



The University of the State of New York

The State Education Department

State Review Officer

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No. 14-003

Application of a STUDENT SUSPECTED OF HAVING A DISABILITY, by his parent, for review of a determination of a hearing officer relating to the provision of educational services by the XXXXXXXXX

Appearances:

Susan Luger Associates, Inc., Special Education Advocates for petitioner, Lawrence D. Weinberg, Esq., of counsel

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for respondent, Gail M. Eckstein, Esq., of counsel

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from the decision of an impartial hearing officer (IHO) which denied his request to be reimbursed by respondent (the district) for the costs of the student's tuition at the York Preparatory School (York Prep) for the 2013-14 school year. The appeal must be sustained.

II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law § 4402; *see* 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due

process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[l]).

New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding "any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student" (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][6]-[7]; 34 CFR 300.503[a][1]-[2], 300.507[a][1]). First, after an opportunity to engage in a resolution process, the parties appear at an impartial hearing conducted at the local level before an IHO (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j]). An IHO typically conducts a trial-type hearing regarding the matters in dispute in which the parties have the right to be accompanied and advised by counsel and certain other individuals with special knowledge or training; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed five business days before the hearing; and obtain a verbatim record of the proceeding (20 U.S.C. § 1415[f][2][A], [h][1]-[3]; 34 CFR 300.512[a][1]-[4]; 8 NYCRR 200.5[j][3][v], [vii], [xii]). The IHO must render and transmit a final written decision in the matter to the parties not later than 45 days after the expiration period or adjusted period for the resolution process (34 CFR 300.510[b][2],[c], 300.515[a]; 8 NYCRR 200.5[j][5]). A party may seek a specific extension of time of the 45-day timeline, which the IHO may grant in accordance with State and federal regulations (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5]). The decision of the IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]).

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision, and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.514[b], [c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

By letter dated March 14, 2013, the parent referred the student to the district for an evaluation and requested that the CSE provide the student with a free appropriate public education (FAPE) (see Parent Ex. C at p. 1).¹ In addition, the parent notified the district that they

¹ The parent executed the enrollment contract with York Prep for the student's attendance during the 2013-13 school year on February 20, 2013 (see Parent Ex. F at pp. 1-4). On February 21, 2013, the parent executed a contract enrolling the student in the Jump Start program at York Prep for the 2013-14 school year, which

executed an enrollment contract with York Prep for the 2013-14 school year in order to reserve a seat for the student in the event that the district failed to offer the student an appropriate program, and if the district failed to provide an appropriate program, the parent intended to seek reimbursement for the costs of the student's tuition at York Prep (id.).²

On September 16, 2013, the CSE convened to determine the student's initial eligibility for special education and related services (see Dist. Ex. 2 at pp. 1-2). Based upon the consideration and review of a 2012 neuropsychological evaluation of the student—which the parent had privately obtained—as well as a 2013 social history, 2013 classroom observations, and a 2013 report card, the September 2013 CSE found that the student was not eligible for special education and related services as a student with a disability (see id.; see also Dist. Ex. 1 at p. 1). By prior written notice dated October 31, 2013, the district notified the parent of the September 2013 CSE's determination, explaining the basis for the determination, describing the evaluations or assessments relied upon in reaching the determination, and other options considered but rejected (see Dist. Ex. 1 at pp. 1-2).

A. Due Process Complaint Notice

By due process complaint notice dated August 30, 2013, the parent alleged that the district failed to offer the student a FAPE for the 2012-13 and 2013-14 school years (see Parent Ex. A at pp. 1-4). More specifically, the parent asserted that the district failed to: comply with its child find obligations, evaluate the student, convene a CSE meeting to develop an IEP for the 2013-14 school year, and provide related services authorizations (id. at pp. 2-3). As a result, the parent placed the student at York Prep and provided the district with timely notice of the student's enrollment, as well as his intention to seek reimbursement for the costs of the student's tuition for the 2013-14 school year (id. at p. 3). As relief, the parent requested reimbursement of the costs of the student's tuition at York Prep, including reimbursement for the additional costs of the student's tuition for the Jump Start program, for the 2013-14 school year (id. at pp. 3-4). The parent also requested reimbursement for the costs of evaluations and related services provided to the student (id.).

B. Impartial Hearing Officer Decision

On November 7, 2013, the parties proceeded to an impartial hearing, which concluded after one day of testimony (Tr. pp. 1-95). At the impartial hearing, the district conceded that it failed to offer the student a FAPE for the 2013-14 school year, submitted two documents into the hearing record as evidence, and did not present any testimonial evidence (see Tr. pp. 5, 7, 15-96; Dist. Exs. 1-2). In a decision dated December 3, 2013, the IHO concluded that the parent failed to establish that York Prep was an appropriate unilateral placement, noting in particular that the hearing record did not contain sufficient information about the student's needs during the 2012-

included an agreement to pay the costs associated with the preparation and testimony of each teacher at an impartial hearing (id. at p. 4). The Commissioner of Education has not approved York Prep as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

² The parent wrote two additional letters to the district, dated July 22 and August 16, 2013, as follow-up to his letter, dated March 14, 2013 (see Parent Exs. D at pp. 1-2; E at pp. 1-2).

13 school year upon which to determine what would constitute an appropriate educational setting for him during the 2013-14 school year (see IHO Decision at pp. 7-10). In addition, the IHO found that the 2012 neuropsychological evaluation report did not recommend a "small class setting [for the student], but rather the report only contained recommendations for accommodations and supports" (id. at p. 10). Moreover, the IHO found that the parent also failed to submit any of the student's York Prep progress reports, although the reports were available at the time of the impartial hearing (id.). The IHO also found that the testimony of the student's York Prep teachers constituted the only evidence that pertained to the student's needs and his progress during the 2013-14 school year (see id.). Based upon the foregoing, the IHO concluded that while the evidence suggested that the student attained educational benefits from his placement at York Prep, the hearing record failed to contain sufficient evidence to support findings that the student required small classes for the entire school day, that the services the student received at York Prep were designed to meet his unique needs, or that the student was being supported by such services as were necessary to permit him to benefit from instruction (id.).

Notwithstanding the conclusion that York Prep was not appropriate to address the student's special education needs, the IHO also determined that equitable considerations would have precluded an award of relief in this instance (see IHO Decision at pp. 11-12). The IHO noted that in February 2013, the parent entered into an enrollment contract with York Prep, and without explanation, waited until March 14, 2013 to refer the student to the district for the provision of special education (id. at p. 11). Moreover, the IHO noted that the hearing record did not explain what the parent would have done had the district offered the student a FAPE (id.). Under the circumstances, the IHO concluded that the hearing record did not support a finding that the parent intended to enroll the student in a public school or that he cooperated with the CSE process (id. at pp. 11-12). Consequently, the IHO denied the parent's request for tuition reimbursement for the student's unilateral placement at York Prep for the 2013-14 school year (id. at p. 12).³

IV. Appeal for State-Level Review

The parent appeals, and asserts that the IHO erred in concluding that the student's unilateral placement at York Prep was not appropriate and that equitable considerations would not weigh in favor of the parent's requested relief. The parent argues that the IHO erred in finding that the hearing record did not contain sufficient evidence of the student's needs during the 2012-13 school year, and further, that the parent was required to establish what the student's needs were during the 2012-13 school year when the 2012-13 school year was not the school year at issue. The parent also argues that the IHO improperly faulted him for not providing an updated progress report from York Prep. In addition, the parent contends that the IHO erred in finding that the hearing record did not contain evidence demonstrating that the student required a small class setting at York Prep; rather, the parent alleges that he was required to show that York Prep offered the student an individualized program and the student benefitted as a result. Next,

³ The IHO also denied the parent's request for reimbursement of the cost of fees, evaluations, and related services as the hearing record contained no evidence to support such an award of relief (see IHO Decision at pp. 10-12).

the parent asserts that the IHO's determination with respect to equitable considerations was not supported by evidence in the hearing record.

In an answer, the district responds to the parent's allegations, and generally argued to uphold the IHO's decision in its entirety.

V. Applicable Standards

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see generally Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 239 [2009]; Bd. of Educ. v. Rowley, 458 U.S. 176, 206-07 [1982]).

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; R.E. v. New York City Dep't of Educ., 694 F.3d 167, 189-90 [2d Cir. 2012]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 [2d Cir. 2012]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]).

A board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents, if the services offered by the board of education were inadequate or inappropriate, the services selected by the parents were appropriate, and equitable considerations support the parents' claim (Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 [1993]; Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369-70 [1985]; R.E., 694 F.3d at 184-85; T.P., 554 F.3d at 252). In Burlington, the Court found that Congress intended retroactive reimbursement to parents by school officials as an available remedy in a proper case under the IDEA (471 U.S. at 370-71; see Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 111 [2d Cir. 2007]; Cerra, 427 F.3d at 192). "Reimbursement merely requires [a district] to belatedly pay expenses that it should have paid all along and would have borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148).

A private school placement must be "proper under the Act" (Carter, 510 U.S. at 12, 15; Burlington, 471 U.S. at 370), i.e., the private school offered an educational program which met the student's special education needs (see Gagliardo, 489 F.3d at 112, 115; Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007], aff'd, 2008 WL 3852180 [2d Cir. Aug. 19, 2008]). A parent's failure to select a program approved by the State in favor of an unapproved option is not itself a bar to reimbursement (Carter, 510 U.S. at 14). The private school need not employ certified special education teachers or have its own IEP for the student (Carter, 510 U.S. 7; Application of the Bd. of Educ., Appeal No. 08-085; Application of the Dep't of Educ., Appeal No. 08-025; Application of the Bd. of Educ., Appeal No. 08-016; Application of the Bd. of Educ., Appeal No. 07-097; Application of a Child with a Disability, Appeal No. 07-038;

Application of a Child with a Disability, Appeal No. 02-014; Application of a Child with a Disability, Appeal No. 01-105). Parents seeking reimbursement "bear the burden of demonstrating that their private placement was appropriate, even if the IEP was inappropriate" (Gagliardo, 489 F.3d at 112; see M.S. v. Bd. of Educ., 231 F.3d 96, 104 [2d Cir. 2000]). "Subject to certain limited exceptions, 'the same considerations and criteria that apply in determining whether the [s]chool [d]istrict's placement is appropriate should be considered in determining the appropriateness of the parents' placement...'" (Gagliardo, 489 F.3d at 112; Frank G. v. Bd. of Educ., 459 F.3d 356, 364 [2d Cir. 2006], quoting Rowley, 458 U.S. at 207). Parents need not show that the placement provides every special service necessary to maximize the student's potential (Frank G., 459 F.3d at 364-65). When determining whether the parents' unilateral placement is appropriate, "[u]ltimately, the issue turns on" whether that placement is "reasonably calculated to enable the child to receive educational benefits" (Frank G., 459 F.3d at 364; see Gagliardo, 489 F.3d at 115, citing Berger v. Medina City Sch. Dist., 348 F.3d 513, 522 [6th Cir. 2003] [stating "evidence of academic progress at a private school does not itself establish that the private placement offers adequate and appropriate education under the IDEA"]]). A private placement is only appropriate if it provides education instruction specially designed to meet the unique needs of a student (20 U.S.C. § 1401[29]; 34 CFR 300.39[a][1]; Educ. Law § 4401[1]; 8 NYCRR 200.1[ww]; Rowley, 458 U.S. at 188-89; Gagliardo, 489 F.3d at 114-15 [noting that even though the unilateral placement provided special education, the evidence did not show that it provided special education services specifically needed by the student]; Frank G., 459 F.3d at 365; Stevens v. New York City Dep't of Educ., 2010 WL 1005165, *9 [S.D.N.Y. Mar. 18, 2010]).

The Second Circuit has set forth the standard for determining whether parents have carried their burden of demonstrating the appropriateness of their unilateral placement.

No one factor is necessarily dispositive in determining whether parents' unilateral placement is reasonably calculated to enable the child to receive educational benefits. Grades, test scores, and regular advancement may constitute evidence that a child is receiving educational benefit, but courts assessing the propriety of a unilateral placement consider the totality of the circumstances in determining whether that placement reasonably serves a child's individual needs. To qualify for reimbursement under the IDEA, parents need not show that a private placement furnishes every special service necessary to maximize their child's potential. They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction.

(Gagliardo, 489 F.3d at 112; see Frank G., 459 F.3d at 364-65).

The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see R.E., 694 F.3d at

184-85; M.P.G. v. New York City Dep't of Educ., 2010 WL 3398256, at *7 [S.D.N.Y. Aug. 27, 2010]).

VI. Discussion

A. Unilateral Placement

In this case, the district conceded that it did not offer the student a FAPE for the 2013-14 school year; consequently, the next issue is whether the parent's unilateral placement of the student at York Prep, combined with the Jump Start program, during the 2013-14 school year was appropriate. For the reasons described below, the hearing record does not support the IHO's finding that York Prep, combined with Jump Start, was not appropriate.

1. The Student's Needs

Initially, the parent argues that the IHO erred in finding that the hearing record did not contain sufficient evidence of the student's needs during the 2012-13 school year, and further, that the parent was required to establish what the student's needs were during the 2012-13 school year when the 2012-13 school year was not the school year at issue. The district asserts that the IHO properly identified a lack of documentation about the student's performance or needs during the 2012-13 school year. A review of the hearing record supports the parent's contentions, and the IHO's finding must be reversed.

Under the circumstances of this case—where the district conceded that it failed to offer the student a FAPE for the school year in question and elected to not submit any evaluative information or assessments of the student as evidence of the district's view of the student's special education needs into the hearing record—the district has effectively abandoned any opportunity to assert at either the impartial hearing or on appeal its position regarding the student's special education needs and the extent to which the parent's unilateral placement either addressed or failed to address those needs (Tr. pp. 5, 7-8; Dist. Exs. 1-2). Accordingly, to the extent that York Prep or Jump Start staff relied upon evaluation reports or assessments of the student to identify the student's needs and develop the student's educational program, and those evaluation reports or assessments were not sufficiently accurate or complete for the purposes of determining the student's needs, the responsibility for such deficiency lies with the district and not the parent (see 34 CFR 300.305[c]; 8 NYCRR 200.4[b][5][iii]; A.D. v. Bd. of Educ., 690 F. Supp. 2d 193, 208 [S.D.N.Y. 2010] [finding that a unilateral placement was appropriate even where the private school reports were alleged by the district to be incomplete or inaccurate and finding that the fault for such inaccuracy or incomplete assessment of the student's needs lies with the district]).⁴ Thus, the question of whether York Prep, combined with the Jump Start program, was an appropriate unilateral placement is principally determined by whether the combined program provided "educational instruction specially designed to meet the unique needs of [the student]" (Rowley, 458 U.S. at 188-89; see Gagliardo, 489 F.3d at 115; Frank G., 459

⁴ Moreover, because a "private placement need not provide . . . an IEP for the disabled student," York Prep had no duty to conduct the tests or evaluations typically relied upon by a district to develop an IEP (Frank G., 459 F.3d at 364).

F.3d at 365). As discussed below, the evidence in the hearing record submitted by the parent in this case was sufficient to identify the student's unique individual needs and to satisfy the parent's burden to establish the appropriateness of the student's unilateral placement at York Prep for the 2013-14 school year.

In this case, the parent submitted a comprehensive, 58-page neuropsychological evaluation report of the student, which the parent privately obtained in 2012, as evidence of the student's special education needs (see Parent Ex. B at pp. 1-58).⁵ According to the report, the parent requested the evaluation in order to determine the "most appropriate academic supports, accommodations and modifications" for the student (id. at p. 1).

In the report, the evaluator described the student as a hardworking, cooperative and thoughtful young man who maintained a "wonderful work ethic despite his frustration throughout the evaluation process" (Parent Ex. B at p. 40). An administration of the Wechsler Intelligence Scale for Children—Fourth Edition (WISC-IV) yielded a full scale IQ in the average range for general cognitive ability (id. at pp. 4, 35-36). The student exhibited "slightly higher" verbal reasoning abilities compared to nonverbal reasoning abilities, which both fell within the average range (id. at p. 36). In addition, the student's ability to quickly process visual material and sustain attention, concentrate, and exert mental control were in the average range, while the student's processing speed fell within the borderline range (id. at pp. 4, 36).

With respect to academic achievement, the student performed at or above expected levels in the areas of spelling, math fluency, math problem solving, and attained scores in the high average range with respect to math fluency for multiplication (see Parent Ex. B at p. 36). In contrast, however, the student displayed challenges with reading, and demonstrated lower reading abilities than expected from his predicted ability-achievement estimates (id.). In addition, the student experienced "significant challenges with written language," especially with increased demands placed on the student (id.). Moreover, the evaluator described the student's writing as "effortful" and "frustrating" (id.).

To better understand the nature of the student's academic delays, the evaluator administered a "broad array of measures of neuropsychological functioning," which focused on assessing the student's "sensory and motor skills, attention and concentration, executive functioning, language, visuospatial abilities, and learning and memory" (Parent Ex. B at p. 36). An examination of the student's sensorimotor domain revealed skills that fell within the "borderline range bilaterally" (id. at pp. 10, 36). The evaluator explained that the student's graphomotor challenges manifested in his "difficulties with writing" and made "written language tasks particularly difficult" for him (id. at p. 36). The evaluator also described the student's attention and concentration abilities as "area[s] of significant challenge" for the student (id.). According to the report, the student exhibited difficulty sustaining attention and concentration,

⁵ To the extent that the IHO was concerned, or implicitly determined, that the 2012 neuropsychological evaluation report did not sufficiently identify the student's special education needs, the IHO is reminded that federal and State law provide IHOs with the discretionary authority to order an independent educational evaluation (IEE) of the student at district expense (34 CFR 300.502[d]; 8 NYCRR 200.5[g][2]; [j][3][viii]; Application of the Bd. of Educ., Appeal No. 12-033).

and the student "often required prompting and redirection" (id. at pp. 11, 36). In addition, while the student performed within the average range on an attention task, teacher reports indicated that the student's functional attention was "problematic" (id. at p. 36). In particular, the student demonstrated "significant difficulty" with attention, which interfered with his "information processing, problem solving and effective learning at school" (id.). Additional assessments of the student's executive functioning revealed that he "struggle[d] with inhibition of impulsive respon[ding], problem solving, planning and organization," and the evaluator noted that an "executive/organizational skills" became "increasingly in demand as the curriculum in the higher grades bec[ame] more complex" (id.).

With regard to the student's executive functioning and organizational skills, the evaluator explained that it was "important to incorporate active educational interventions into the translation of executive function interventions" within the context of an IEP or a section 504 plan (Parent Ex. B at p. 36). The evaluator further noted that the emphasis of support should focus on "teaching, modeling, and cuing an approach to self-management of learning through active planning, organization, and monitoring of work" (id.).

Using a variety of assessments to measure the student's learning and memory functioning revealed, in part, the following: working memory (average range), verbal memory (average range), nonverbal memory (high average range), and verbal and nonverbal recognition memory (average range) (see Parent Ex. B at p. 37). Overall, the evaluator noted that the full range of scores across the assessments ranged from the average range to the borderline range (id.). The evaluator explained that the student's performance for visual and verbal memory revealed a "significant difference with a notable strength for nonverbal (visual) memory, particularly for less complex visual information" (id.). The evaluator further noted that the student's verbal learning abilities were lower than expected for students his age, and the student demonstrated "poor recall, recognition and retention for newly learned verbal information" (id.).

Based upon parent, teacher and the student's self-reports, the evaluator found that the student experienced difficulty with "inhibition, initiating problem solving or activity, working memory, planning and organizing problem solving approaches, organization of materials and with monitoring his behavior" (Parent Ex. B at p. 37). In addition, the evaluator indicated that the student's "low arousal and attentional challenges further interfere[d] with his learning, problem solving and cognitive functioning" (id.).

Assessments of the student's social/emotional and psychological needs revealed that the student reported "feeling happy most of the time, supported by the adults in his life" and that he could "effectively modulate his feelings" (Parent Ex. B at p. 37). However, the student also acknowledged periods of frustration, which adults had also observed (id.). Similarly, the parent reported that the student sometimes lost his temper "too easily" and became "frustrated by task demands," which appeared to be most problematic at school as teacher reports reflected "significant concerns" regarding the student's "emotional functioning" (id.). According to teacher reports, the student appeared "disconnected from his environment," and he exhibited difficulty with "peer relations, functional communication, and emotional control," which negatively affected the student's learning (id.).

In summary, the evaluator noted the student's difficulties with respect to "functional attention and concentration, processing speed and executive functioning" (Parent Ex. B at p. 37). In addition, the evaluator indicated that these "challenges" became "further compounded" by the student's "low levels of arousal which interfere[d] with efficient information processing and learning" (*id.*). The evaluator further indicated that the student's arousal levels were an area of "real challenge" that manifested as "fluctuations in attention" and negatively affected the student's "retention of information" (*id.*). In addition, the evaluator noted the student's significant difficulties in the areas of reading and written language, and concluded that the student met the criteria for a diagnosis of an attention deficit and hyperactivity disorder (ADHD), primarily inattentive type (*id.*).

To address the student's needs identified as a result of the neuropsychological evaluation, the evaluator recommended several supports and services, including but not limited to: (1) extended time on all tests including classroom and standardized exams due to the student's "significant processing speed challenge;" (2) modifications for reading, such as digital texts and audio books to foster "multimodal processing, specifically auditory and visual;" (3) texts with enlarged font, the provision of lesson plan information in advance, pre-reading lesson plan information, and the provision of chapter outlines given the student's visual challenges; (4) study guides and note-taking assistance, such as lecture notes, power point handouts, to address the student's graphomotor skills and written language and to allow the student to "free up cognitive resources for attending and retaining lectures;" and (5) the use of assistive technology for note-taking (i.e., live scribe) in order to "free up cognitive resources for learning" (Parent Ex. B at pp. 38-39). The evaluator also suggested that the student would benefit from having access to an "academic support person," such as a counselor or tutor with whom the student could check-in as frequently as needed (*id.* at p. 38). The evaluator also recommended the use of "scaffolding, guided practice and tutoring," as well as repetition and review and breaking down goals into manageable time frames depending upon the task (*id.* at pp. 38-39).

A review of the testimonial evidence presented by three of the student's teacher at York Prep corroborated the student's educational needs as identified in the 2012 neuropsychological evaluation report (*see, e.g.*, Tr. pp. 15, 35-36, 73-74). For example, the student's Jump Start teacher identified the students' primary educational deficits as "executive functioning, particularly organization and note taking," and "written expression and reading comprehension" (Tr. pp. 18, 27). She further testified that the student experienced visual difficulties, making it difficult for the student to "open his locker," which resulted in the student being unprepared for class if he could not access his materials (Tr. pp. 18-19; *see* Tr. p 77). Similarly, the student's Spanish teacher described the student's delays in the areas of graphomotor needs, sustaining his attention for an extended period of time, and delays with respect to the student's processing needs and working memory (*see* Tr. pp. 35-37). Additionally, the student's history teacher testified that the student exhibited difficulty in the areas of executive functioning and organization (*see* Tr. pp. 72-76). The history teacher further testified that the student demonstrated difficulty "getting information from reading, extracting key information from reading, especially from academic textbook style reading," and described the organization of the student's writing as "not fairly strong" (*id.*).

Based upon the foregoing, the IHO erred in finding that the hearing record failed to contain sufficient evidence of the student's needs, or alternatively, that the parent failed to sustain his burden to establish the student's needs.

2. The York Prep and Jump Start Program

Here, the parent argues that, contrary to the IHO's rationale, he was not required to establish that the student required a small class setting for the entire day at York Prep; rather, the parent asserts that he was required to show that York Prep, combined with Jump Start, offered the student an individualized program and the student benefitted as a result. The district contends that the 2012 neuropsychological evaluation report did not specifically recommend a small class setting for the student, and therefore, the IHO properly concluded that the parent did not present sufficient evidence to demonstrate that the student required a small class setting. A review of the evidence in the hearing record supports the parent's contentions, and thus, the IHO's finding that York Prep and the Jump Start program did not provide the student with educational services to meet his unique needs must be reversed.

The hearing record describes York Prep as effectively providing a "mainstream program with a strong inclusion component" (Tr. pp. 46-48). The headmaster of York Prep (headmaster) described the Jump Start program as the "inclusion program" component, which was designed for those students who were "bright, but ha[d] learning difficulties" (Tr. pp. 48-49). More specifically, the headmaster explained that the Jump Start program was designed to teach students how to handle their learning needs, and to ensure that student received accommodations to support them and to support the mainstream curriculum, since Jump Start did not have its own "separate Jump Start curriculum" (Tr. pp. 49, 69). The headmaster characterized the Jump Start program as "fairly intense," while attempting to remain "as least restrictive as possible" (Tr. p. 56). In addition, Jump Start teachers are State-certified special education teachers (*id.*).⁶ Students meet with their Jump Start teachers on a group basis twice each day, once in the morning and once in the afternoon (Tr. pp. 56-58). In addition, Jump Start teachers pull students out of their nonacademic courses two times per week for individual sessions (*see* Tr. p. 56). Jump Start teachers also, at times, pushed in to students' classes (*see* Tr. pp. 56-57). According to the headmaster, York Prep enrolled 350 students in grades 6 through 12; 125 of those students participated in the Jump Start program (*see* Tr. p. 49). For students enrolled at York Prep, the school day began at 8:45 a.m. and concluded at 3:12 p.m.; however, students enrolled in the Jump Start program began the school day at 8:00 a.m. and ended the school day at 4:00 p.m. (*see* Tr. pp. 56-57).

To address the student's executive functioning deficits—namely the student's difficulties with respect to organization, the student's Jump Start teacher organized his class materials into "one big binder with clearly designated sections for each subject" (Tr. pp. 18-19). According to the Jump Start teacher, the student had a lot of difficulty keeping his papers and binders in order and often misplaced things or forgot things at home, and consequently, the student was unprepared for class (*id.*). She further noted that the student sometimes could not change his binders for different subjects throughout the school day, and as a result, was unprepared for class

⁶ The headmaster clarified that the Jump Start teachers also taught mainstream subjects at York Prep (*see* Tr. pp. 58, 62).

(Tr. p. 19). Furthermore, the Jump Start teacher kept track of the student's assignments in her own planner, and every morning, she reviewed a list of all materials to ensure that the student had everything that he needed for the school day, including homework assignments and books (id.). The Jump Start teacher added that during the morning and afternoon Jump Start sessions, she required the student to physically show her the contents of his backpack to make that he had the necessary materials for the school day (Tr. pp. 19-20). Similarly, the student's history teacher referenced the student's difficulty remembering homework and in order to address the student's executive functioning needs in history class, the history teacher explained that he engaged in regular contact with both of the student's parents, and especially with the student's Jump Start teacher (see Tr. p. 79). According to the history teacher, he communicated daily with the student's Jump Start teacher to keep her abreast of upcoming assignments, what the student had been doing, and what the student had not been doing (id.; see Tr. p. 85). Likewise, the history teacher indicated that the student's Jump Start teacher helped the student construct a plan for when and how the student's work was going to be completed (see Tr. p. 85). The history teacher also testified that use of the "Edline" computer program provided another form of communication designed to support the student's executive functioning needs (see Tr. p. 79).⁷ For example, by using the Edline program, the history teacher explained that the student, his Jump Start teacher, and his parents always had access to the student's daily assignments—and often upcoming assignments—in the event that the student misplaced the information for those assignments due to his executive functioning difficulties (id.). The student's Spanish teacher also described her use of the Edline program, where she explained she was able to provide class notes, a vocabulary list, and additional information for her students on the page (see Tr. pp. 44-45).

The student's Jump Start teacher described the difficulty the student experienced in taking notes, and she further indicated that student basically copied down everything he read and that the student's notes lacked any "rhyme or reason" (Tr. pp. 20-21). Specifically, in reference to the student's history assignments, the Jump Start teacher noted that she used those particular homework assignments as a model for the student, then used the section titles as a heading for his notes, while providing the student with a "who, what, where, when, why, how format" for each section (Tr. p. 21). According to the Jump Start teacher, this structure allowed the student to have "a very clear purpose for the note taking" and it aided the student in isolating the main idea for each section (id.). The Jump Start teacher also worked with the student on his English assignments, where she testified that she worked on annotating and taking notes when the student read (see Tr. pp. 20-23). She described the use of underlining important quotations, putting brackets around lengthier passages, and boxing the names of important characters or places (Tr. pp. 21-22). In addition, the Jump Start teacher worked on writing comments and questions in the margins with the student (Tr. pp. 21-22). Similarly, the student's history teacher

⁷ The headmaster described "Edline" as a "password protected software program," which was available to all parents of Jump Start students (Tr. p. 54). He further described Edline as an important resource to help parents assist their children with the organizational deficits (see Tr. p. 56). The headmaster also explained that on a weekly basis, Edline provided parents with a "complete snapshot," provided an opportunity to interact with their children, and encouraged the parents' interaction with the school using the Jump Start teacher as a "point person" (Tr. pp. 54-55). In addition, the headmaster testified that Edline allowed the Jump Start teachers to view all of the other teachers' comments in every grade (Tr. p. 54). He further explained that Edline aided students with organizational deficits, because they could access Edline every day, and get their homework and tests on a daily basis (see Tr. p. 55).

testified that he provided all of his students with what he described as "simple system for note taking, to help them extract the key details in a piece of textbook, academic writing" (Tr. p. 82). Furthermore, the student's Spanish teacher provided the student with a two-column chart, in which students wrote the vocabulary word in English on one side and in Spanish on the other side, which she described as a "great study tool" (Tr. p. 41). According to his Spanish teacher, the student could compare the list with the PowerPoint presentation and the pictures, and study (id.).

The hearing record also reflects that the supports and accommodations that the student received at York Prep and through his participation in Jump Start were consistent with the recommendations suggested in 2012 neuropsychological evaluation report (compare Tr. pp. 18-22, 79, 82, with Parent Ex. B at pp. 38-39). For example, the evaluator suggested that the student would benefit from the provision of an "academic support person," with whom he could check in as frequently as needed, as well as study-guides and note taking assistance (Parent Ex. B at p. 38). In view of the foregoing, the hearing record substantiates a finding that York Prep, in conjunction with the Jump Start program, addressed the student's executive functioning deficits with respect to his organization and note taking needs.

To address the student's attention deficits and processing needs, the student's Spanish teacher testified that limited periods of instruction to 10 to 15 minutes, which she described as a "mini-lesson, followed by a practice" (Tr. p. 39). According to the Spanish teacher, that practice session was "very interactive," because she permitted the students to walk around the classroom, and it enabled the student to move around and interact with other students (id.). In addition to curtailing the length of her instruction, the Spanish teacher also repeated instructions twice in Spanish and twice in English, in order to aid the student's focusing (see Tr. p. 42). In addition, the Spanish teacher noted that the student sat in the front of her class, which enabled her to redirect and refocus him in the event that she noticed that he was "drifting" (Tr. pp. 42-43). She also described a strategy called "Total Physical Response," where she gave students the opportunity to act out or come up with hand gestures for certain words or terms (Tr. pp. 39-40). The Spanish teacher also explained that she provided information to her students in a "very scaffolded" manner, that is, she taught vocabulary lessons through pictures, and she tried to use information that students would understand—a strategy suggested in the 2012 neuropsychological evaluation report as beneficial to the student (compare Tr. p. 39, with Parent Ex. B at p. 38).

With respect to the student's processing needs, the student's Spanish teacher characterized him as "more of a visual learner compared to a verbal learner" (Tr. p. 41). Accordingly, to address the student's processing difficulties, the Spanish teacher incorporated PowerPoint presentations into her lessons that showed a vocabulary word and then a picture that correlated to that word to enable the student to make the connection (id.). In addition, the Spanish teacher surmised that the use of the PowerPoint presentations also aided the student's working memory deficits because it was beneficial for the student to be able to associate pictures with certain words (see Tr. pp. 41-42). Furthermore, the hearing record also suggests that in light of his participation in the Jump Start program, the student received extended time on all examinations, as recommended in the 2012 neuropsychological evaluation report (compare Tr. pp. 51, 62-63, with Parent Ex. B at p. 38).

Accordingly, the hearing record supports a finding that York Prep combined with the Jump Start program provided the student with specially designed instruction aligned with the student's attention and processing needs.

To address the student's graphomotor needs and consistent with the recommendation in the 2012 neuropsychological evaluation report, the hearing record reveals that the student used a computer to take notes in class because he fatigued very easily when taking notes by hand (compare Tr. pp. 21-22, with Parent Ex. B at p. 38). The Spanish teacher also referenced the student's use of a computer in class due to his graphomotor needs, and she further explained that the computer helped the student make sure that he had all of his notes properly written on his computer (see Tr. pp. 37-38). In addition, the Spanish teacher noted that the nature of her class was designed to meet the student's graphomotor deficits, because her students did a limited amount of writing and she provided the class with guided notes (see Tr. p. 38). The hearing record also reveals that the student used his computer to take notes in his history class (see Tr. pp. 87-88). Under the circumstances, the hearing record suggests that York Prep combined with the Jump Start program provided the student with supports designed to address his unique graphomotor needs.

With respect to the student's needs in the area of reading comprehension, the 2012 neuropsychological evaluation report recommended modifications for reading, such as digital texts and audio books, and the provision of instruction and strategies on reading for meaning, in order to increase the student's comprehension and improve his retention of recently reviewed material (see Parent Ex. B at pp. 38-39). According to the student's Jump Start teacher, while the student understood what he read, the student sometimes had a hard time seeing the big picture and could not connect a passage to the overarching theme in the book (see Tr. p. 27). To address these difficulties, the Jump Start teacher described her use of graphic organizers with the student (id.). Specifically, the Jump Start teacher explained that she employed graphic organizers with the student to summarize main ideas or describe characters (id.). In addition, the Jump Start teacher testified that the student completed "a character dossier" that he completed as he read each chapter of the book his class was reading (Tr. pp. 27-28). She also worked on the student's annotating skills to help the student understand what he was reading (see Tr. p. 28). The Jump Start teacher also testified that she chose these activities for the student because the student required the structure and the guidance while reading in order to ensure his understanding (see Tr. pp. 28-29). The student's history teacher also described his use of graphic novels to help illustrate some of the concepts discussed in class in a less traditional format (see Tr. pp. 80-81). Under the circumstances, the evidence in the hearing record demonstrates that York Prep in conjunction with the Jump Start program provided the student with instruction and accommodations specially designed to address the student's reading comprehension deficits.

Next, to address the student's difficulties in the area of written expression, the Jump Start teacher first explained that the student's writing lacked structure, his paragraphs were disjointed, and his thoughts were unorganized (see Tr. p. 23). She also noted the student's difficulty with grammar and use of a number of run on sentences in his writing (id.). In order to address these deficits, the Jump Start teacher employed what she described as the "PIE Method," an acronym for "point of the paragraph," "illustration," and "explanation" (Tr. pp. 23-24). Specifically, the

Jump Start teacher noted that the PIE method was geared toward writing in English; however, she added that it could be used anytime the student needed to provide textual evidence in his writing, and therefore could aid the student when writing a history research paper (see Tr. p. 23). The Jump Start teacher also testified that she utilized the PIE method in conjunction with various graphic organizers in order to keep the student's writing more structured (see Tr. pp. 23-25). Likewise, although the student's history teacher described the student as a "fine writer," he noted the student's difficulty organizing his thoughts and placing them in a coherent order (Tr. p. 83). Therefore, in order to help the student write in a more cohesive fashion, the history teacher did not give long writing assignments, and provided a number of lessons on writing structure and how to use examples and explain them (see Tr. pp. 83-84). The history teacher also testified that he conferenced individually with the student to help him during times where the student's writing was not as strong as it could be (see *id.*). Based on the foregoing, the hearing record suggests that York Prep in conjunction with Jump Start utilized supports and strategies designed to address the student's unique needs in the area of written expression.

And finally, to address the student's visual needs that affected his functioning in the classroom, the student's Jump Start teacher used a big binder to keep track of the student's materials (see Tr. pp. 18-19). She explained that the student's visual difficulties made it difficult for him to open his locker, and as a result, sometimes, the student would be unable to "change out" his binder throughout the day (*id.*). By incorporating the student's materials into one binder, the student did not need to go to his locker as much during the day, and for the most part, he had everything with him (see Tr. p. 20). She added that the student's use of a computer in class also addressed the student's visual needs (see Tr. p. 22). Additionally, the student's history teacher noted that in order to address the student's vision needs, the history teacher employed "a lot of visual primary sources beyond any sort of written information, to help [the student] access the information for the class in an alternative manner" (Tr. pp. 77-78). The history teacher also testified that, whenever possible, he provided the student with large-print versions of the classroom materials, which the 2012 neuropsychological evaluation report indicated would be useful for the student in light of his visual challenges (compare Tr. p. 78, with Parent Ex. B at p. 38). Based on the foregoing, the hearing record suggests that the accommodations provided to the student at York Prep and through the Jump Start program were specially designed to meet the student's unique visual needs.

2. Progress

Next, the parent argues that the IHO improperly faulted him for not providing an updated progress report from York Prep. The district contends that the parent did not sustain his burden to establish the appropriateness of the unilateral placement because the hearing record did not contain evidence that the student's placement at York Prep was likely to produce progress and not regression. A review of the hearing record supports a finding that the student's unilateral placement at York Prep, combined with the Jump Start program, was reasonably calculated to enable him to receive educational benefits, and moreover, that the student made progress.

With respect to the student's progress at York Prep, a finding of progress is not required for a determination that a student's unilateral placement is adequate (Scarsdale Union Free Sch. Dist. v. R.C., 2013 WL 563377, at *9-*10 [S.D.N.Y. Feb. 4, 2013] [noting that evidence of

academic progress is not dispositive in determining whether a unilateral placement is appropriate]; see M.B. v. Minisink Valley Cent. Sch. Dist., 2013 WL 1277308, at *2 [2d Cir. Mar. 29, 2013]; D.D-S. v. Southold Union Free Sch. Dist., 2012 WL 6684585, at *1 [2d Cir. Dec. 26, 2012]; L.K. v. Northeast Sch. Dist., 2013 WL 1149065, at *15 [S.D.N.Y. Mar. 19, 2013]; C.L. v. Scarsdale Union Free Sch. Dist., 2012 WL 6646958, at *5 [S.D.N.Y. Dec. 21, 2012]; G.R. v. New York City Dep't of Educ., 2009 WL 2432369, at *3 [S.D.N.Y. Aug. 7, 2009]; Omidian v. Bd. of Educ., 2009 WL 904077, at *22-*23 [N.D.N.Y. March 31, 2009]; see also Frank G., 459 F.3d at 364).⁸ However, a finding of progress is, nevertheless, a relevant factor to be considered (Gagliardo, 489 F.3d at 115, citing Berger, 348 F.3d at 522 and Rafferty v. Cranston Pub. Sch. Comm., 315 F.3d 21, 26-27 [1st Cir. 2002]).

Here, a review of the hearing record indicates that the student made progress in his primary areas of need as a result of the supports and services the student received at York Prep and through the Jump Start program. According to the student's Jump Start teacher, the student had "come a long way . . . even in this short time" (Tr. p. 29). She added that at the time of the impartial hearing, the student had no problem asking her for assistance, and was "very receptive" to her suggestions and her help (id.). More specifically, she noted that as a result of organizing the student's binder, she received fewer reports from his teachers about the student being unprepared for class (Tr. p. 20). In addition, as a result of the note taking assistance, the Jump Start teacher testified that at the time of the impartial hearing, the student could take clear notes, especially in history, without her assistance (see Tr. p. 22). She further explained that the student could "just sit down and start writing sections with bullet points" (id.). The Jump Start teacher also indicated that the student improved his ability to take notes in his English class (id.). Furthermore, with respect to the student's reading comprehension needs, the Jump Start teacher testified that the use of the character dossier aided the student, because he was able to use the dossier in order to complete the final test on the book (see Tr. pp. 28-29).

In the area of written expression, although she described the student's writing as "very, very weak," the Jump Start teacher testified that in light of her instruction, the organization of the student's writing had improved, and while it might require some prompting, the student could elaborate more on his responses (see Tr. pp. 25, 29). Likewise, the student's Spanish teacher also testified that the student had shown progress in Spanish, particularly with respect to his ability to pay attention (Tr. pp. 40-42). According to the Spanish teacher, the student knew what was expected of him when he arrived for her class, and he had his materials ready (see Tr. p. 40). She added that the student understood that he was required to sit and maintain his attention for the first 10 to 15 minutes of class while she was instructing; however, he could walk around for the remainder of the period and interact with his peers (id.). The student's history teacher also noted improvement with respect to the student's executive functioning, as he testified that the

⁸ The Second Circuit has found that progress made in a unilateral placement, although "relevant to the court's review" of whether a unilateral placement was appropriate, is not sufficient in itself to determine that the unilateral placement offered an appropriate education (Gagliardo, 489 F.3d at 115; see Frank G., 459 F.3d at 364 [holding that although a student's "[g]rades, test scores, and regular advancement [at a private placement] may constitute evidence that a child is receiving educational benefit, . . . courts assessing the propriety of a unilateral placement consider the totality of the circumstances in determining whether that placement reasonably serves a child's individual needs"]; Lexington County Sch. Dist. One v. Frazier, 2011 WL 4435690, at *11 [D.S.C. Sept. 22, 2011] [holding that "evidence of actual progress is also a relevant factor to a determination of whether a parental placement was reasonably calculated to confer some educational benefit"]).

student was turning in assignments on time and was "on top of his homework" (Tr. p. 80). He further noted that the student was doing very well in history and his testimony also suggested that the student would not have been able to master the material to such a degree without the supports or modifications that the history teacher afforded the student (Tr. pp. 84-85).

Based on the foregoing, the hearing record demonstrates that York Prep in conjunction with the Jump Start program was reasonably calculated to confer educational benefits on the student, and therefore, constituted an appropriate unilateral placement for the student. Accordingly, the IHO's conclusion that York Prep combined with the Jump Start program was not an appropriate educational placement for the student, must be reversed.

B. Equitable Considerations

The parent alleges that the IHO's erred in concluding that the hearing record did not support a finding that the parent intended to enroll the student in a public school or that he cooperated with the CSE process, and thus, equitable considerations, if applied, would not weigh in favor of the parent's requested relief. The district argues that the IHO correctly concluded that the parent did not cooperate with the CSE process and did not intend to enroll the student in a public school. In this instance, the hearing record does not support the IHO's conclusion.

The final criterion for a reimbursement award is that the parents' claim must be supported by equitable considerations. Equitable considerations are relevant to fashioning relief under the IDEA (Burlington, 471 U.S. at 374; M.C. v. Voluntown, 226 F.3d 60, 68 [2d Cir. 2000]; see Carter, 510 U.S. at 16 ["Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable"]). With respect to equitable considerations, the IDEA also provides that reimbursement may be reduced or denied when parents fail to raise the appropriateness of an IEP in a timely manner, fail to make their child available for evaluation by the district, or upon a finding of unreasonableness with respect to the actions taken by the parents (20 U.S.C. § 1412[a][10][C][iii]; see S.W. v. New York City Dep't of Educ., 646 F. Supp. 2d 346, 362-64 [S.D.N.Y. 2009]; Thies v. New York City Bd. of Educ., 2008 WL 344728 [S.D.N.Y. Feb. 4, 2008]; M.V. v. Shenendehowa Cent. Sch. Dist., 2008 WL 53181, at *5 [N.D.N.Y. Jan. 2, 2008]; Bettinger v. New York City Bd. of Educ., 2007 WL 4208560, at *4 [S.D.N.Y. Nov. 20, 2007]; Carmel Cent. Sch. Dist. v. V.P., 373 F. Supp. 2d 402, 417-18 [S.D.N.Y. 2005], aff'd, 2006 WL 2335140 [2d Cir. Aug. 9, 2006]; Werner v. Clarkstown Cent. Sch. Dist., 363 F. Supp. 2d 656, 660-61 [S.D.N.Y. 2005]; see also Voluntown, 226 F.3d at 69 n.9; Wolfe v. Taconic Hills Cent. Sch. Dist., 167 F. Supp. 2d 530, 533 [N.D.N.Y. 2001]; Application of the Dep't of Educ., Appeal No. 07-079; Application of the Dep't of Educ., Appeal No. 07-032).

Given the facts and circumstance, the hearing record weighs in favor of a conclusion that equitable considerations support an award of relief to the parent. Notwithstanding the district's claim that the parent failed to cooperate with the CSE process, the hearing record reflects that the parent provided consent to evaluate the student, and the district has offered no evidence to the contrary (see Parent Ex. C at p. 1). The sole source of evaluative material regarding the

student—a comprehensive 58-page neuropsychological evaluation report—submitted into the hearing record was obtained by the parent, and shared with the district (Parent Ex. D at p. 1; see Parent Ex. B). Moreover, the parent was the only party that offered any evidence with respect to the student's needs. On these facts, it cannot be said that the parent obstructed the CSE process. In addition, in a case such as this, where the available evidence in the hearing record shows that district did not convene a CSE meeting to develop the student's IEP until nearly six months after the parent referred to the student to the district for an evaluation, the parents wrote multiple letters to the district before the start of the school year, and the CSE meeting occurred after the start of the 2013-14 school year and the district's overall course of action appears to simply leave the parent with no option but to wait for the district to act, on balance, the district's argument that the parent did not intend to enroll the student in a public school rings hollow and tips decidedly in favor of the parent. In view of the foregoing, the IHO's conclusion that equitable considerations should bar an award of relief in this instance must be reversed.

VII. Conclusion

In summary, the hearing record supports a finding that York Prep, combined with the Jump Start program, constituted an appropriate unilateral placement for the student for the 2013-14 school year, and that equitable considerations weigh in favor the parent's request for relief.

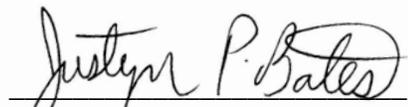
THE APPEAL IS SUSTAINED.

IT IS ORDERED that the IHO's decision, dated December 3, 2013, is modified by reversing those portions which determined that York Prep and Jump Start were not an appropriate unilateral placement for the student for the 2013-14 school year; and

IT IS FURTHER ORDERED that the IHO's decision, dated December 3, 2013, is modified by reversing that portion which found that equitable considerations did not support an award of tuition reimbursement as relief; and

IT IS FURTHER ORDERED that upon proper proof of payment, the district shall reimburse the parent for the costs of the student's tuition incurred at York Prep for the 2013-14 school year, including the costs of the student's tuition for his enrollment in the Jump Start program.

Dated: Albany, New York
February 28, 2014


JUSTYN P. BATES
STATE REVIEW OFFICER