



The University of the State of New York

The State Education Department

State Review Officer

www.sro.nysed.gov

No. 14-033

Application of a STUDENT WITH A DISABILITY, by his parents, for review of a determination of a hearing officer relating to the provision of educational services by the New York City Department of Education

Appearances:

Law Offices of James A. Brown, attorneys for petitioners, James A. Brown, Esq., of counsel

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for petitioner, Cynthia Sheps, 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. Petitioners (the parents) appeal from the decision of an impartial hearing officer (IHO) which denied their request to be reimbursed 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 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

In this case, the parents advised the district in a letter dated February 5, 2013, that, to date, the CSE had not developed the student's IEP for the 2013-14 school year and, as a result, they secured a placement at York Prep for the student through the execution of an enrollment contract for the 2013-14 school year in the event that the district did not offer the student an appropriate program (see Parent Ex. B at p. 1).¹ The parents expressed their willingness to enroll the student in a public school if the district offered an appropriate "program and/or placement," and requested

¹ On January 31, 2013, the parents executed an enrollment contract with York Prep for the student's attendance during the 2013-14 school year and paid York Prep a deposit (see Parent Exs. A at pp. 1-4; K at p. 1). 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). The student has continuously attended York Prep since September 2009 (see Parent Ex. C at p. 1; see also Dist. Ex. 1 at p. 1).

that the district schedule the student's annual review "as soon as possible" (id.). In addition, the parents requested that a "member of the CSE placement office" attend the annual review (id.).²

By letter dated August 19, 2013, the parents notified the district that although it scheduled the student's annual review for August 22, 2013—which they planned to attend—the district had not yet offered a "recommended placement" for the student (Parent Ex. E at p. 1). While the parents remained willing to consider "any recommendation" by the CSE, they notified the district of their intentions to unilaterally place the student at York Prep for the 2013-14 school year and to seek tuition reimbursement from the district (id.).

On August 22, 2013, the CSE convened to conduct the student's annual review and to develop an IEP for the 2013-14 school year (see Parent Ex. F at pp. 1, 19-20). Finding that the student remained eligible for special education and related services as a student with a learning disability, the August 2013 CSE recommended integrated co-teaching (ICT) services in a general education classroom for instruction in mathematics, English language arts (ELA), social studies, and science at a community school (id. at pp. 1, 15, 19-20).³ The August 2013 CSE also recommended special education teacher support services (SETSS) for mathematics (five times per week) and ELA (two times per week), along with related services consisting of two 40-minute sessions per week of individual physical therapy (PT) and testing accommodations (id. at pp. 15-17, 20).

A. Due Process Complaint Notice

By due process complaint notice dated September 10, 2013, the parents alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2013-14 school year (see Parent Ex. G at pp. 1-4).⁴ The parents asserted several allegations with regard to the August 2013 CSE meeting, the August 2013 IEP, and the assigned public school site (id. at pp. 2-4). Relevant to this appeal, however, the parents asserted that the student's unilateral placement at York Prep provided "instruction, supports, methodologies, supervision, and services" specially designed to meet the student's unique needs, which enabled the student to make progress at York Prep (id. at p. 4). As relief, the parents requested reimbursement for the

costs of the student's tuition at York Prep (id.).⁵

² In January and February 2013, the parents privately obtained a psychological evaluation of the student to determine his "current levels of cognitive and academic functioning" and to assist in a determination of "services and accommodations" the student required for "continued success throughout high school" and to prepare for college (see Parent Ex. C at pp. 1-10). For clarity, this evaluation will be referred to as the February 2013 psychological evaluation in this decision.

³ The student's eligibility for special education programs and related services as a student with a learning disability is not in dispute (see 34 CFR 300.8[c][10]; 8 NYCRR 200.1[zz][6]).

⁴ By final notice of recommendation (FNR) dated September 12, 2013, the district summarized the special education and related services recommended in the August 2013 IEP for the 2013-14 school year, and identified the particular public school site to which the district assigned the student to attend for the 2013-14 school year (see Parent Ex. H).

⁵ On September 20, 2013, the parents visited the assigned public school site (see Parent Ex. I at p. 1). By letter dated September 23, 2013, the parents informed the district that based upon a tour of the site and a discussion with the assistant principal about the student and his IEP, the assigned public school site was not an appropriate

B. Impartial Hearing Officer Decision

On January 6, 2014, the parties proceeded to an impartial hearing, which concluded on January 14, 2013 after two days of proceedings (see Tr. pp. 1-65). At the impartial hearing, the district conceded that it failed to offer the student a FAPE for the 2013-14 school year (see Tr. pp. 4-5). Near the conclusion of the impartial hearing, the district further indicated that it did not intend to raise any issues with respect to equitable considerations, but argued in its closing statement that the IHO should limit any award of tuition reimbursement to the costs of the Jump Start program and deny the parents' request for reimbursement of the costs of the "general education tuition" of the York Prep program (see Tr. pp. 57-61). The district submitted one document into the hearing record as evidence—an August 2013 social history update—but did not present any testimonial evidence (see Tr. pp. 1-65; Dist. Ex. 1 at pp. 1-2).^{6, 7}

In a decision dated January 27, 2014, the IHO concluded that the parents failed to establish that York Prep was an appropriate unilateral placement (see IHO Decision at pp. 7-8). Relying upon the "evaluations and class reports" as a basis upon which to determine the student's needs, the IHO found that the February 2013 psychological evaluation did not indicate that the student had a diagnosis of an attention deficit hyperactivity disorder (ADHD), which directly contradicted information in a letter drafted by the student's psychiatrist who pharmacologically treated the student related to a diagnosis of ADHD since winter 2009 (id. at p. 7). In addition, the IHO also found that the February 2013 psychological evaluation directly contradicted the York Prep teachers' understanding of the student's disability, noting that each teacher addressed the student's "diagnosis of ADHD" (id.). However, the IHO also found that while the February 2013 psychological evaluation accurately described the student's "functioning and disabilities," the York Prep teachers failed to address the student's "disabilities as documented" in the February 2013 psychological evaluation (id. at p. 8). Furthermore, the IHO found that the York Prep teachers imposed writing requirements on the student in direct contravention of the findings in the February 2013 psychological evaluation, which indicated that the student could not write and recommended that the student be permitted to use a calculator and a computer in class and on tests (id. at p. 7). The IHO also found that none of the teachers at York Prep discussed the student's handwriting (id. at p. 8). As a result, the IHO denied the parents' request for tuition reimbursement for the 2013-14 school year (id.).

IV. Appeal for State-Level Review

The parents appeal, and assert that the IHO erred in concluding that the student's unilateral placement at York Prep was not appropriate. The parents argue that contrary to the IHO's findings,

setting" for the student (id. at p. 2). The parents set forth a number of reasons why the assigned public school site was not appropriate, and indicated their intentions to continue the student's placement at York Prep and to seek tuition reimbursement (id. at pp. 2-4).

⁶ State regulations define a social history as a "report of information gathered and prepared by qualified school district personnel pertaining to the interpersonal, familial and environmental variables which influence a student's general adaptation to school" (8 NYCRR 200.1[tt]). A social history report includes, but is not limited to, information about the "family's composition, family history, developmental history of the student, health of the student, family interaction and school adjustment of the student" (id.).

⁷ On January 24, 2013, the IHO issued an order establishing York Prep and the Jump Start program as the student's pendency (stay-put) placement during the instant proceedings (see Interim IHO Decision at p. 2).

the hearing record contains sufficient evidence describing how York Prep—as well as the York Prep teachers and the Jump Start teachers—addressed the student's unique educational needs, including handwriting, and how York Prep provided the student with the actual recommendations set forth in the February 2013 psychological evaluation report and in the letter drafted by the student's psychiatrist. Additionally, while not dispositive, the parents argue that the hearing record contains evidence to support a finding that the student made progress at York Prep. Lastly, the parents argue that although York Prep did not provide the student with PT services, such fact does not preclude finding that York Prep was an appropriate unilateral placement for the student for the 2013-14 school year. The parents seek to reverse the IHO's decision, and to direct the district to reimburse them for the costs of the student's tuition at York Prep, including the costs of the Jump Start program.

In an answer, the district responds to the parents' allegations, and argues to uphold the IHO's determination in its entirety. Alternatively, if entitled to an award of tuition reimbursement, the district asserts that any award to the parents must be limited to the costs of the Jump Start program and must exclude reimbursement for expenses that are not otherwise eligible for public funding.

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. v. Mamaroneck Union Free Sch. Dist.*, 554 F.3d 247, 252 [2d Cir. 2009]). 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, 293 Fed. App'x 20, 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, at *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 to determine is whether the parents' 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, and therefore, the IHO's determination must be reversed.

1. The Student's Needs

In this instance, although the student's needs are not directly in dispute, a discussion thereof provides context for the discussion of the remaining disputed issue to be resolved—namely, whether the student's unilateral placement at York Prep, combined with the Jump Start program, was appropriate. In addition, 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 parents' unilateral placement either addressed or failed to address those needs (see Tr. pp. 4-5; Dist. Ex. 1 at pp. 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]).⁸ 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]"

⁸ 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).

(Rowley, 458 U.S. at 188-89; see Gagliardo, 489 F.3d at 115; Frank G., 459 F.3d at 365). Moreover, even if the district alleged that the hearing record did not contain sufficient information to determine the student's needs, as discussed below, a review of the hearing record establishes that the evidence in the hearing record submitted by the parents in this case was sufficient to identify the student's unique individual needs and to satisfy the parents' burden to establish the appropriateness of the student's unilateral placement at York Prep for the 2013-14 school year.

Here, the parents submitted an April 2009 psychological evaluation and a February 2013 psychological evaluation of the student, which accurately described the student's special education needs (see Parent Exs. C at pp. 1-10; R at pp. 1-10). Following the April 2009 psychological evaluation of the student, the evaluator concluded that the student's cognitive difficulties warranted a diagnosis of a nonverbal learning disability that included "very weak" organizational skills, "immature" fine motor coordination and basic visual processing skills, and "underdeveloped" executive functioning, which limited the student's ability to compensate for such difficulties (Parent Ex. R at p. 7). The evaluator reported that although the student was a "solid reader and an enthusiastic writer," concerns were raised about his handwriting skills and his ability to organize his thoughts on the page (id.). Additionally, according to the evaluator, the student's difficulties with mathematics—his "weakest subject"—arose from "some combination of executive/organizational and visual-motor/processing speed issues" (id.). At that time, the evaluator recommended that the student receive extra time for all standardized and in-class tests (id.). In addition, the evaluator noted that the student seemed "ideally suited for York's Jump Start program," and further recommended that the student's Jump Start program should focus on "how to compensate for his organizational weaknesses, especially with respect to writing assignments, studying for comprehensive tests and managing his time" (id.).⁹

In the February 2013 psychological evaluation report, the evaluator indicated that since the April 2009 psychological evaluation, the student "generally" did well at York Prep with the support of the "comprehensive on-site tutorial program, Jump Start" (Parent Ex. C at p. 1). The evaluator also noted, however, that the student continued to struggle in mathematics and science, he remained in the "lowest academic track," and he exhibited significant difficulty with big tests," as studying for them demanded more sophisticated organizational skills (id.). Results of cognitive assessments confirmed the presence of a nonverbal learning disability, which limited the extent to which the student absorbed "material presented visually," and affected his organization skills, graphomotor facility, and processing speed (id. at p. 3). The evaluator also noted additional vulnerabilities in the areas of memory and attention (id.). In addition, the evaluator described the student's "most outstanding cognitive strength" as his ability to "understand ideas and make connections between them" (id.).

Specifically, assessments of the student's language skills revealed that despite excellent vocabulary and comprehension skills, the student exhibited significant difficulty with word finding problems and struggled to organize verbal responses (see Parent Ex. C at pp. 3-4). The student demonstrated great difficulty with virtually all visually-based tasks, which negatively affected his

⁹ The evaluator also noted in the April 2009 psychological evaluation report that during the past year, the student complained about an inability to "pay attention," which led to the initiation of—and continued use of—pharmacological treatment (Parent Ex. R at p. 1). This information is consistent with a January 7, 2014 letter drafted by the student's psychiatrist, indicating the student's pharmacological treatment by the psychiatrist for an ADHD since winter 2009 (compare Parent Ex. Q, with Parent Ex. R at p. 1).

attention to visual detail, processing speed, and organization (id. at pp. 4-5). In the area of graphomotor ability, the evaluator described the student's pencil control and handwriting skills as "immature" (id. at p. 5). The evaluation report indicated that the student processed visually-based information "very slowly," and exhibited a lack of processing speed on academic tasks, especially in mathematics (id.). In addition, the student struggled on verbal memory tasks with significant organizational components, and results of memory testing suggested global difficulty transferring newly presented information from short-term memory to long-term memory (id.). Although the evaluator reported that the student's behavior during testing did not yield significant concerns regarding the presence of an attention deficit, the student's executive functioning—which the evaluator described as the "efficient allocation of attentional resources . . . includ[ing] such skills as organization, planning and self-monitoring"—was a relevant area of concern (id. at pp. 5-6).

Academically, the student's difficulties with organization and executive functioning made reading "dense non-fiction (e.g. History or Science texts) . . . very challenging" and his "uneven ability to play with non-literal language" also made reading "sophisticated fiction" difficult for the student as well (Parent Ex. C at p. 6). With regard to writing, the evaluator indicated that it was very hard for the student to formulate his ideas and "get them down on the page in [a] linear and organized fashion" (id.). The evaluator characterized the student's weakest subject as mathematics because he could not "reliably" complete calculations in his head, he performed very poorly on a written calculations test, and he worked very slowly on a mathematics fluency test, demonstrating the profound lack of visual processing speed noted elsewhere (id. at p. 7). As a result of the foregoing, the evaluator continued the student's diagnoses of a mathematics disorder and a disorder of written expression (id.).

In his report, the evaluator indicated that the student needed instruction and support in learning how to approach studying in a more organized, methodical fashion in order to improve his performance on "comprehensive tests;" explicit guidance in executive functioning with respect to academic tasks, such as expository writing, studying for tests, and time management; reading support for dense nonfiction and sophisticated fiction texts; remedial work in the areas of expressive language and the executive functioning aspects of writing; and explicit instruction in basic arithmetic operations (see Parent Ex. C at pp. 5-7). The evaluator further recommended that the student receive extended time on all in-class and standardized tests and that he was allowed the use of a computer and calculator in class for both tests and note taking and to circle his answers in a booklet rather than using a computerized answer sheet (id. at p. 7). Additionally, the evaluator indicated that the student would benefit from the opportunity to preview material to be presented in class and to have a note taker (id.).¹⁰

In addition, the hearing record indicates that the student's 10th grade York Prep mathematics and York Prep English teachers—as well as his history/Jump Start teacher—during the 2013-14 school year were aware of the student's attention, executive functioning, and academic needs and his needs related to the diagnosis of a nonverbal learning disability based upon their

¹⁰ To the extent that the district submitted an August 2013 social history update into evidence at the impartial hearing, a review of the August 2013 social history update reflects the parent's understanding of the student's cognitive, academic, and executive functioning deficits was generally commensurate with the results of the February 2013 psychological evaluation (compare Dist. Ex. 1 at pp. 1-2, with Parent Ex. C at pp. 3-7). The August 2013 social history updated also indicated that the student received a diagnosis of ADHD, which was treated with medication (see Dist. Ex. 1 at p. 1).

observations of the student in class and their review of the student's "psychoeducational report" (Parent Exs. L at pp. 1-2; N at p. 1; O at pp. 1-2).¹¹ Here, the teachers independently described the student's difficulties with attention, organization, visual processing, written language, and reading comprehension commensurate with the student's difficulties as described in the February 2013 psychological evaluation report (compare Parent Ex. C at pp. 3-7, with Parent Ex. L at pp. 2-3, and Parent Ex. N at pp. 2-3, and Parent Ex. O at pp. 2-5).

2. The York Prep and Jump Start Program

Turning to the issue in dispute, the parents argue that contrary to the IHO's findings the hearing record contains sufficient evidence describing how the York Prep and the Jump Start program—as well as the York Prep teachers and the Jump Start teachers—addressed the student's special educational needs, including handwriting, and provided the student with the actual recommendations set forth in the February 2013 psychological evaluation report and in the letter drafted by the student's psychiatrist.¹² In addition, the parents argue that although the student did not receive PT services at York Prep, this fact, alone, does not preclude a finding that York Prep, combined with the Jump Start program, was an appropriate unilateral placement for the student for the 2013-14 school year. In opposition, the district asserts that the parents did not sustain their burden to establish that York Prep and the Jump Start program was an appropriate unilateral placement primarily because the student's teachers did not address the student's handwriting deficits, and the parents supplemented the program with additional PT services for the student. A review of the evidence in the hearing record supports the parents' contentions, and thus, the IHO's finding that York Prep, combined with the Jump Start program, did not provide the student with educational services to meet his unique needs must be reversed.

According to the headmaster of York Prep (headmaster), the school—which he characterized as a full inclusion model—enrolled approximately 350 students and placed students within four different "tracks" for the main academic subjects according to their ability (Parent Ex. P at p. 1). Middle school classes had approximately 12 students, while high school classes ranged from 15 to 16 students (id.). At York Prep, although students with learning disabilities comprised approximately half of all of the students enrolled, approximately 125 students with disabilities were enrolled in the Jump Start program (see id. at p. 2). Students admitted into the Jump Start program must have an IEP or "preferably a neuropsychological or psychoeducational evaluation," which the York Prep school psychologist reviewed to determine whether a student was appropriate for the program (id. at pp. 1-2). In the Jump Start program, every student was assigned to a State-certified special education or "remedial specialty" teacher (a Jump Start teacher), who met individually with the student twice a week and provided "skills-based instruction" to address the student's learning deficits (id.). Each Jump Start teacher typically worked with a total of approximately 11 students or less, and met with students twice a day in a group (id. at p. 2). The

¹¹ Within the context of the hearing record, it appears that the York Prep and Jump Start teachers—when referencing the student's "psychoeducational report" as a basis upon which they were familiar with the student's needs in their respective affidavits—relied upon the February 2013 psychological evaluation report as that source for information (compare Parent Ex. C at pp. 1, 7, with Parent Ex. L at p. 2, and Parent N at p. 1, and Parent Ex. O at p. 2).

¹² In a January 7, 2014 letter, the student's psychiatrist indicated that "even with the optimization of his medication regimen," the student required "frequent redirection from his teachers and the structure of a small classroom setting with additional small group and individual support on a daily basis" (Parent Ex. Q).

headmaster indicated that in group sessions, the Jump Start teacher worked on students' executive functioning skills related to homework and test taking, and also skills-based difficulties when necessary (id.). The headmaster also attested that the Jump Start teacher supported York Prep classroom teachers by assisting them with modifications to their instruction, meeting with them to discuss Jump Start students, and providing them with training regarding how to instruct students who participated in the Jump Start program (id. at pp. 2-3). For students in the "lower" tracks, Jump Start teachers "push[ed]-in" to the classrooms and collaboratively taught with York Prep classroom teachers approximately two times per week (id. at p. 3). The headmaster further attested that the formal "push in" program had existed for three years and that, in addition, some Jump Start teachers also taught classes in the lower academic tracks (id.).

Next, to address the student's attention needs the hearing record demonstrates that the York Prep mathematics teacher provided the student with repetition, nonverbal cues to signal to the student that he needed to pay attention, and multisensory instruction, such as PowerPoint presentations, to keep the student engaged in the lesson (see Parent Ex. L at pp. 1-2).¹³ The mathematics teacher also used a "one-document" approach that required the student to write down assignments, take class notes, and complete class assignments and homework all in one document (id. at p. 2). According to the mathematics teacher, because the document was graded, the student was compelled to pay attention and take notes in class (id.). The mathematics teacher also stated that techniques, such as previewing upcoming assignments and repeatedly explaining what the class would be doing related to past and future assignments, helped the student to stay on task (id.). Similarly, in English class the York Prep teacher addressed the student's attention needs by refocusing and redirecting him with verbal cues, and using repetition and visually stimulating, multisensory presentations (see Parent Ex. N at pp. 1-2). The student's Jump Start teacher, who was also his history teacher, attested that she was aware that the student required a great deal of redirection, and therefore, she sat the student close to her to help keep him engaged in the lesson and used both verbal and nonverbal cues to redirect and refocus him (see Parent Ex. O at pp. 1-2, 4). The Jump Start teacher indicated that the student responded well to redirection and did not resist her efforts to refocus him (id. at p. 2). She also reviewed the student's class notes to ensure that he paid attention in class and grasped the concepts presented (id.).

To address the student's executive functioning needs, the York Prep mathematics teacher maintained a very structured classroom, which helped the student stay organized and aware of teacher expectations (see Parent Ex. L at p. 2). The mathematics teacher also used instructional strategies, such as graphic organizers and chunking or breaking down material, to help the student better understand the lesson (id. at p. 3). The Jump Start teacher addressed the student's organizational needs by checking to ensure he wrote down his homework each day, and used Edline—a computer-based information system classroom teachers used to post documents including homework assignments, PowerPoint presentations, handouts, and upcoming test dates—and a Google calendar to keep track of his assignments (see Parent Ex. O at pp. 2, 4; see also Parent Ex. P at p. 2). The student was also required to e-mail the Jump Start teacher on a nightly basis to inform her of his homework assignments and their stage of completion (see Parent Ex. O at p. 2).

¹³ Prior to his employment at York Prep, the mathematics teacher held a special education certification and taught in both "self-contained" classes and integrated co-teaching (ICT) settings in the public school (Parent Ex. L at p. 1).

The Jump Start teacher also used color-coded binders and folders with the student to improve his organization (id.).

To mitigate difficulties the student had with solving geometry problems that contained little to no linguistic information, the York Prep mathematics teacher taught the student to "mentally find and activate compensating verbal abilities" and apply them to "image-based problems"—effectively, turning an "image into language" (Parent Ex. L at p. 3). According to the mathematics teacher, this process helped the student access the information he needed to solve problems and to locate necessary information (id.). Twice per week, a Jump Start teacher certified in special education pushed into the student's mathematics class and collaboratively taught with the York Prep mathematics teacher to ensure that the student's deficits were addressed (id.). During mathematics class, the same Jump Start teacher sat with the student during note-taking and discussions, ensuring he had the correct materials and helping him access nonverbal problems using strategies tailored to his learning profile (id.). The student's assigned Jump Start teacher also reviewed mathematics practice problems with him (see Parent Ex. O at p. 3).

To address the student's written expression deficits, the Jump Start teacher used a specific writing "system" that included techniques such as brainstorming, using outlines and graphic organizers, teaching and reinforcing editing and revising skills, and formulating paragraphs (Parent Ex. O at pp. 3-5). She also provided explicit instruction to improve the student's grammar skills, including providing grammar rule "drills" (id. at p. 3). In English, the student's class met seven times per week, two of which met in the writing (computer) lab (see Parent Ex. N at p. 2). In the writing lab, the York Prep English teacher provided the student with "step-by-step" instruction in the writing process, which gave the student "much needed structure" (id.). The English teacher indicated that because of the small class size, he could devote individual attention to the student's writing needs and spent time helping the student one-on-one with brainstorming ideas and formatting and organizing his essays (id.). The York Prep English teacher also used other strategies with the student, including graphic organizers and a specific computer software program to help the student plan stages of writing essays (id.).

To improve the student's reading comprehension skills, both the York Prep English teacher and the Jump Start teacher reviewed annotation and highlighting strategies with the student; the Jump Start teacher also provided the student with opportunities to summarize what he had read as a check for understanding (see Parent Exs. O at pp. 3, 5; N at p. 2). The Jump Start teacher also had the student reread material, and she used character charts and story maps to help the student stay organized, improve comprehension, and recall details (see Parent Ex. O at p. 3). In the student's history class, the Jump Start teacher "frontloaded" vocabulary by providing and reviewing vocabulary lists with the student and asking targeted questions as a check for comprehension (id. at p. 5). In English, the teacher broke down reading passages into smaller segments so the student would not become "lost" in longer, detailed reading assignments (see Parent Ex. N at p. 2). The English teacher also posted passages on an overhead projector and reviewed the passages line by line—often substituting simpler words—to improve the student's comprehension (id. at pp. 2-3). In addition, the English teacher previewed reading materials with the student so he knew what to look for in a particular paragraph while reading (id. at p. 3). The English teacher also utilized a Jump Start teacher for two "push in" sessions a week which he found beneficial to the student (id. at 3).

In addition to addressing the student's difficulties with attention, organization, visual processing, written language, and reading comprehension as described in the February 2013 psychological evaluation report, the hearing record further indicates that the York Prep and Jump Start teachers provided the student with specific accommodations noted within the evaluation report, such as extended time for assessments, the use of a laptop computer in the classroom, and preview of materials to be presented in class or the provision of class notes or a note taker (compare Parent Ex. C at pp. 3-8, with Parent Ex. L at pp. 2-3, and Parent Ex. N at pp. 2-3, and Parent Ex. O at pp. 2-5). As noted by the parents, the hearing record also demonstrates that the York Prep and Jump Start program, together with the teachers, provided the student with the accommodations recommended in the psychiatrist's letter, dated January 7, 2014, including redirection, a small structured setting, and additional small group and individual support on a daily basis (compare Parent Ex. Q, with Parent Ex. L at pp. 2-3, and Parent Ex. N at pp. 2-3, and Parent Ex. O at pp. 2-5, and Parent Ex. P at pp. 2-4).

With respect to the district's more specific allegations that York Prep, combined with the Jump Start program, was not an appropriate unilateral placement because it did not address the student's handwriting difficulty, the hearing record indicates that the student used a laptop computer in the classroom, and received guided class notes via Edline, thus accommodating his handwriting deficits (see Parent Exs. L at p. 3; M at p. 2; O at pp. 2, 4; see Parent Ex. P at p. 2).¹⁴ The district further asserts that the parents' unilateral placement was not appropriate because it did not provide the student with the PT services, as recommended in the August 2013 IEP (see Parent Ex. F at pp. 16, 20). However, other than the recommendation for PT services in the August 2013 IEP—which the district did not defend at the impartial hearing—the hearing record is devoid of evidence indicating that the student presented with such significant gross motor needs that he required PT services in order to receive educational benefits or that the failure to provide the student with PT services at York Prep, alone, resulted in a finding that the unilateral placement was not appropriate.¹⁵

Based upon the foregoing, the hearing record demonstrates that contrary to the IHO's conclusions, the hearing record contained sufficient evidence describing how the York Prep and the Jump Start program—as well as the York Prep teachers and the Jump Start teachers—addressed the student's special educational needs, including handwriting, and provided the student with the recommended accommodations.

3. Progress

Finally, the parents argue that, although not dispositive, the hearing record contains evidence to support a finding that the student made progress at York Prep. 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

¹⁴ Moreover, the student's August 2013 IEP did not include a recommendation that the student receive occupational therapy services to address handwriting deficits, nor did the IEP—with the exception of using a keyboard as a testing accommodation—provide in-class program modifications, such as the use of a computer or class notes, to accommodate the student's handwriting needs (see Parent Ex. F at pp. 1-23).

¹⁵ The February 2013 psychological evaluation report did not indicate that the student exhibited gross motor needs, nor did the evaluator recommend PT services for the student (see Parent Ex. C at pp. 1-10).

dispositive in determining whether a unilateral placement is appropriate]; see M.B. v. Minisink Valley Cent. Sch. Dist., 523 Fed. App'x 76, 78, 2013 WL 1277308 [2d Cir. Mar. 29, 2013]; D.D-S. v. Southold Union Free Sch. Dist., 506 Fed. App'x 80, 81, 2012 WL 6684585, [2d Cir. Dec. 26, 2012]; L.K. v. Ne. Sch. Dist., 932 F. Supp. 2d 467, 486-87 [S.D.N.Y. 2013]; C.L. v. Scarsdale Union Free Sch. Dist., 913 F. Supp. 2d 26, 34, 39 [S.D.N.Y. 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. Mar. 31, 2009]; see also Frank G., 459 F.3d at 364).¹⁶ 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]).

As argued by the parents, the hearing record shows that the student exhibited progress while at York Prep during the 2013-14 school year (see Parent Exs. L at p. 4; M at p. 2; N at p. 3; O at pp. 4-5). The student's mathematics teacher attested that he observed a "tremendous improvement" in the student's ability to access materials more independently than at the beginning of the school year, that he routinely implemented strategies when prompted, and that his grades on tests and quizzes steadily increased (see Parent Ex. L at p. 4). The mathematics teacher also indicated that the student's organization and classroom participation improved (*id.*). The English teacher also attested to the student's progress during the 2013-14 school year based upon results of the student's assessments (see Parent Ex. N at p. 3). According to the English teacher, the student also exhibited the ability to manage long-term tasks more independently, showed an improvement in his ability to focus in class, asked meaningful questions requiring inferential thinking, and internalized strategies regarding the writing process (*id.*). The Jump Start teacher noted that the student's grades generally improved since the beginning of the school year, and he improved in specific areas of written expression (see Parent Ex. O at pp. 4-5). Finally, the hearing record further shows that based upon the student's November 2013 report card, he achieved passing grades in all subjects (see Parent Ex. J).

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 and Relief

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,

¹⁶ 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"]).

510 U.S. at 16 [noting that "[c]ourts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required," and further that "[t]otal reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable").

As noted previously, the district indicated near the conclusion of the impartial hearing that it did not intend to raise any issues with respect to equitable considerations, but then argued in its closing statement that the IHO should limit any award of tuition reimbursement to the costs of the Jump Start program, alone, and should deny the parents' request for reimbursement of the costs of the "general education tuition" for the York Prep program (see Tr. pp. 57-61). On appeal, the district reasserts this argument, and argues for the first time on appeal that the parents should not be reimbursed for the costs of expenses not otherwise eligible for public funding, including the following: tuition insurance; a "combined fee;" a returned check fee or expired/declined credit card fee; a bookstore charge; and "additional charges."¹⁷ In this case—and contrary to district's assertions at the impartial hearing and on appeal—the district's arguments more closely resemble assertions that the parents are not entitled to the entire amount of relief requested, and thus, are more appropriately analyzed within the context of equitable considerations than with regard to whether York Prep, combined with the Jump Start program, was appropriate to meet the student's needs (see L.B. v. Nebo Sch. Dist., 379 F.3d 966, 979 n.18 [10th Cir. 2004] [indicating that whether the student required the entirety of the after-school services obtained to succeed in the private placement was an appropriate equitable consideration]).

While parents are entitled to reimbursement for the cost of an appropriate private placement when a district has failed to offer their child a FAPE, it does not follow they may take advantage of deficiencies in the district's offered placement to obtain all those services they might wish to provide for their child at the expense of the public, as such results do not achieve the purpose of the IDEA. To the contrary, "[r]eimbursement 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 [emphasis added]; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148). As one circuit court recently explained, "[e]quity surely would permit a reduction from full reimbursement if [a unilateral private placement] provides too much (services beyond required educational needs), or if it provides some things that do not meet educational needs at all (such as purely recreational options), or if it is overpriced" (C.B. v. Garden Grove Unified Sch. Dist., 635 F.3d 1155, 1160 [9th Cir. 2011]; Still v. DeBuono, 101 F.3d 888, 893 [2d Cir. 1996] [finding that "[t]he appropriate amount (of reimbursement) thus bears a relationship to the quantum of services that the state would have been required to furnish"] [emphasis added]; J.P. v County Sch. Bd., 447 F. Supp. 2d 553, 591 [E.D. Va. 2006], rev'd on other grounds 516 F.3d 254 [4th Cir. 2008] [explaining that the district "must reimburse the parents for the reasonable costs of educating (the student) at the (private school) and any related services and accommodations that would have been covered under the IDEA had (the district) provided (the student) with an appropriate education"] [emphasis added]).

First, to the extent the district asserts that the parents should only be reimbursed for the costs of the Jump Start tuition, the hearing record demonstrates that the student's Jump Start

¹⁷ The "combined fee" referred to the costs of "combined activity & student accident insurance & parents association dues;" similarly, the "additional charges" included the costs of test preparation, trips, summer school, or other expenses incurred during the school year (Parent Ex. A at p. 1).

program was sufficiently integrated into the York Prep program and that the program, as a whole, met his special education needs. According to York Prep's headmaster, Jump Start teachers supported the York Prep classroom teachers by helping them modify instruction to meet the needs of the Jump Start students (see Parent Ex. P at p. 2). Additionally, the hearing record indicates that the Jump Start teachers and the York Prep classroom teachers met regularly to discuss students, and the Jump Start teachers collaboratively provided instruction with the York Prep classroom teachers as part of a formal "push in" program (see Parent Exs. L at p. 3; N at p. 3; O at p. 4; P at p. 3; M at p. 2). Under these circumstances, the specialized instruction cannot be solely attributed to a specific school program—York Prep or Jump Start—and cannot be viewed separately from the general education instruction (Bd. of Educ. v. Gustafson, 2002 WL 313798, at *6-*7 [S.D.N.Y. Feb. 27, 2002]); but see Application of the Dep't of Educ., Appeal No. 09-046; Application of Dep't of Educ., Appeal No. 06-061; Application of a Child with a Disability, Appeal No. 05-008). Therefore, the evidence in the hearing record does not support the district's argument, and an award of tuition reimbursement to the parents in this case shall include reimbursement of the costs of both the York Prep tuition (\$41,200.00) and the Jump Start tuition (\$19,000.00) (see Parent Ex. A at pp. 1, 4).

Next, with regard to the district's request to deny reimbursement for the tuition insurance, the "combined fee," the returned check fee or expired/declined credit card fee, the bookstore charge, and the "additional charges" as described in the York Prep enrollment contract, the evidence in the hearing record does not support the district's arguments. First, the enrollment contract specifically indicates that the parents would only be responsible for these charges, "if applicable," and thus, appear to represent additional charges with regard to the overall tuition rates for either York Prep or the Jump Start program (see Parent Ex. A at p. 1). Next, a review of the hearing record fails to indicate that any of the charges identified above applied to the student's attendance at York Prep, or his participation in the Jump Start program, during the 2013-14 school year, except for the bookstore charge (see Tr. pp. 1-65; Dist. Ex. 1; Parent Exs. A-S). For example, a review of the enrollment contract demonstrates that the parents did not elect to participate in York Prep's "tuition refund insurance," which insured prepaid or unpaid tuition charges in the event of the absence, withdrawal, or dismissal of the student (Parent Ex. A at p. 1). In addition, the hearing record fails to contain any evidence that York Prep—in accord with the contractual language—applied the "combined fee," the returned check fee or expired/declined credit card fee, or the "additional charges" to the student's attendance at York Prep during the 2013-14 school year, that the parents paid for any of these applicable charges, or that the parents sought to recover the costs of these expenses in addition to the tuition for York Prep and the Jump Start program (see Tr. pp. 1-65; Dist. Ex. 1; Parent Exs. A-S). In contrast, the only evidence suggesting that the parents paid the additional bookstore charge is the contractual language itself, which described the bookstore charge as a "mandatory deposit" of \$1200.00 that allowed the student to purchase "books, uniforms, athletic clothing and supplies" (Parent Ex. A at p. 1). Therefore, based upon the evidence in the hearing record and the equitable authority afforded in fashioning relief under the IDEA, the district shall reimburse the parents for the costs of the bookstore charge, not to exceed \$1200.00, upon proper proof of payment.

VII. Conclusion

In summary and contrary to the IHO's determinations, the evidence in the hearing record demonstrates that the parents sustained their burden to establish that York Prep, combined with the Jump Start program, was an appropriate unilateral placement for the student for the 2013-14

school year and that equitable considerations weigh in favor of the parents' request for an award of tuition reimbursement.

THE APPEAL IS SUSTAINED.

IT IS ORDERED that the IHO's decision, dated January 27, 2014, is modified by reversing those portions which determined that York Prep, combined with the Jump Start program, was not an appropriate unilateral placement for the student for the 2013-14 school year; and,

IT IS FURTHER ORDERED that upon proper proof of payment, the district shall reimburse the parents for the costs of the student's tuition at York Prep (\$41,200.00) and the costs of the student's tuition for the Jump Start program (\$19,000.00) for the 2013-14 school year, as well as the costs of the bookstore charge (\$1200.00).

Dated: **Albany, New York**
 April 16 , 2014

CAROL H. HAUGE
STATE REVIEW OFFICER