. Connolly asked if ACF engaged in aggressive behavior and was told no. When she asked about transition assessments, the director didn't know; she was supposed to provide them at a later date, but didn't. Dr. Connolly was told ACF quit her job because the school thought she would be leaving and wanted to keep the job open for another student. Dr. Connolly asked about the tremendous amount of freedom the

students seemed to have and was told some had full-time jobs or attended college. This seemed odd to Dr. Connolly for a residential placement.

In commenting on Dr. Potemri's report, she found it helpful for students with intellectual disabilities, but not relevant to ACF. Dr. Connolly expressed her opinion that had ACF remained a District student, she would already be living her adult life, driving, working and going to college.

In all of her years in education, Dr. Connolly never understood that it was a school district's responsibility to find housing for a student. She endorsed the opinions of district staff that the least restrictive environment for ACF to receive transition services was in the District's program.

Dr. Connolly mentioned a settlement agreement for ACF's attendance at Sandhill, but not Pelham or Walden. In terms of the IEP, although it is checked off as a residential placement, she believes that was not what the District offered, but was part of the settlement.

On cross-examination, Dr. Connolly admitted that she had not reviewed the District's graduation requirements. She did not know whether an IEP team had agreed to waive foreign language courses or the senior project. There was an indication from the District's guidance counselor that this requirement was modified due to the extra elective classes ACF took. (Exh. 158)

In an email dated July 26, 2022, Dr. Connolly indicated to the parents that there must be a meeting on August 30 to "work with the parties to support transition", but that the payment of tuition at Walden would end. The email also states that the meeting will occur even if the parents do not attend. (Exh. 169)

When questioned by the hearing officer why the IEP indicates that ACF needed to be

placed on a “small therapeutic environment”, and that IDEA regulations limit the removal of a student from the regular education setting where the severity of a child’s disability is such that education in a regular classroom with supplemental aids and services cannot be achieved satisfactorily, Dr. Connolly stated:

The parents placed her at Sandhill. The district entered a settlement agreement to pay for her residentially. This, in my view, never went initially through an IEP team, school-based, that determined that she needed to go into a residential setting. I’ve never seen anything like this.”

(Tr. at 673).

**Rebuttal testimony of Dr. Potemri**

After listening to testimony from the District’s witnesses, Dr. Potemri was called on rebuttal and asked if she agreed that it was not the District’s responsibility to find housing for ACF. She replied: “I don’t think there was ever a question about Providence assuming that entire responsibility, but the District’s responsibility is to assist the parent in identifying the resources, connecting with adult service agencies, so that those questions could be answered. What level of support does she qualify for.” (Tr. at 682). She tried to clarify her previous testimony that she was not seeking to restrict ACF, and that she also has concerns that the least restrictive environment has not been looked at for years. If it had, her transition would probably been much smoother.

When asked about whether the Transition Academy could provide ACF with FAPE, she agreed, but stated it would be “down the road”. She again stressed concerns about where ACF will live, and that the parents are concerned they cannot keep ACF safe.

Dr. Potemri then for the first time at the end of the hearing suggested that ACF be put in a residential placement in Rhode Island where she could access adult services and then transition to the District’s day program. She concluded by stating that:

I would transition her to a supported residential placement in Rhode Island so that she could access adult service agencies where there could be that collaboration within Rhode Island. She could transition some of her time to the day program in Providence. But, ultimately, I think a big thing -- I never said that she needed to stay residential, but for this transition period, while the right things happen, she absolutely needs to maintain the level of support that she currently has.

(Tr. at 686).

### **POSITION OF THE PARTIES:**

#### **Parents:**

In their closing brief, the parents identify six errors by the District. First, they argue that the District has failed to fulfill the procedural requirements for awarding ACF a high school diploma and terminating her entitlement to special educational services. They point to what they claim are inconsistent positions that the District has taken: on one hand the District asserts that ACF has completed her high school coursework and graduated; on the other hand, the District concedes it owes ACF continued transition services. To the extent that Providence considers ACF to have graduated, they failed to follow the regulations which require prior written notice warning that the acceptance of a diploma terminates the District's obligation to provide any special education services. Moreover, they argue such a decision to graduate must be made by the IEP team.

Next, parents claim that Providence has improperly attempted to graduate ACF without her meeting all academic requirements for a Providence high school diploma. They point to the District's requirements of a college and career readiness exam, such as the PSAT. Also, there is a requirement for courses in World languages, and a senior project. There is no evidence that these requirements were waived by the IEP team, or even that they could be waived without some sort of finding by the IEP team that there would be a modified curriculum. In addition, the parents allege that there is no evidence that ACF had mastered the coursework at Walden, such

as math.

The third complaint is that Providence was responsible for ensuring that ACF received FAPE, including transition services, while she was at Walden. To the extent that there was any deficiency in the Walden program, parents assert that it is still Providence's responsibility to provide FAPE. In this regard, they cite special education regulations:

- § 300.146 Responsibility of LEA. (6.5.4(B)) Each LEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency —
- (a) Is provided special education and related services —
    - (1) In conformance with an IEP that meets the requirements of §§ 300.320 through 300.325; and
    - (2) At no cost to the parents;
  - (b) Is provided an education that meets the standards that apply to education provided by the SEA and the LEA including the requirements of this part, except for the personnel requirements at § 300.18 and § 300.156(c); and
  - (c) Has all of the rights of a child with a disability who is served by a public agency.

Since Providence agreed to remain as the LEA while ACF attended Walden, the parents assert this converts to a District placement, not a parental one.

Fourth, the parents fault the District for failing to conduct proper evaluations of ACF. The focus of this complaint is that for many years Providence should have been aware of the possible autism diagnosis for ACF but failed to ever properly evaluate her. Once the District did agree to conduct such an evaluation in July of 2021, it took a year to complete and deprived ACF of a significant amount of time and opportunities for appropriate programming. They fault Dr. Connolly with “short-circuiting” the evaluation process by making the determination to end the Walden placement before Dr. Osowiecki's report was completed.

Fifth, a similar argument is made that the District failed to provide adequate transition planning for ACF. Here, the parents seem to fault Walden for improper transition services but place the blame for that failure on Providence. Any transition-type services which were provided in the 2021-22 academic year were insufficient. There was a lack of measurable goals,

and any resulting assessment of progress. The Transition Assessment Forms from Walden never changed; they were repeated verbatim from 2018-22. The failure to conduct appropriate transition assessments resulted in a cascade of errors. Without goals, no appropriate plan or service can be arrived at, and this can constitute a denial of FAPE. The transition plan also failed in addressing ACF's post-school living situation. They fault Providence for relying upon potential BHDDH qualification and placement in a group home, with no "Plan B" if that fell through.

Finally, the parents accuse Dr. Connolly of attempting to unilaterally exit ACF from the Walden placement in violation of the IDEA. The crux of this argument is that, even if Providence is correct in asserting that Walden is not the appropriate placement for ACF, the abrupt nature of the July 26, 2022, email stating that funding would end on August 31 was irresponsible. It failed to take into account the trauma such a move presented, and the need to protect ACF's safety concerns. As for the cancellation of the August 30 IEP meeting, the parents appear to justify it on the basis that they felt Dr. Connolly had pre-judged ACF's placement decision without the benefit of having Dr. Osowiecki's report.

As for remedies, the parents' demand shifted from the original complaint. Instead of a blanket demand to continue ACF at Walden, they now seek gradual transition as suggested by Dr. Potemri. This would first involve a Rhode Island residential placement, so ACF could access local mental health services; a completion of assessments to develop the appropriate, measurable transition goals; then an IEP meeting to create a transition plan that should address: Career Development, Employability, Adult Learning: Education/Training, Life Skills, Daily Living, Social Pragmatics (speech and language), Self-Regulation, Self-Determination, and Executive Functioning. They argue further that Providence's transition planning must support ACF's new



application for services from BHDDH based upon ACF's new autism diagnosis, assist ACF's parents in identifying an appropriate living situation for ACF and connecting with adult services, and include representatives from BHDDH and ORS.

In conclusion, the parents ask the hearing officer to make the following findings:

1. That Providence failed to provide ACF with FAPE, in that it has persistently failed to provide ACF with appropriate transition assessments and planning.
2. That Providence failed to comply with the IDEA, in that it persistently failed to assess ACF in all areas of suspected disability, particularly autism. At very minimum, Providence should have followed through on ACF's possible autism diagnosis in the summer of 2021, as originally planned.
3. That Providence violated the IDEA, in that it purported to "graduate" ACF in the summer of 2022, without prior written notice or a Team decision.
4. That Providence violated the IDEA, in that it purported to "graduate" ACF in the summer of 2022, without appropriate assessment of whether ACF had made sufficient progress in transition.
5. That Providence violated the IDEA, in that it attempted to change ACF's placement without a prior written notice, team decision, or failure to develop a new IEP.
6. That ACF in fact has not completed the requirements for a regular high school diploma, and therefore remains entitled to special education.
7. That ACF's parents are prevailing parties in this litigation.
8. That ACF will remain at Walden until a suitable residential placement in Rhode Island. Said placement must address ACF's mental health issues.
9. That ACF will be given a full set of transition assessments, addressing her needs in the areas of training, education, employment, and independent living skills.
10. That Providence will develop a new IEP and transition plan based upon said assessment. Said IEP and transition plan will contain measurable goals, including the areas of:
  - a. Career Development
  - b. Employability
  - c. Adult Learning: Education/Training
  - d. Life Skills
  - e. Daily Living
  - f. Social Pragmatics (speech and language)
  - g. Self-Regulation
  - h. Self-Determination
  - i. Executive Functioning
11. That Providence shall assist ACF and her parents in connecting with adult services and identifying an appropriate post-secondary living situation, as part of the transition process.
12. That Providence's IEP and transition plan will include a plan to gradually transition her to the appropriate post-secondary living situation, based upon assessment, observation, and performance.

13. That ACF shall receive two years of compensatory special education services after the age of 22, including residential placement until such time that a less restrictive setting is determined appropriate after assessment, observation, and performance.

**The District:**

The position of the District is considerably more succinct. First, they argue that ACF should no longer be placed at Walden, and that she does not qualify for and should not be placed in any residential placement. They emphasize that the placement at Walden was not an IEP team decision but was done through a settlement agreement. Now that ACF has completed her academic requirements, the focus should be on her transition, and that may be accomplished through the District's Transition Academy. The continued placement at Walden has not been to address ACF's educational needs; those could have been accomplished in District. Instead, the placement was based on family issues, and the difficulty they have finding suitable housing for ACF.

The District points to ACF's average intelligence, and her ability to acquire life skills such as a driver's license, college and a job, and that the residential placement is actually harming her ability to succeed in those areas.

The District continues to offer transition services, but there is no reason why that cannot be in the public school setting. Both the parents' expert and the witnesses from the District testified that ACF needed some transition services and no one indicated that she needed to remain residential. The District is more than willing to provide ACF with additional services. However, these services can be offered in the District. Furthermore, it is clear that as long as ACF is placed outside of Rhode Island many services will not be available to her.

For over a year since the March 2022 IEP meeting, the parents have done nothing to transition ACF to Rhode Island. Instead, they continue to expect the District to fund her living

arrangement.

The District disagrees with Dr. Potemri's claim that it is the District's responsibility to assist the parents in locating a less restrictive placement. They point out there is nothing in the regulations or case law to make living arrangements the responsibility of the District. To the extent that the District must assist in this area, it has helped the parents in filing an application with BHDDH, ORS, and obtaining social security benefits for the student.

As for graduation, the District points to a June 2021 IEP meeting (Exh. 100) wherein the parents agreed that ACF had completed her academic requirements. The parents agreed to one additional year of transition services at Walden but allowed ACF to participate in a "graduation" ceremony marking her accomplishments. The June 2021 IEP contains no educational goals, as was evident when the District employees visited in December of 2022.

Similarly, the Providence diploma that was dropped off in June of 2022 was appropriate. There was no evidence the parents or ACF wanted to reject it. And the receipt of the diploma did not change the fact that Providence was continuing to offer transition services even beyond August of 2022.

The District addresses the issue of providing educational records, but it appears the parents have abandoned that argument. As for guardianship, the District indicated it will address that issue going forward. They ask that the complaint be denied.

**DISCUSSION:**

***1. Failure to provide prior written notice before awarding diploma***

When faced with an allegation that a school district violated the procedural requirements of the IDEA, a hearing officer must follow § 300.513, which provides:

- (a) Decision of hearing officer on the provision of FAPE.

- (1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.
- (2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies -
  - (i) Impeded the child's right to a FAPE;
  - (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
  - (iii) Caused a deprivation of educational benefit.

Thus, if a procedural violation of the notification requirement, “does not actually impair the parents' knowledge of, or participation in, educational decisions, the violation is not a substantive harm under the IDEA.” C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 71 (3rd Cir. 2010) (*see also*, Gadsby by Gadsby v. Grasmick, 109 F.3d 940, 956 (4th Cir.1997) (noting that parents received late notice with ample time to respond and holding that “[b]ecause any violation of the notice provisions did not interfere with the provision of a free appropriate public education to [the child], these violations cannot subject [the district] to liability for reimbursement of [private school] tuition”). However, “a school district's failure to comply with the procedural requirements of the [IDEA] will constitute a denial of a FAPE . . . if such violation causes substantive harm to the child or his parents.” Id. Substantive harm occurs when a party can establish, by a preponderance of the evidence, that “the procedural inadequacies (i) [i]mpeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of the educational benefit.” Id. at 67. *See also*, Jalen Z. v. Sch. Dist. of Phila., 104 F.Supp.3d 660 (E.D. Pa. 2015).

Here, there is no evidence that the parents or ACF suffered substantive harm by any alleged failure to provide prior written notice. First, it must be noted that these parents have long been represented by attorneys and are therefore well aware of what rights they may have under

IDEA. Second, there is no evidence that the parents were denied participation in the decision-making process, since the completion of coursework was discussed in July of 2021 and used to develop the 2021-22 IEP. There is no evidence that the parents ever rejected that IEP. Also, there was an IEP meeting parents participated in to discuss exiting ACF from Walden, but continuing with transition services. And the July 29, 2022, email from Dr. Connolly discussed ending the placement at Walden, but not the denial of transition services, which the District was still offering.

The parents argue under this section that the decision to graduate ACF should have been a team decision, requiring prior written notice. The decision as to whether ACF should have graduated will be addressed below. But I cannot find that decision to be void just because the notice was not given. The parents effectively aborted any potential harm as they saw it by filing for due process and invoking stay put. Absent any claim of substantive harm, I find no denial of FAPE based upon any procedural violation.

## ***2. Whether ACF met all graduation requirements***

The parents' complaint regarding graduation requirements arose only when the District attempted to exit ACF from Walden. Prior to that time, there is no evidence the parents objected to the waiver of the world language or senior project requirements. In fact, it appears that the reason these were not provided ACF was that Walden was either not equipped to provide those curricula, or that ACF was involved in other classes. Any suggestion that the parties could not agree to waive these requirements is belied by the fact that this placement at Walden was by a settlement agreement, not a placement by the District through an IEP team.

When asked about the senior project, Dr. F. simply stated she did not recall if it was ever discussed. (Tr. at 47) Dr. Potemri seemed much more concerned about the lack of a senior

project, but never recommended that it somehow be included in ACF's program now. Dr. Potemri seemed less concerned with the waiver of the world language, apparently because of ACF's disabling condition.

As for the lack of academic rigor or ACF's failure to master math facts, Dr. Osowiecki testified that it did not surprise her. She noted that, "students, especially when they have complex emotional, social, and behavioral problems that can impact their executive functioning and make memorization of simple things more challenging in the moment, especially under timed situations. In everyday life, you are allowed to use a calculator, and you don't have to have that information memorized. And even in school, for students that may struggle with things like math calculations, they're often provided with multiplication tables and other supports." (Tr. at 495)

Ultimately, the parents seek no specific remedy for ACF's failure to have any world language and senior project. As for the complaint about the lack of academic rigor, again the parents seek no specific remedy such as more educational services in this area. I think it apparent to all the experts that the goal for ACF now is functional life skills to prepare for her transition.

### ***3. The District's responsibility for Walden's implementation of an IEP***

Part of the difficulty of this case has been determining exactly how ACF came to be placed at Walden. By the end of the hearing, all of the experts agreed that the current residential placement is not appropriate, and in fact may be hindering ACF's progress towards independent living.

The settlement agreement provided to the hearing officer after the close of evidence sheds some light on the how this situation came about, but I find that the genesis of the agreement can be traced to the April 13, 2016, report of Dr Rich. (Exh. 3)

What is remarkable about this report is that it appears to be written to address an incident involving sexual abusive or problematic behavior. This resulted from a sexually inappropriate encounter between ACF and a young relative. The concern for Dr. Rich was whether this incident presented a risk of harm to ACF or others of similar behavior.

ACF was aging out of the Walker School that she was attending at the time. Interestingly, despite the behavior issues that ACF had, Walker was recommending that she return home, as long as she received wraparound services and attend a specialized therapeutic day program. (*Id.* at 12) Dr. Rich did an assessment of sexual risk and determined that ACF needed to remain in a residential program. He states: “I give due weight to the perspective of Walker School, which is that [ACF] can successfully return home”; however, he was concerned about her sexual safety. “Accordingly, it’s difficult to support the idea that [ACF] is ready to return home and into the community at this time or in the immediate future, and certainly not within the next six months”. (*Id.* at 18) He goes on to recommend a residential program that is “short-term”, and “ideally has a step-down to a lower level of care in a more community-based setting such as a group home and an appropriate therapeutic day school in the community.”

Why this is relevant is that this seems to be the basis for Providence agreeing to the settlement. Earlier in the report, Dr. Rich notes that “[ACF] will age out of Walker in June upon her 14<sup>th</sup> birthday, although it has not yet been fully determined and agreed upon by the Providence School Department that [ACF] will remain until June.” (*Id.* at 2) Clearly, there was a dispute as to whether ACF needed such a residential placement, but Providence acquiesced in a settlement just a few months later in November of 2016.

There is nothing in the records provided in the hearing to suggest that ACF engaged in any sexually abusive conduct again, or that she is at risk for such behavior. While she clearly

has difficulty with social cues and making appropriate relationships, this is not the same reason given for her residential placement. Had Dr. Rich's advice been followed, it is likely that ACF could have exited such a restricted setting much sooner.<sup>6</sup>

It is against this backdrop that one has to consider Providence's responsibilities for any deficiencies in ACF's program at Walden. Parents cite to § 300.146 of the regulations, as amended by RI Regulation 6.5.4(B).<sup>7</sup> But that regulation does not seem to apply, since Providence did not place ACF, the parents did, and Providence is not paying for the full amount of the tuition.<sup>8</sup>

The parents also note that Providence participated in the IEP meetings at Walden. The settlement agreement stated that ACF "remains eligible for" IEP services. It does not state that Providence is responsible for those services at Walden. Instead, I read that statement as acknowledging that ACF may access IEP services in Providence when she ended her residential placement. In this context, Ms. Pare's involvement was to act as a resource to the parents and Walden for information such as curriculum and graduation requirements, and ultimately what transition services such as eligibility for BHDDH and ORS were available.

Instead, it would appear that § 300.148 - Placement of children by parents when FAPE is

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<sup>6</sup> Dr. Osowiecki mentions Dr. Rich's report in her evaluation (Exh. D at 5) and the risk of sexually exploitive or abusive behavior, and his recommendation for a residential level of care. She fails to note the Walker school recommendation for a step down to a lower level of restrictive placement, or Dr. Rich's agreement that that should occur over time.

<sup>7</sup> The only difference between the State and Federal regulations appears to be that RI places the burden on the LEA, whereas the federal regulation places it upon the SEA.

<sup>8</sup> Again, the parties have not informed the hearing officer of any current payment arrangement, so I am left to interpret the November 2016 agreement which provided that the parents are paying part of the placement.



at issue - is more relevant. This section provides parents with an avenue to sue districts for tuition reimbursement and provides that “A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.”<sup>9</sup>

There is further difficulty trying to determine exactly how the parents deem the IEPs to be deficient. There were a number of “IAP review/revisions” introduced, standing for Individual Action Plans, but there were clinical plans not educational. They are of little relevance, particularly since no original action plans were introduced.

The IEPs that were introduced covered from 11-15-18 to 11-15-19 (Exh. 24); 3-4-20 to 3-4-21 (Exh. 57); and 6-15-21 to 6-14-22 (Exh. 100). The relevant progress reports provided were limited to 4-12-19 (Exh. 35); 11-8-19 (Exh. 46); 11-13-20 (Exh. 78); 1-28-22 (Exh. 123); and 6-24-22 (Exh. 145).

It has been repeated many times that the “The IEP is the centerpiece of the statute's education delivery system for disabled children.” Andrew F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 994 (2017) (*citing Honig v. Doe*, 484 U.S. 305, 311, (1988)). “To meet its substantive obligation, . . . a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Andrew F., 137 S. Ct. at 1000; *see also Board of Ed. Of Hendrick Hudson Central Sch. Dist. Westchester Cty. v. Rowley*, 458 U.S. 174 (1982). The circumstances in this case are that ACF was being educated at a private residential school, not a regular classroom, focusing on her emotional disturbance. The private school wrote and implemented IEPs that appear to be modified from Massachusetts forms.

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<sup>9</sup> There is a third option to consider, which is RI Regulation § 6.5.3 - Children with Disabilities Enrolled by Their Parents in Private Schools. But that section does not permit the filing of a due process complaint, unless it involves “child find”. See § 300.140.

There were informal agreements to waive curriculum and testing requirements. The IEPs include language attempting to justify excluding ACF from a less restrictive environment, contrary to the intent of the IDEA. The placement was not at the behest of Providence, but the insistence of the parents. It has not been adequately explained to me how these IEPs were deficient in any academic area, or why the progress reports do not show adequate progress. Finally, and perhaps most importantly, other than in the area of transition, there is no explanation by the parents of how to remedy any of the alleged deficiencies in the IEPs.

Given the nature of the placement, I cannot fault Providence for any alleged deficiencies in the Walden program.

#### ***4. Failure to evaluate***

Here, the basis of parents' argument is that the District should have evaluated ACF for autism many years ago, and when they did finally agreed to do so, it took an inordinate amount of time to complete. The problem with this argument is that there is no evidence in the record that prior to 2021, any expert was recommending such an evaluation.

One need only look to the evaluations from 2013 and 2016 (Exhs. 1 and 3), to see that there is no discussion of autism. Instead, the diagnosis for ACF has consistently one of Reactive Attachment Disorder. While Dr. Osowiecki mentions in her report that "past evaluators have questioned an Autism Spectrum Disorder" she makes no citation to support this. It appears she probably got this from the parent.

As for the recommendation contained in Dr. Osowiecki's report, they appear to have already been addressed and in place for many years. As Dr. Osowiecki acknowledged, the presentation of Reactive Attachment Disorder, and the PTSD and anxiety which is also manifest, are practically the same as high functioning autism.

There is another concern with the diagnosis. It appears that the motivation behind it was to help qualify ACF for BHDDH services. But when ACF was presented with the feedback, she had a very negative reaction to it. If the parents and District persevere on trying to shoehorn ACF into this diagnosis, I fear it may do more harm than good. As Ms. Pfefferle pointed out, autism is now on a spectrum and kids with that diagnosis can function quite well in society. (Tr. at 613)

Dr. Potemri in her report asserts that any transition services would present significant concerns if it did not take into account the new Autism Spectrum Disorder diagnosis. (Exh. 171, at 17) She does not state, however, how ACF's transition plan and academic IEPs over the years would have been any different with such a diagnosis. In any event, the parties had the Osowiecki report on August 16, in time to consider at an August 30 IEP meeting. Instead, the parents refused to show up at the meeting. There was nothing stopping the parents from meeting with the school district officials to discuss any future IEP and transition services while this hearing has been pending.

##### ***5. Lack of transition planning***

As with the complaints about academic programs, the parents fault the District for failing to address that ACF's transition work was not being done properly. But this argument runs into the same problem, Providence is not responsible for deficiencies in transition planning when it was the parents who demanded the Walden placement.

Nevertheless, the District does not now, and did not in either March or July of 2022, deny that they would provide transition planning. The dispute has been where that planning will take place.

## ***6. Dr. Connolly's attempt to unilateral exit ACF from Walden***

The crux of this argument is that Dr. Connolly acted without authority and in violation of the IDEA by stating at the meeting of March 22, 2022, and in an email dated July 26, 2022, that ACF's placement at Walden was at an end. This is called "grossly irresponsible". As for the failure of conducting an IEP meeting between March and August of 2022, the parents claim there was difficulty scheduling by all parties. And they apparently justify not meeting on August 30 because Dr. Connolly had "pre-judged" placement.

"A school district violates the IDEA if it predetermines placement for a student before the IEP is developed or steers the IEP to the predetermined placement." K.D. ex rel. C.L. v. Dep't of Educ. Hawaii, 665 F.3d 1110, 1123 (9th Cir. 2011). "[P]redetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. In such cases, regardless of the discussions that may occur at the meeting, the School District's actions would violate the IDEA's procedural requirement that parents have the opportunity 'to participate in meetings with respect to the identification, evaluation, and educational placement of the child.'" H.B. ex rel. P.B. v. Las Virgenes Unified Sch. Dist., 239 Fed. Appx. 342, 344 (9th Cir. 2007) (quoting 20 U.S.C. § 1415(b)(1)). "However, predetermination is not synonymous with preparation." Nack ex rel. Nack v. Orange City Sch. Dist., 454 F.3d 604, 610 (6th Cir. 2006). School districts may come to IEP meetings with a proposal in mind, but must remain open to input from parents and their experts. *See* G.D. v. Westmoreland Sch. Dist., 930 F.2d 942, 947-48 (1<sup>st</sup> Cir. 1991) (finding no predetermination despite the fact that the district came to team meeting with draft IEP).

I cannot find that Dr. Connolly violated the IDEA because she came to the March 2022 IEP expressing the opinion that ACF had completed graduation, was therefore no longer entitled to IEP academic services, was not appropriately placed at Walden, and needed to return to Providence to receive any additional transition services. The 2021-2022 IEP provided for no academic goals (Exh. 100), and there was a July 23, 2021, summary of performance (Exh. I) which indicated that ACF had completed her academic coursework and was receiving an extra year at Walden to work on transition. Indeed, there is no dispute that the parents agreed to this.

As for whether ACF was appropriately placed at Walden, the overwhelming evidence at this point is that she is not. Even the parents' expert has had to concede that Walden is too restrictive an environment and has quite frankly failed at its transition program for this young woman. The plan from Walden seems to be the hope and expectation that ACF will continue to be institutionalized through BHDDH and go to a group home. That seems unlikely and may not be in ACF's best interest.

Lastly, Dr. Connolly has been consistent in stating that Providence will continue to offer transition services despite the graduation. I find her conduct throughout these proceedings to be reasonable under the difficult circumstances and confusing legal status of the Walden placement.

**CONCLUSION:**

Based upon the foregoing, I deny the parents first six requests for remedy. Whatever the deficiencies in transition assessments and planning are the fault of Walden, not Providence. To the extent Providence is responsible for transition going forward, it has acknowledged that obligation, both in Dr. Connolly's July 23, 2022, email and throughout this hearing.

The District has not stated how long it will provide transition services. They have indicated that it typically is for one year. If applied to ACF, this will take her to her 22<sup>nd</sup>

birthday, which is when the District's requirement to provide FAPE would normally end. I make no findings as to whether the District will be obligated to provide services past that date, but will note below that I am denying any compensatory education up to the date of this decision.

With regarding to the diagnosis of autism, I do not find Providence violated the IDEA, since no reports exist before 2021 which suggested that ACF had autism. As stated previously, it appears that Reactive Attachment Disorder and Autism Spectrum Disorder share similar traits, and it was testified that Reactive Attachment Disorder ends at age 18. Once the ASD diagnosis was suspected, Providence agreed to and paid for Dr. Osowiecki's evaluation, the report was completed in as timely a manner as practical and was ready for the parties to consider at the August 30, 2022, IEP meeting.

With regard to the failure to provide prior written notice when ACF was given her diploma, I find that there has been no substantive harm suffered by ACF. Providence has maintained before and throughout this hearing that it will provide transition services despite the graduation, and will not consider its obligations to provide special education services under the IDEA to be terminated.

With regard to the issuance of the diploma, I find that it is in the best interests of ACF to have received the diploma, and any attempt to rescind it would serve no useful educational purpose. The sole reason for the parent's request to rescind the diploma appears to be to maintain ACF's eligibility for special education in the nature of transition services, to which the District as agreed. I will also stress that it does not appear anyone has asked ACF her thoughts on having received the diploma, or whether it should be somehow rescinded.

Request number seven is that the hearing officer consider the parents as prevailing parties to the litigation. Under the IDEA, the parents of a child with a disability who prevail in the

administrative proceeding or litigation related to a due process hearing, may be entitled, in the discretion of the Court, to reimbursement of reasonable attorney fees. 20 U.S.C.

§1415(i)(3)(B)(i)(I).

[A] prevailing party is any party who “succeed[s] on any significant issue ... which achieves some of the benefits plaintiffs sought in bringing suit.” Maine Sch. Admin. Dist. No. 35 v. Mr. and Mrs. R., 321 F.3d 9, 14 (1st Cir. 2003). A party in a proceeding or lawsuit related to IDEA is considered “prevailing” when there is a “material alteration of the legal relationship of the parties” as well as “judicial imprimatur on the change.” Smith v. Fitchburg Pub. Sch., 401 F.3d 16, 22 (1st Cir. 2005) (*quoting* Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res., 532 U.S. 598 (2001)). Such “judicial imprimatur” includes an administrative hearing involving a hearing officer. Smith v. Fitchburg Pub. Sch., 401 F.3d at 22 n. 9. (“[F]or purposes of the IDEA, a party may 'prevail' in an administrative hearing—thus the appropriate involvement of a [state educational agency] hearing officer can provide the necessary 'judicial imprimatur.'”).

As hearing officer, I do not have the authority to award attorney’s fees. While some hearings officers may opine as to prevailing party status, I decline to do so.

Request number eight is that ACF remain at Walden until a suitable residential placement is found in Rhode Island. As an initial matter, this request was not made in the original due process complaint, so I am reluctant to permit the parents to argue it now. However, I would deny the request in any event, since I do not find that it is the District’s obligation to provide for ACF’s living arrangements. I agree with the District’s argument that the primary reason the parents are seeking residential services is not to access transition services for educational purposes, but because there are personal family issues to address. *See, e.g. In Re Scott*, 24 IDELR 1229 (New Hampshire State Educational Agency 1996); Sylvie M. v Board of Educ. Of Dripping Springs Indep. Sch. District., 31 IDELR 28(W.D. Tex. 1999).

What I do find is that the continued placement of ACF at Walden to be inappropriate, and in fact potentially harmful. All the experts, including parents’, agree on this point. The disagreement is over how to exit ACF from that program.

I agree with Dr. Osowiecki's observation that the transition away from Walden should take place over "several weeks". As I will order below, the parties need to conduct an IEP meeting as soon as possible to consider this change in placement. But it cannot drag on indefinitely and cannot be conditioned on where ACF will live. Therefore, I will order that Providence's obligation to pay for Walden end no later than the end of June of 2023.

Requests numbers nine through twelve concern Providence's obligation to provide transition services. To reiterate, there is agreement by Providence to provide such services, and to consider all of the recommendations in that regard from Drs. Potemri and Osowiecki. I would encourage Providence to include Ms. Lombardi and Ms. Pfefferle in any such transition planning. I found their testimony sincere and practical, and particularly with regard to Ms. Pfefferle, passionate in her expectations for what ACF may be able to accomplish.

I would also expect that ACF herself be included in the IEP meetings and planning for her future. The parents expressed a concern over the stress that ACF undergoes when dealing with formal proceedings. But she was able to endure the guardianship hearing, and by all accounts appears positive when presented with challenging tasks like evaluations. There is evidence that ACF has participated in prior IEP meetings as well. (Exh. 80)

The reality that the parents and ACF must face is that she will not be institutionalized much longer. There is serious doubt that she will be accepted into state care under BHDDH. That planning for this eventuality should have occurred sooner is regrettable. I find it disturbing that Walden has not taken a more active role in preparing ACF for independent living. But given the nature of the arrangement as to how ACF came to be placed at Walden, I cannot fault Providence for any of these deficiencies.

Finally, parents request compensatory services. Parents first raise the issue of



compensatory education in their post-hearing brief. Under the special education regulations, the hearing is confined to those issues as raised in the due process complaint. See § 300.511(d)”:

“The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under § 300.508(b), unless the other party agrees otherwise.” There is no mention of compensatory services in the complaint, and no request to amend to complaint to add such a request. The District has not been given the opportunity to address this issue and would be considerably prejudiced by its inclusion in any remedy.

Also, compensatory services are intended to address regression caused by a deficient IEP which results in a denial of FAPE:

“Compensatory education is a surrogate for the warranted education that a disabled child may have missed during periods when his IEP was so inappropriate that he was effectively denied a FAPE.” C.G. ex rel. A.S. v. Five Town Cmty. Sch. Dist., 513 F.3d 279, 290 (1st Cir. 2008) (citing Me. Sch. Admin. Dist. No. 35 v. Mr. & Mrs. R., 321 F.3d 9, 18 (1st Cir. 2003)). “However, compensatory education is not an automatic entitlement but, rather, a discretionary remedy for nonfeasance or misfeasance in connection with a school system’s obligations under the IDEA.” Id.

*See S.C. ex rel. N.C. v. Chariho Regional School District*, 298 F.Supp.3d 370, 384 (D.R.I. 2018).

There is no evidence as to what regression, if any, ACF suffered as a result of any deficient IEP. In fact, there is no evidence that the parents ever objected to the IEPs. I therefore deny any claim for compensatory educational services.

**ORDER:**

1. The parties shall conduct an IEP meeting forthwith to provide transition services for ACF. Those transition services will take place at Providence's Transition Academy unless the parties agree otherwise.
2. The team will be led by Providence; and ACF shall be invited to any IEP and planning meetings. Her involvement in the process is to be encouraged.
3. The recommendations of both Dr. Potemri and Dr. Osowiecki will be considered at the IEP meeting, along with recommendations from Providence School District staff. Representatives of Walden may be invited, but their presence is not required, and the meeting should not be delayed for their attendance.
4. Providence will continue to assist the parents in any application processes for BHDDH and ORS but is not responsible for establishing any living arrangement for ACF. Providence will not be responsible for any residential or day school placement, unless agreed to by the parties.
5. ACF will retain her diploma and be considered a graduate of the Providence School District. Providence will ensure that ACF's records show all prerequisites to apply for college. The graduation shall not terminate Providence's requirement to provide transition services to ACF.
6. The District will no longer be responsible for payment of the Walden placement after June 30, 2023.



/s/ Gregory P. Piccirilli, Esq.  
Special Education Due Process Hearing Officer  
Dated: March 30, 2023