



The University of the State of New York

The State Education Department

State Review Officer

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No. 20-131

Application of the NEW YORK CITY DEPARTMENT OF EDUCATION for review of a determination of a hearing officer relating to the provision of educational services to a student with a disability

Appearances:

Howard Friedman, Special Assistant Corporation Counsel, attorneys for petitioner, by Cynthia Sheps, Esq.

Law Office of Gottlieb & Gottlieb, LLP, attorneys for respondents, by Marc A. Gottlieb, Esq.

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 district) appeals from the decision of an impartial hearing officer (IHO) which ordered it to reimburse the parents for their son's tuition, residential costs, transportation, and related services at the Middlebridge School (MBS) for the 2019-2020 school year. The appeal must be dismissed.

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 and Due Process Complaint Notice

At the time of the impartial hearing, the student was 16 years old and parentally placed at MBS, a small, out-of-state, independent boarding and day program for students with learning disabilities (Parent Ex. F at p. 1).¹

¹ Although the student was enrolled at MBS as a boarding student for the 2019-20 school year, due to COVID-19 the school sent its students home on March 13, 2020, with remote learning starting on March 16, 2020 (Parent Ex. L; see Tr. pp. 82-83, 87-88). The student participated in classes through MBS's virtual remote learning (Tr. pp. 82-83; see Parent Ex. H).

The hearing record is sparse with regard to the student's educational history. The student's mother reported that the parents became aware that the student was struggling in or around fourth grade (Tr. p. 92-93). The student was not able to keep up with peers and had difficulty remembering things (Tr. p. 93). In addition, the student was not able "to express" his social and academic issues (id.) The parents started trying to move the student to a school that could better support him (id.). As gleaned from the hearing record, the last time a district CSE met was on March 1, 2017 to develop an IEP for the student for the 2017-18 school year (Tr. pp. 104-05; see Parent Ex. A; Dist. Ex. 1).² The March 2017 CSE found the student eligible for special education programs and services as a student with a learning disability (Parent Ex. A at pp. 1, 11). The hearing record does not indicate any change to the student's educational classification since that time.³ The March 2017 CSE recommended that for the 2017-18 school year the student receive integrated co-teaching (ICT) services in a general education setting in a community school for English language arts (ELA), math, science, and social studies, with related services of individual and group counseling, and testing accommodations (Parent Ex. A at pp. 8-11). The student attended Windward School, characterized as "a special school for bright children with language-based learning disabilit[ies]" for the 2017-18 school year (Tr. p. 113; see Parent Ex. B at p. 1).⁴

In early September 2018 the parents obtained an updated neuropsychological evaluation of the student (Parent Ex. B). Based on a variety of assessments the examiner determined that the student met the criteria for a language disorder, social (pragmatic) communication disorder, specific learning disorder with impairment in mathematics, ADHD predominately inattentive type, and social and generalized anxiety (Parent Ex. B at pp. 4-5).

Much of the student's subsequent history was reported by the student's mother. The CSE did not contact the parents to develop an IEP for the student for the 2018-19 school year (see Tr. p. 105). The student initially attended a residential program at the Forman School (Forman), described by the parent as a school for students with learning disabilities who did not exhibit social disorders (Tr. p. 94). The parents sought tuition reimbursement for the student's attendance at Forman and ultimately entered into a settlement agreement with the district (Tr. pp. 94-95).⁵ The hearing record does not detail the terms of the agreement. According to the student's mother, the

² Both parties entered the student's March 1, 2017 IEP into evidence (Tr. pp. 24-26, 28; Parent Ex. A; Dist. Ex. 1). The parents' exhibit is printed using a landscape layout and consists of 12 pages (Parent Ex. A). The district's exhibit is printed using a portrait layout and consists of 23 pages (Dist. Ex. 1). A review of both IEPs for content shows they are the same, except that the district's copy of the IEP includes blank areas intended for progress report notations, while the parents' copy of the IEP does not (compare Parent Ex. A with Dist. Ex. 1). For purposes herein, the copy entered into evidence by the parents will be the exhibit cited when referring to the March 1, 2017 IEP (Parent Ex. A).

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 The student's mother reported that Windward School recommended "a lot of stuff" for the student, including (unspecified) residential and non-residential placements and the parents looked at all of them (Tr. p. 114).

⁵ Testimony by the parent affirmed that she submitted written evidence to the district about the student's need for a residential program as part of the undisclosed settlement negotiations for 2018-19 when he was at Forman (Tr. pp. 95-96).

student's experience at Forman was "awful" (Tr. p. 96). She explained that because of the student's social pragmatic difficulties, he was "in way over his head" and "was getting in a lot of trouble" socially (Tr. p. 98). She further explained that the student got into situations where peers took advantage of the social aspect of his learning disabilities (Tr. p. 98). The student was not able to perceive the ramifications of his actions (Tr. pp. 98-99). The parents withdrew the student from Forman in December 2018 and he returned home (Tr. p. 99). According to the student's mother, once home, the parents put the student in a "lockdown-type situation," taking away all electronics (Tr. p. 99). However, the student remained in contact with students (from Forman) "doing all kinds of things that any parent would...not want to be going on" (Tr. p. 99). The student's mother noted that the student had "social pragmatic issues on top of his learning disability" and Forman did not have a social pragmatics program (Tr. p. 112). The parents attempted to find an outside counselor prior to withdrawing the student from Forman but determined that one day a week of additional service was not sufficient to address the student's social difficulties (Tr. p. 112).

The student eventually was accepted at Greenwood, an all-boys school (Tr. p. 99-100). The school actively worked on addressing the student's social difficulties; however, when the student returned home for the summer he continued to experience behavioral issues (Tr. pp. 99-101). The student's mother reported that the student began seeing a psychiatrist who "evaluated him as having an attachment disorder" (Tr. p. 101). As a result, the student attended weekly counseling sessions (id.).

According to the student's mother, the parents learned from the September 2018 neuropsychological evaluation that the student's fluid reasoning score was deficient, and he needed a very small program for social pragmatics along with addressing his learning disabilities (Tr. p. 100).⁶ The student's mother reported that the only school the parents could find that met this criteria was Middlebridge (MBS), however, it did not have any "spots" (Tr. p. 100). The student remained at Greenwood until a residential opening became available at MBS (Tr. p. 101).^{7, 8} For the 2018-19 school year, in addition to settling with the parents for the student's attendance at Forman, the district also settled for the student's attendance at Greenwood (Tr. pp. 94-95, 133).

For the 2019-20 school year, the student's mother reported that again, the CSE did not contact the parents or convene (Tr. pp. 104-05). On March 18, 2019, the parents signed an enrollment contract with MBS for the 2019-20 school year (Parent Ex. N). A February 24, 2020 notarized affidavit of payment signed by the assistant head of school from MBS reflects the parents

⁶ Testimony by the student's mother indicated the parents always knew the student struggled socially (Tr. p. 113). He was never able to interact with more than one other child at a time, had difficulty in large groups and was never able to have a play date (Tr. pp. 96, 113). The parents initially sought residential placement so he could start to learn social interaction skills (Tr. p. 113). At home, the student was able to isolate himself in his room and not interact with anyone (Tr. p. 113). During cross examination when asked if the district ever recommended a residential school for the student the parent stated, "The [district] never recommended anything. The programs that the district recommended for us and that we visited, each time we visited them, they didn't have a space for [the student] at that time" (Tr. p. 113).

⁷ The student's mother reported that the parents wanted to move the student to Middlebridge "before it was too late to be at a co-ed environment, so he could learn proper interaction with the opposite sex" (Tr. p. 102).

paid a deposit in the amount of \$5,000 on March 18, 2019, the same day the parents signed the enrollment contract (Parent Exs. M; N.).⁹

In a letter dated June 14, 2019, the parents notified the district that as of that date, the CSE had not contacted them about an IEP meeting for the 2019-20 school year (Parent Ex. C). The letter noted that accordingly, the parents felt they had no choice but to enroll the student at the "Greenwood School" and hold the district responsible for the cost of the student's tuition there (Parent Ex. C).¹⁰

In a due process complaint notice dated August 6, 2019, the parents requested an impartial hearing for the 2019-20 school year (Parent Ex. D). The parents reiterated their assertion that the CSE had not contacted them regarding a meeting for the 2019-20 school year (Parent Ex. D). In addition, they advised the district that they would seek to hold it responsible for the student's tuition at Greenwood, having timely reserved their right to do so by their June 14, 2019 letter (Parent Ex. D).^{11 12}

A. Impartial Hearing Officer Decision

An impartial hearing convened on September 12, 2019 with a prehearing conference and concluded on June 15, 2020 after four days of proceedings (Tr. pp. 1-138). In a decision dated July 2, 2020, the IHO found that the district conceded it failed to offer the student a FAPE for the 2019-20 school year, as the district did not put on a case and evidence showed that the student's last IEP was dated March 1, 2017 and relied on evaluations from 2014 (IHO Decision at p. 8). Further, the IHO found that Middlebridge was an appropriate unilateral placement, and that there

⁹ By the end of November 2019, the parents paid a total of \$87,000 to MBS (\$70,500 for academic tuition and \$16,500 for residential tuition) (Parent Ex. M).

¹⁰ The student's mother indicated that inclusion of the "Greenwood School" in the parents' letter was a typographical error that both she and her attorney missed (Tr. pp. 103-04). She reported that otherwise, the terms of the letter were accurate (Tr. p. 104). Further, the student's mother testified, for purposes of clarification, that at the time of the letter in June 2019, there was the possibility that the student might not get into MBS (as a boarding student) (Tr. pp. 104, 116). The student had been accepted as a day student and was on a wait list for the residential program (Tr. p. 116). The student's mother testified that the parents might have needed to revisit Greenwood until the student was accepted into MBS as a boarding student (Tr. pp. 104, 116). I note that on appeal the district's request for review indicated it was appealing the appropriateness of the parent's unilateral placement of the student at MBS for the 2019-20 school year (see Req. for Rev. ¶) 4).

¹¹ In an August 15, 2019 letter to the parent, the district sought consent for additional assessment of the student as part of a requested reevaluation or mandated three-year evaluation (Parent Ex. E). The parent provided signed consent on August 21, 2019 and in a handwritten note on the consent form, the parent asked, "Does the testing included obviate the need for further testing?" (Parent Ex. E). The hearing record offered no evidence that any evaluation occurred, and as noted earlier, the CSE did not contact the parent or convene to develop an IEP for the student for the 2019-20 school year (Tr. pp. 104-05).

¹² In September 2019, the student began attending MBS (see Parent Ex. F at p. 1).

were no equitable considerations that would warrant a reduction or denial of the parents' requested relief (see IHO Decision at pp. 8-13).

With regard to the residential component of the parents' unilateral placement, the IHO found that "the Student's need for a small class, special education program with specific programs and strategies to address Student's significant needs far outweigh[ed] the benefit from interaction with non-disabled peers." (IHO Decision at p. 11).

Further, the IHO found that the district had not conducted any evaluations as required by the IDEA and provided no evidence to contradict the recommendations in the parents' independent neuropsychological evaluation (IHO Decision at p. 11). Therefore, the IHO found that MBS was an appropriate placement (*id.*).

With regard to the equities, the IHO determined that there was nothing in the hearing record to indicate that the parents' actions obstructed the district's obligations under the IDEA (IHO Decision at p. 13). The IHO found that, as a result, there were no actions on the part of the parents that could serve to reduce relief (*id.*).

IV. Appeal for State-Level Review

On appeal, the district argues that the IHO erred in finding that the parents satisfied their burden of demonstrating that MBS was an appropriate unilateral placement for the student. The district asserts that the hearing record does not support the parents' assertion that MBS provided adequate services to address the student's special education or social/emotional needs. The district also argues that MBS, a school that exclusively enrolls students with disabilities, was not the least restrictive environment (LRE) for the student because it unduly limited the student's access to nondisabled peers.

The district argues that the IHO erred in finding that the equities favored the parents and requests that the State Review Officer reverse the IHO's findings and annul the relief awarded by the IHO. Specifically, the district asserts that the parents failed to provide ten business days prior written notice of their intent to enroll the student in MBS and that the identification of Greenwood as the student's placement for the 2019-20 school year in the due process complaint notice, despite the parent's testimony that this was a typographical error, does not excuse the parents from statutory requirements, especially since the parents had executed a contract with MBS several months prior to alerting the district of their unilateral placement of the student and even longer before filing their due process complaint notice. The district also alleges that the IHO erred in awarding reimbursement of the full amount of academic and residential tuition and, alternatively, if the SRO determines that the IHO properly found that the parents sustained their burden with respect to the student's unilateral placement at MBS, the award of relief should not include residential fees supporting room and board, given that the student resided at home due to the COVID-19 pandemic from March 13, 2020 through the end of the 2019-20 school year and further that the remote learning platform did not include after school or elective activities during that time. The district argues it should only be liable to pay for services actually delivered to the student.

In an answer, the parents respond to the district's allegations and generally argue in favor of upholding the IHO's award of reimbursement for the student's full academic and residential tuition at MBS for the 2019-20 school year.

In a reply to the parents' answer, the district argues that some of the statements asserted by the parents in the "Conclusion" section of their answer with respect to the provision of a FAPE for the 2019-20 school year (in part) were improperly asserted and not responsive to statements alleged by the district in its request for review.¹³ The district reiterates its requests that an SRO reverse those portions of the IHO decision which found that the parents sustained their burden with respect to the unilateral placement of the student at MBS and that the equities favored the parents, or alternatively, annul a pro-rata share of the award of residential tuition from March 13, 2020 through May 29, 2020, representing the portion of the school year that the student quarantined at home.

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. of Hendrick Hudson Cent. Sch. Dist. 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; T.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 151, 160 [2d Cir. 2014]; 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]dequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP" (Walczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998], quoting Rowley, 458 U.S. at 206; see T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 253 [2d Cir. 2009]). The Supreme Court has indicated that "[t]he IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement" (Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 580 U.S. ___, 137 S. Ct. 988, 999 [2017]). While the Second Circuit has emphasized that school districts must comply with the checklist of procedures for developing a student's IEP and indicated that "[m]ultiple procedural

¹³ The "Conclusion" section of the answer stated that "Petitioner has denied [the student] a FAPE for several years running. In 2018-19, it settled for tuition at two residential schools, one co-ed and one same-gender. In 2019-20, [p]etitioner took its chances at hearing and lost. On appeal, it advances five arguments that serve only to demonstrate [p]etitioner's reticence to honor its proper debts. The IHO properly determined that (MBS) was appropriate for [the student] and that the equities of this case support and demand an award of full tuition reimbursement" (Ans. pp. 7-8).

violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not" (R.E., 694 F.3d at 190-91), the Court has also explained that not all procedural errors render an IEP legally inadequate under the IDEA (M.H., 685 F.3d at 245; A.C. v. Bd. of Educ. of the Chappaqua Cent. Sch. Dist., 553 F.3d 165, 172 [2d Cir. 2009]; Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]). Under the IDEA, if procedural violations are alleged, an administrative officer may find that a student did not receive a FAPE only if the procedural inadequacies (a) impeded the student's right to a FAPE, (b) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 [2007]; R.E., 694 F.3d at 190; M.H., 685 F.3d at 245).

The IDEA directs that, in general, an IHO's decision must be made on substantive grounds based on a determination of whether the student received a FAPE (20 U.S.C. § 1415[f][3][E][i]). A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction" (Rowley, 458 U.S. at 203). However, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP" (Walczak, 142 F.3d at 130; see Rowley, 458 U.S. at 189). "The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created" (Andrew F., 137 S. Ct. at 1001). The statute ensures an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents" (Walczak, 142 F.3d at 132, quoting Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 [2d Cir. 1989] [citations omitted]; see Grim, 346 F.3d at 379). Additionally, school districts are not required to "maximize" the potential of students with disabilities (Rowley, 458 U.S. at 189, 199; Grim, 346 F.3d at 379; Walczak, 142 F.3d at 132). Nonetheless, a school district must provide "an IEP that is 'likely to produce progress, not regression,' and . . . affords the student with an opportunity greater than mere 'trivial advancement'" (Cerra, 427 F.3d at 195, quoting Walczak, 142 F.3d at 130 [citations omitted]; see T.P., 554 F.3d at 254; P. v. Newington Bd. of Educ., 546 F.3d 111, 118-19 [2d Cir. 2008]). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]; see Andrew F., 137 S. Ct. at 1001 [holding that the IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances"]; Rowley, 458 U.S. at 192). The student's recommended program must also be provided in the least restrictive environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 CFR 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see Newington, 546 F.3d at 114; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132).

An appropriate educational program begins with an IEP that includes a statement of the student's present levels of academic achievement and functional performance (see 34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]), establishes annual goals designed to meet the student's needs resulting from the student's disability and enable him or her to make progress in the general education curriculum (see 34 CFR 300.320[a][2][i], [2][i][A]; 8 NYCRR 200.4[d][2][iii]), and

provides for the use of appropriate special education services (see 34 CFR 300.320[a][4]; 8 NYCRR 200.4[d][2][v]).¹⁴

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, 489 F.3d at 111; 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).

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).

VI. Discussion

A. Unilateral Placement

As the district conceded at the impartial hearing that it failed to offer the student a FAPE for the 2019-20 school year, the only issue to be determined on appeal is whether the IHO erred in determining that MBS was an appropriate unilateral placement for the student and that equitable considerations supported reimbursement to the parents of the tuition and associated costs of the student's attendance at MBS.

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, 142 F.3d at 129). 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. at 13-14). 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. of the City Sch. Dist. of Yonkers, 231 F.3d 96, 104 [2d Cir. 2000]). "Subject to certain limited exceptions, 'the same considerations and criteria that apply in determining whether the

¹⁴ The Supreme Court has stated that even if it is unreasonable to expect a student to attend a regular education setting and achieve on grade level, the educational program set forth in the student's IEP "must be appropriately ambitious in light of his [or her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives" (Endrew F., 137 S. Ct. at 1000).

[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, quoting Frank G. v. Bd. of Educ. of Hyde Park, 459 F.3d 356, 364 [2d Cir. 2006]; see 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 a unilateral placement is appropriate, "[u]ltimately, the issue turns on" whether the 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; Berger v. Medina City Sch. Dist., 348 F.3d 513, 522 [6th Cir. 2003] ["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 appropriate if it provides instruction specially designed to meet the unique needs of a student (20 U.S.C. § 1401[29]; Educ. Law § 4401[1]; 34 CFR 300.39[a][1]; 8 NYCRR 200.1[ww]; Hardison v. Bd. of Educ. of the Oneonta City Sch. Dist., 773 F.3d 372, 386 [2d Cir. 2014]; C.L. v. Scarsdale Union Free Sch. Dist., 744 F.3d 826, 836 [2d Cir. 2014]; Gagliardo, 489 F.3d at 114-15; Frank G., 459 F.3d at 365).

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, quoting Frank G., 459 F.3d at 364-65).

1. Student's Needs

As already noted, there is no evidence in the hearing record that the CSE met to develop an IEP for the student for the 2019-20 school year. As a result, the hearing record does not include as robust a picture of the student's needs as would be presented where a district defended its IEP with testimonial and documentary evidence. One court in this jurisdiction has addressed whether a unilateral placement was appropriate under circumstances in which the student's needs remained unclear (A.D. v. Bd. of Educ. of City Sch. Dist. of New York, 690 F. Supp. 2d 193, 206 [S.D.N.Y. 2010]). In A.D., the Court discussed how New York has placed the burden of production and persuasion on parents to establish that the unilateral placement was appropriate (690 F. Supp. 2d at 206). However, if there is a lack of required evaluative information and the IEP is deficient as a result, the Court held that, when analyzing whether the unilateral placement addresses the student's needs, the district, rather than the parent, is held accountable for any lack of information regarding the student's needs because the IDEA places the responsibility for evaluation procedures

on the district in the first instance (id. at p. 207; see Application of the Bd. of Educ., Appeal No. 08-056).

Under the circumstances of this proceeding—where the district conceded that it failed to offer the student a FAPE for the 2019-20 school year and did not develop an IEP for the student for the 2019-20 school year, which could have demonstrated the district's view of the student's special education needs at that time—the responsibility for any deficiency in understanding the student's needs falls on the district, rather than the parents (see A.D., 690 F. Supp. 2d at 208; Application of a Student with a Disability, Appeal No. 15-076; Application of a Student Suspected of Having a Disability, Appeal No. 15-038; Application of a Student with a Disability, Appeal No. 14-033; Application of a Student with a Disability, Appeal No. 14-028; Application of a Student Suspected of Having a Disability, Appeal No. 14-003; Application of the Dep't of Educ., Appeal No. 13-198; Application of the Dep't of Educ., Appeal No. 13-072; Application of a Student with a Disability, Appeal No. 12-027).

The evaluation most contemporaneous with the parents' decision to unilaterally place the student at MBS for the 2019-20 school year is the September 2018 updated neuropsychological evaluation (Parent Ex. B). At the time the report was written, the student had completed eighth grade at the Windward School (Parent Ex. B at p. 1). According to the report, the student was referred for an updated neuropsychological evaluation by his parents "to inform current planning in the context of supplemental private language remediation" implemented since the student's previous testing in June 2017 (id.).

With regard to the student's background and relevant history, the September 2018 neuropsychological evaluation update report (neuropsychological report) indicated that when initially evaluated in April 2013 at age nine, the student presented as a cooperative student of at least average reasoning whose academic output was hampered by interrelated language, memory, motor, and executive functioning difficulties and anxiety (Parent Ex. B at p. 1). According to the evaluating psychologist, the student met all the criteria for diagnoses of a language disorder and an anxiety disorder, and "some but not all" of the features of an attentional disorder (id.). An update conducted in 2017 indicated that the student had made gains in reading comprehension, structured composition, and areas of language and executive functions (i.e., grasp of oral directions, verbal fluency, sentence formulation, narrative recall, and said shifting) in the context of at least average verbal reasoning (id.). However, the student's aptitude and academic functions, in chief, in applied math, were hampered by language, memory, motor, and executive function weaknesses, exacerbated by anxiety (id. at pp. 1-2). The evaluator reported that in 2017, the student met the criteria for language, (math) learning, and social anxiety disorders and "some but not all" of the features of an attentional disorder (id.). The evaluator noted, that given all of these factors, the student qualified for ongoing placement in a special school as well as routine accommodations for testing and standardized examinations, such as 1.5x with breaks, separate location, computer and calculator use, and directions read and reread (id. at p. 2). Other recommendations included language and cognitive behavioral therapy (id.).

For purposes of the September 2018 neuropsychological update, the student's background and history were updated with the student and the parent, supplemented by academic records and the impressions of a private speech-language pathologist and a consulting medical clinician (Parent

Ex. B at p. 2). At the time of the neuropsychological update the student was medicated for attention and anxiety (id.). The evaluating psychologist reported that parent-completed measures of inattention and anxiety were clinically significant; the student's anxiety was consistent with social and generalized anxiety, while measures of the student's hyperactive and impulsive symptoms were below clinically significant levels (id.).

Based on her observation of the student during testing, the evaluator reported that the student was "amenable and cooperative," relating his summer travel experiences and interest in sports to the evaluator, with whom he was familiar (Parent Ex. B at p. 2). The evaluator noted continued evidence of word finding difficulty (id.). She further noted that the student did not always include core features or elaborate sufficiently (id.). According to the evaluator the student was sensitive to whether tasks were timed (id.). He fidgeted and did not use provided scratch paper (id.).

The neuropsychological report indicated that the evaluator administered a sentence completion test and subtests of the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V), Wechsler Individual Achievement Test-Third Edition (WIAT-III), Clinical Evaluation of Language Fundamentals-Fifth Edition (CELF-V), Wide Range Assessment of Memory and Learning (WRAML-2), NEPSY-II (Developmental Neurological Assessment), and Delis-Kaplan Executive Function System (D-KEFS) to the student (Parent Ex. B at p. 1).

The evaluator reported that administration of the WISC-V vocabulary subtest yielded a score in the 16th percentile (low average range) (Parent Ex. B at p. 3). The student's comprehension of spoken passages, "akin to teacher lecture," was measured via administration of the CELF-V understanding spoken paragraphs subtest and yielded a score in the 16th percentile (low average range) (id.). Administration of the semantic relationships subtest of the CELF-V yielded a score in the 25th percentile (low average range), assessing the student's understanding of comparative, spatial, passive, and temporal relationships in sentences (id.). Administration of the sentence assembly subtest of the CELF-V yielded a score in the 25th percentile (low average range), assessing the student's flexibility assembling syntactic structures to generate multiple meaningful and grammatically correct sentences (id.).

According to the evaluator, the student's recognition of emotions in photographs of facial expressions as measured by NEPSY-II affect recognition subtest yielded a score in the 37th percentile (average) (Parent Ex. B at p. 3). However, a measure of social perspective taking measured via administration of the NEPSY-II theory of mind subtest yielded a score < 2nd percentile (deficient) and was marked by fidgeting (id.). The evaluator reported that the student erred with false belief (i.e., different people have different thoughts/beliefs about the same situation), bluff/deception, seeing leads to knowing (if one person sees what is in box and the other only sees the outside, only the first will know what is in the box), figurative language (i.e., butterflies in my stomach), and relating emotions to specific situations (id.).

With regard to the student's memory skills, the evaluator indicated that administration of the NEPSY-II memory for names subtest yielded a score in the 37th percentile (average) when recalling names presented with pictures in immediate recall and after a delay (Parent Ex. B at p. 3). When drawing from memory designs presented for brief intervals via administration of the

WRAML-2 design memory subtest, the student scored in the 63rd percentile (average) (id. at pp. 3-4). Yet, when identifying pictures in a demonstrated sequence in the face of proactive interference during administration of the WISC-V picture span subtest, the student scored at the 9th percentile (borderline) (id. at p. 4). According to the evaluator, administration of the DKEFS design fluency subtest yielded a nonverbal (graphomotor) response initiation score in the 50th percentile (average overall) in spite of production at the 25th percentile (below average) in the initial simple condition via administration of the DKEFS design fluency filled dots subtest (id.). The evaluator reported that the student was stable since his last assessment, as administration of the WISC-V block design subtest yielded a score in the 16th percentile (low average) when efficiently organizing, physically rotating and integrating parts (id.). On the WISC-V matrix reasoning subtest, he similarly scored in the 16th percentile (low average) when anticipating an abstract pattern by the evaluator and yielded a score in the 5th percentile (borderline) when reasoning quantitatively, applying concepts of equality, matching, addition, and/or multiplication when understanding relations among objects (id.).

With regard to the student's mathematical skills, the evaluator reported that administration of the WIAT-III applied problems subtest yielded a score in the 19th percentile (below average), marked by error with fractions, number progressions, perimeter, and mean (Parent Ex. B at p. 4). The student inquired about whether he was timed and did not use scratch paper (id.). Administration of the WIAT-III math fluency subtest yielded a score in the 23rd percentile (below average) for timed subtraction (id.).

The neuropsychological report indicated, that "essentially," the student had made gains in affect recognition and memory for rote verbal labels and abstract visual details, the latter in spite of poor visual working memory (Parent Ex. B at p. 4). According to the evaluator, the student continued to have trouble with expressive vocabulary, flexible expressive formulation, and receptive language (i.e., narratives, abstract word relationships) (id.). He also still had nonverbal organizational weaknesses in sequencing and "sizing up abstract 'tree-forest' relationships with downstream effects," in combination with language weaknesses, on social perspective taking (id.).

With regard to the student's personality and emotional functioning, the evaluator reported that on a sentence completion task, the student reported being "happy," looking forward to summer already, and excited for the future (Parent Ex. B at p. 4). He was matter of fact about going to college (id.). According to the evaluator, the student was at his best when well-rested (id.). The student was sensitive to fatigue, boredom, and frustration and found reading and homework aversive (id.). The student found oral reading more enjoyable than silent reading (id.). The evaluator noted that the student was sensitive to sternness in teachers and "forgetting to do something" (id.). The student was nervous on receipt of his report card and worried about tests, getting sick, and losing friendships (id.).

The neurological report included the evaluator's conclusions that the student continued to meet the criteria for a language disorder, social (pragmatic) communication disorder, specific learning disorder with impairment in mathematics, ADHD predominantly inattentive type, and social anxiety/generalized anxiety disorder (Parent Ex. B at pp. 4-5).

The neuropsychological report included almost four pages of recommendations for the student (Parent Ex. B at pp. 6-10). The evaluator noted that her then-current findings of academic, language/social (pragmatic) communication, and attention/executive functioning weaknesses and social and generalized anxiety warranted careful academic planning (id. at p. 6). She opined that mainstream and day school programs were explicitly ruled out as the student needed a supportive, immersive, residential high school environment that provided support inside and outside of the classroom (id.). The evaluator stated that the student's social/emotional learning needs continued after the school day ended and that he needed academic support for his learning, language, and ADHD as well as emotional support and facilitation of social skills and relationships on a full-time basis (id.). In addition, the student needed to continue working on developing self-advocacy skills (id.). The evaluator noted that the student had difficulty with perspective taking, theory of mind, and getting along with other kids and, further, that he misread social interactions (id.). The student continued to have difficulty generalizing from learned information and making inferences (id.). He needed encouragement to approach and effectively engage in social interactions, to participate in class, and to manage transitions and new material (id.). Recalling and applying facts remained challenging (id.). The evaluator opined that the student required a small class in a small full-time residential special education setting providing multi-sensory instruction noting that there was increased opportunity for individualized attention, repeated directions, rewording, re-teaching, scaffolding language and prompting as needed, modelling, and customizing academic tools in such a setting (id.). The evaluator explained that the goal of a residential setting was to rigorously strengthen the student's skills; to sustain and promote his good effort and respectful, considerate, and cooperative student behaviors; and to prevent the student's anxious manifestations from becoming "further fixed" (id.). The evaluator opined that going forward academic work, social demands, and developmental expectations would only become more abstract, complex, and challenging, with the identified weaknesses taking a more salient toll on the student (id.). Without a residential setting, she suggested, the student would be unable to generalize the skills he acquired during the school day (social as well as academic) and bring them to bear in other environments (id.).

The neuropsychological report included fourteen additional and detailed recommendations related to receptive and expressive language tasks, perspective-taking; social thinking; classroom and teacher interventions/strategies in academic subjects and for reading, writing, homework, and study skills; use of technology and software; and accommodations for testing such as extended time (1.5x) with breaks, separate location, computer and calculator use, and directions read and re-read (Parent Ex. B at pp. 6-10). The report included a recommendation to substitute classes on foreign culture for foreign language requirements, given the student's fundamental language disorder (id. at p. 9). Other recommendations made by the evaluator included ongoing medication management of inattention and cognitive behavioral therapy to target the student's social and generalized anxiety (id. at p. 10).

2. Specially Designed Instruction and Progress

Moving on to the parent's burden with regard to the appropriateness of MBS for the student as a residential student, the MBS program description indicates that MBS is an independent boarding and day program for students with learning disabilities (Parent Ex. F at p. 1).

With regard to the program and services offered at MBS, the assistant head of school for MBS stated that academic and tutorial curricula were individualized for all students (Parent Ex. F at p. 1). He explained that students were placed in classes based on their ability levels and learning styles and that appropriate accommodations were provided to all students including small class sizes, differentiated instruction, scaffolding, untimed exams, and opportunities to demonstrate an understanding of concepts in multiple modalities (id.). In addition, students received a daily 1:1 tutorial in which they worked on individualized remedial programs (id.). According to the assistant head of school, staff members at MBS developed strong interpersonal relationships with students and their families to emphasize students' strengths and address their challenges in a nurturing, supportive environment (id.). These relationships extended from the classrooms, with small class sizes, individualized academic programs, and 1:1 tutorials, to the residential setting (id.).

According to the assistant head of school, the MBS environment integrated students' learning throughout the curriculum and between the academic and residential components of the program (Parent Ex. F at p. 1). Integration promoted multi-sensory learning and generalized learning across settings, as the school's program was designed to facilitate student success not only in high school but also in the larger community (id.).

The assistant head of school explained that the academic program at MBS consisted of instruction in English/language arts, mathematics, science, history/social studies, art and technology, social pragmatics/career development, and physical education/health or wellness (Parent Ex. F at p. 2). Class-size varied from three to seven students (id.). All students attended daily 1:1 tutorial sessions and a proctored study hall four days a week to reinforce their academic skills (id.). The assistant head of school reported that students' class schedules were determined by their testing backgrounds, current performance, previous exposure in content areas, reading ability, processing speed, written output, social skills, and individual interests (id.). Teachers created expectations that were appropriate to each student's strengths and weaknesses (id.). The assistant head of school described the classroom environment at the school as safe, dynamic, and highly interactive and noted that teachers and students worked collaboratively to explore content, share ideas, and build skills (id.). He noted that every classroom interaction provided an opportunity to address areas of challenge and reinforce ideas of strength for students (id.). Teachers were trained to identify frequent sources of student confusion and error patterns, so they could effectively address these areas of difficulty (id.). In addition, students were provided multiple and varied opportunities to express their understanding and share their unique talents through different mediums (id.). According to the assistant head of school, with a more comprehensive understanding of their own unique strengths and weaknesses and many opportunities to experience success, students made academic progress and grew to become independent, lifelong learners (id.).

In addition, the MBS assistant head of school indicated that language-based, multi-sensory instruction was a fundamental component of the academic program at the school (Parent Ex. F at p. 2). Classroom instruction, activities, and output assignments were designed to incorporate visual, auditory, tactile, and kinesthetic modalities (id.). Structure and predictability ensured the sense of consistency within the classroom, supported by highly organized materials and clearly stated directions (id.). The assistant head of school explained that information was presented in an organized, sequential, and cumulative manner, and language and conceptual confusions were

addressed immediately with direct and explicit instructions (id.). Teachers used a high degree of repetition and paraphrasing and modeled appropriate use of specific language (id.). They also regularly revisited previously learned material to assess learning and the acquisition of new skills and knowledge (id.). Presentation and lessons were tailored to each student's levels of comprehension and reading level, so that students could confidently do what was asked of them but would also be continually challenged (id.).

With regard to the 1:1 tutorial embedded into the academic day, the assistant head of MBS reported that each student worked with a remedial language specialist (RLS) for 40 minutes daily to improve their language and communication skills affected by their literacy needs (Parent Ex. F at p. 3).

Further, the assistant head of school indicated every student participated in daily social pragmatics classes, with a curriculum that covered students' social interactions, self-awareness, and self-advocacy (Parent Ex. F at p. 3). Classes used real-time feedback, role-playing, and self-reflection to improve students' social interactions, including both informal interactions with peers or adults and formal interactions with supervisors or professors (id.). Students also worked to increase their experience and insight into their own behaviors in postgraduate environments by exploring areas of interest, strengths and challenges (id.).

According to the assistant head of school, all MBS students were enrolled in at least one social pragmatics class per year (Parent Ex. F at p. 3). Unlike other core academic classes, the social pragmatics curriculum was not set prior to the school year beginning (id.). Social pragmatics instructors worked closely with the academic and residential dean's office to constantly assess and evaluate students' social skills development, their needs, and relevant developmental and environmental themes that might be developing on campus (id.). The assistant head of school explained that, collaboratively, as a school and with the student's family, new social pragmatics curriculum goals would be implemented on a four to six-week basis (id.). Each unit was designed to give students a supportive space in which to practice their communication development, understand, label and manage feelings and emotions, and foster positive self-esteem (id.). With instructor guidance, students would practice appropriately labeling and expressing their emotions, communicating effectively with their peers and adults, and understanding and identifying nuanced verbal and non-verbal interactions (id.). The social pragmatic curriculum focused on addressing conversational skills, decision-making, anger and stress management, self-awareness, nonverbal behaviors, self-advocacy, conflict resolution, organizational skills, time management, maintaining friendships, self-concept, and empathy (id.).

With regard to the residential program at MBS, the assistant head of school stated that the residential program complemented and extended MBS's academic program (Parent Ex. F at p. 4). The residential program encompassed weekday afternoons, evenings, and weekends (Parent Ex. F at p. 4; see Tr. pp. 79-80). In addition to reinforcing academic skills in lessons through hands-on and community activities, the residential program taught social and emotional and independent living skills necessary for students to become self-assured, self-aware, and active contributors to their communities (Parent Ex. F at p. 4).

The assistant head of school testified that a typical MBS student profile was "complicated," in that a typical student would have average to above-average cognitive potential with a variety of learning diagnoses, differences, or challenges (Tr. p. 38). Students were capable of learning, but often times had deficits in the areas of working memory or processing speed, as well as difficulty with different aspects of social communication (Tr. p. 38). Possible diagnoses for students at the school were diverse and might include a language-based learning disability, expressive and receptive language disorder, social communication challenges, dyslexia, dysgraphia, or a high functioning autism spectrum disorder (Tr. pp. 38-39).

Testimony by the MBS assistant head of school indicated the students at the school ranged in age between 13-19 years old (Tr. p. 35, 37). Students were primarily high school age but on occasion MBS might have a seventh or eighth grade student (Tr. p. 38). MBS also had a post-graduate program for students who recently graduated but who chose to do one or two more years prior to making the transition to a post-secondary setting (Tr. p. 38). According to the assistant head of school, MBS classes consisted on average of five or six students who were grouped by cognitive profiles, so that students were in classes with other students that were learning in a similar manner (Tr. pp. 39, 42). In addition, all students were grouped by reading level, comprehension, ability, and pattern of strengths and challenges, when it came to things like comprehension, executive function skills, and processing speed (Tr. p. 39). The school aimed to group students in a manner where all students were working at a similar pace and could process and work with the material in a similar manner (Tr. p. 39). In the dormitories, students were often grouped by age or by social-emotional ability (Tr. p. 42).

With regard to academic faculty, the assistant head of school reported that MBS had "really great" staff retention (Tr. p. 40). All academic teachers were content-certified and were trained and had experience working with students with learning differences (Tr. p. 40). Social pragmatics teachers usually had a background in social work or counseling, clinical psychology, or speech-language pathology (Tr. p. 40). Many of the school's tutors had a background in either special education, English, speech-language pathology, or reading literacy (Tr. p. 40). According to the assistant head of school, at the beginning of each school year, staff engaged in a thorough two-week in-service where all students' learning profiles were gone over in depth (Tr. p. 40). In addition, every six weeks beyond that, the school provided professional development (Tr. p. 41). Staff also attended national conferences and upon their return shared what they had learned with the community (Tr. p. 41).

The assistant head of school testified that all of the classes offered at MBS followed its state's standards and all of the school's students were required to progress through a certain sequence of classes and be exposed to and pass a variety of different curricula in order to be eligible for a high school diploma (Tr. p. 42). MBS uses a variety of different types of curricula and teaching modalities (Tr. p. 42). In social pragmatics, the school uses a lot of cognitive behavioral therapy, and the social thinking curriculum (Tr. pp. 42-43). The assistant head of school indicated the school had flexibility to draw upon and utilize different styles of curricula and teaching resources (Tr. p. 43). The school modified materials according to students' needs (Tr. p. 43). He noted that the school did a lot of differentiation, scaffolding, and modifications to make sure that it was presenting material in a manner that was "really conducive" for students' learning styles and cognitive ability (Tr. p. 43). The assistant head of school reported modification of materials

involved taking into consideration how much material could be presented at one time to the student for that student to understand it, and could include chunking assignments, awareness of the pacing of a class, and the language used to describe and introduce information to students (Tr. p. 43). In addition, the assistant head of school indicated material provided to students "subsidize[d]" the things being taught in class to engage the student in the material (Tr. p. 44). Sometimes, material would be presented several different ways in order to provide students with multiple exposures to the material and the assistant head of school noted that it was important to spiral back and assess prior knowledge (Tr. p. 44).

The assistant head of school indicated that prior to arriving at MBS, the school required families to submit updated "neurological" testing (Tr. p. 65). MBS conducted informal testing as part of its admissions review to obtain a baseline measure of a student's reading and comprehension, as well as to get a feel for how a student tests and how they respond to different questions and the time they need to answer (Tr. pp. 65-66). The school also asks for reports from other schools and uses that information, along with information gleaned from talking with families and analyzes that for common themes, to get a good sense of the students' learning profiles (Tr. p. 66). Although the assistant head of school did not speak to anyone from the student's previous schools, he suggested that the admissions department would have been in touch with someone that had worked with the student in the past, probably from his past school (Tr. p. 67). In addition to getting information about the student's academics, a big part of what MBS looked for was feedback or material related to the student's social-emotional functioning (Tr. p. 67).

Specific to the student in the instant case, the assistant head of school indicated he was familiar with the student and his progress during his first year at MBS (Tr. pp. 44-45). The assistant head of school reported that he worked very closely with the student while he was transitioning to MBS academically, socially and emotionally (Tr. pp. 44-45). In addition, he reported that with regard to the student he worked closely with faculty that monitored and tracked the student's performance in class, worked with teachers around what was effective for the student and what was not working for him, and what modifications needed to be made (Tr. pp. 44-45). He noted that the parents were in touch with MBS teachers, residential instructors, the residential dean, the dean's office as well as himself on a consistent and streamlined basis (Tr. pp. 45, 74). The assistant head of school reported that during the transition phase of the student's attendance at MBS he spoke with the student's parents at least once a week, and some weeks, he may have spoken with the parents upward of as many as three to five hours a week (Tr. p. 74).

With regard to the student's needs, and generally consistent with the findings in the neuropsychological update previously discussed, the assistant head of school described the student as a bright student who struggled in the areas of receptive and expressive language and social communication (Tr. p. 46). According to the assistant head of school, the student had "lower" working memory and processing speed, which often resulted in the student struggling with executive function and organizing, prioritizing, and initiating tasks (Tr. p. 46). He indicated that the student was somebody who wanted to do the work and be in class, but often struggled with understanding the process and purpose of assignments (Tr. p. 46). The assistant head of school referred to the student as a "rusher" who "just want[ed] to get things done and he tended to move through tasks very quickly (Tr. p. 46). The assistant head of school indicated that this was a reason why scaffolding and breaking down assignments was key for the student, as it highlighted the

learning process and allowed him to work through things methodically and in a task-oriented way (Tr. pp. 46-47).

Turning to the student's social/emotional functioning, the assistant head of school characterized the student as well-intentioned and noted that he wanted to have friends and wanted to do things for the right reasons, but because of deficits with receptive and expressive language, he struggled with group dynamics and missed social cues or misread social situations (Tr. p. 47). The assistant head of school reported that, specifically, perspective-taking was "really hard" for the student and he might misinterpret another student's motives (Tr. p. 47). If he had to track a lot of conversations with different perspectives, the student might have difficulty recognizing all the different competing perspectives in those conversations and in understanding the language (vocabulary) used (Tr. pp. 47-48). The student required a lot of support at MBS working with the dean's office in recognizing the cause-and-effect of his actions, breaking down motives and relationships and friendships, working through conflicts and conflict resolution (Tr. pp. 47-48). The assistant head of school testified that the student struggled with self-esteem, and not only did he struggle with understanding what was going on socially, he was trying to figure out how to make and maintain friends (Tr. p. 48). He described the student as a "teenager [] trying to fit in, trying to make friends, trying to make good decisions," all the while trying to navigate the challenges due to his social communication diagnosis (Tr. p. 48). When asked if the student's difficulties demanded a residential placement, the assistant head of school testified that he thought the student benefitted from real-time feedback more than structured social pragmatics instruction in a controlled setting, whether that was in academic or social environments (Tr. pp. 48-49). He opined that the student needed to have someone work with him and help him understand what was going on with him and what was going on with the environment around him (Tr. p. 49). According to the assistant head of school, if too much time went by, the student would end up forgetting the sequence of events and he would not be able to retain and understand all the things that led up to what was happening (Tr. p. 49). For example, while a counseling environment might be good for the student, if the counseling occurred two or three or four days after an incident he would have a really hard time with the accuracy of the situation because his working memory and processing speed deficits affected what he remembered cognitively and emotionally (Tr. p. 49). The assistant head of school stated that while he would not say the student required a residential placement, he did need the type of support and real-time social/emotional feedback provided by that setting and he (the assistant head of school) was not familiar with day programs that offered the same level of support (Tr. pp. 49-50). During cross examination, the assistant head of school testified that the program at MBS, which happened to be residential, allowed the school to work with the student within the teachable moments that arose, in a way that was most effective (Tr. pp. 77-78). In light of how the student's learning impairments affected him socially and emotionally, the afterschool program, which was part of the residential program, created environments and situations with real-time feedback that "created a whole different level of dynamics" (Tr. p. 78).

According to testimony by the assistant head of school, the student's largest class consisted of seven students and his smallest class was his daily 1:1 remedial language tutorial that focused on the areas of the student's language profile where he needed the most help (Tr. p. 50). In determining the class groupings, the assistant head of school indicated that he went through all students' learning profiles and educational testing and communicated with parents and people that have worked with the students in other settings (Tr. p. 51). He developed learning profiles for all

students and then grouped students by their cognitive profiles (Tr. p. 51). Specific to the student, the assistant head of school explained that he was in classes with other students that had a similar pattern of strengths and challenges pertaining to comprehension skills, decoding, executive function, processing speed, and working memory (Tr. p. 51). He indicated the student had a great peer group, with lots of potential to make friends, and form relationships (Tr. p. 52). The assistant head of school testified that a typical day for the student included a normal morning routine (hygiene, independent living routine, shower, get ready for the school day, breakfast), and going through all class periods, including a daily structured study hall (Tr. p. 52). He opined that the student benefitted from having a study hall proctor who knew him and was able to check-in with him to make sure he completed his work without rushing, as well as to check for comprehension, understanding, and thoroughness of his work (Tr. pp. 52-53). The assistant head of school reported that the student participated in an elective program where he could do extra-curricular activities (Tr. p. 53). In addition, after dinner, the student participated in the MBS residential program which incorporated independent living skills (i.e., laundry, clubs), independent residential curricula (i.e., technology, social media,), social skills training (i.e., how to make and retain friends), and goal setting (Tr. p. 53). The student's day also included free time/social time when students spent time with friends while being supervised by staff for purposes of supporting students during social-emotional teachable moments (Tr. pp. 53-54). The assistant head of school indicated that the student benefitted from this supervision and support because without such intervention, he was prone to make poor social/emotional decisions, have difficulty understanding why he made those decisions, or how those decisions affected him and those around him (Tr. p. 54). At MBS, the student had access to around the clock supports (Tr. p. 54). He had access to a teacher, a dean's office and experienced supervisory staff comprised mostly of people who had a background in counseling or social work (Tr. pp. 54-55).

When attending MBS on campus, the student's academic schedule was comprised of seven periods covering wellness, U.S. history, algebra I, English 10, chemistry, lunch and a language skills lab, social pragmatics, remedial language tutorial/study hall (Parent Exs. F at p. 4; G). When the school went to a remote learning platform in March 2020 due to COVID 19, the student had a block schedule consisting of four or five sessions of live, online instruction with his teachers (Tr. pp. 55, 82-83; Parent Ex. H; see Parent Ex. L at pp. 1-2).¹⁵ If the student did not show up for class, he would receive a call within the first four-to five minutes of that period (Tr. p. 55). The student was also provided with opportunities to participate in afterschool electives and evening programming, including "Zoom dorm meetings and social hangouts" (Tr. p. 55; see Parent Exs. H; L).¹⁶

¹⁵ MBS provided details regarding its remote learning program in a letter to parents/guardians dated April 24, 2020 (Parent Ex. L).

¹⁶ Testimony by the assistant head of school indicated MBS did not offer tuition refunds to students during the quarantine period, so that the school could retain its staff and programmatic model (Tr. p. 56; see Parent Ex. L). In anticipation of returning to the MBS campus and operating live, "all the faces, all the programs, and all the people [would be] there to pick up the program where we left off" (Tr. p. 56). MBS continued to pay rent and salaries during the quarantine period (Tr. pp. 56-57).

During cross examination the assistant head of school was asked about the student's use of assistive technology, particularly since it was recommended in the 2018 neuropsychological report (Tr. pp. 61, 63; Parent Ex. B at pp. 7, 9). The assistant head of school testified that the student had access to assistive technology and software (i.e. "Learning Ally," speech-to-text software, "IXL") at MBS (Tr. pp. 61-62). He explained that MBS was "really thoughtful" about introducing different types of assistive technology so that the student developed his skills as opposed to avoiding skill development (Tr. p. 62). The student had voluntary access to on-line portals that tracked and organized all of his assignments, and through which the student could submit assignments and communicate with his teachers and be prompted/reminded by them (Tr. pp. 62-63). According to the assistant head of school, everything was in a centralized location to share and view the same material (Tr. p. 63).

With regard to dormitory grouping, the assistant head of school indicated that the student was grouped with students between the ages of 13 to 16 years, because MBS did not feel that the student's place socially and emotionally was with the older boys who might have more residential experience or function at a higher level from an independent living or maturity perspective (Tr. pp. 67-68). The assistant head of school opined that the student's dormitory grouping was a "really good placement" for him (Tr. p. 68).

Also, during cross examination, the assistant head of school indicated that as an independent boarding and day program, MBS did not need to be special education certified (Tr. p. 68). Although the assistant head of school had not taught the student in a classroom, he spent about one hour per week with the student (Tr. p. 69). When questioned about related services, the assistant head of school reported that all students at MBS received daily social pragmatics instruction in a 40-minute class (Tr. p. 69). In addition, the student received 70 minutes a day dedicated to his remedial language program in a language tutorial (Tr. p. 69).¹⁷ The student also accessed members of the dean's office or the residential dean's office between one to three hours per week to work on socially related concerns in solution-focused counseling (Tr. pp. 69-71).¹⁸ The assistant head of school noted that about half-way through the school year the student accessed off-campus counseling to work with a specialist concerning attachment issues (Tr. pp. 69-72).

With respect to the student's progress at MBS, 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., 523 Fed. App'x 76, 78 [2d Cir. Mar. 29, 2013]; D.D-S. v. Southold Union Free Sch. Dist., 506 Fed. App'x 80, 81 [2d Cir. Dec. 26, 2012]; see also Frank G.,

¹⁷ The assistant head of school's February 2020 letter detailing the student's program at MBS indicated that the student's 1:1 tutorial with a remedial language specialist was 40 minutes in length (Parent Ex. F at p. 3). The student's remedial language specialist reported that in addition to the 1:1 tutorial session the student had the opportunity to complete related assignments in the 30-minute daily skills lab (Parent Ex. J at pp. 1-2).

¹⁸ The assistant head of school reported that about 85 percent of the time, the student worked with someone who had a master's degree in social work, counseling, or clinical psychology (Tr. 70).

459 F.3d at 364).¹⁹ 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 Public Sch. Comm., 315 F.3d 21, 26-27 [1st Cir. 2002]; see T.K. v. New York City Dep't of Educ., 810 F.3d 869, 878 [2d Cir. 2016]).

A review of the hearing record reveals that the student made progress while attending MBS during the 2019-20 school year. Testimony by the assistant head of school indicated that upon entering MBS, the student had access to all services on the school's campus such as the health center, dean's office, counseling, tutoring, help with social pragmatics, an internship program, and the athletic program (Tr. p. 57). According to the assistant head of school, the student availed himself of the supports and services at MBS (Tr. p. 57). He regularly checked in with the dean's office and made progress in his self-advocacy, assertiveness, and in his ability to utilize staff for support and as a result he "grew pretty tremendously" (Tr. pp. 57-58). In terms of individualizing the student's program, the assistant head of school reported that at different junctures during the school year the student might have required more 1:1 support to work through different types of social issues or challenges (Tr. p. 58). As needed, whether working with the student via cognitive behavior therapy or different kinds of counseling techniques, MBS modified and adjusted its language and approach so that it was at the student's developmental level and in a manner that was most beneficial to the student (Tr. p. 59).²⁰ The assistant head of school opined that as a result of these supports the student's awareness of his learning process or metacognitive sense of who he was as a learner improved and some of his defenses around his learning approach lessened (Tr. p. 59). He further opined that the student's ability to be honest and accept feedback from staff "improved tremendously" as the student was able to be more vulnerable academically, socially, and emotionally, and discuss what was working for him and what was not working for him (Tr. pp. 59-60). The assistant head of staff indicated that the student had "gotten a lot more comfortable in his own skin" and was recognizing his strengths and challenges and working through those challenges as they arose (Tr. p. 60). In terms of academics, the assistant head of school reported that the student benefitted from the executive function support he received at MBS (Tr. p. 60). He had slowed down and could self-monitor better (Tr. p. 60). He needed less scaffolding than he needed at the beginning of the school year (Tr. p. 60). Although the assistant head of school did not have the student's testing scores available at the impartial hearing, he testified that all of the student's teachers felt the student had a successful year and was nicely progressing through

¹⁹ 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"]).

²⁰ During cross examination, when questioned about whether MBS provided the student with therapeutic supports, the assistant head of school stated he strongly thought the school's social pragmatics program and the work the student did with check-ins were therapeutic (Tr. pp. 74-75). He indicated that MBS was thoughtful about the learning process, the student's learning profile, and the incremental steps necessary to introduce to, and work on with, the student, so that the school was "working towards therapeutic goals" (Tr. p. 75).

material (Tr. p. 60). The assistant head of school testified that MBS was an appropriate placement for the student (Tr. p. 61).

The hearing record contains three MBS progress reports (residential, tutorial and academic) pertaining to the student's educational performance during the second semester of the 2019-20 school year (Parent Exs. I; J; K). The residential progress report indicated that throughout the second semester the student made significant progress in his ability to use expressive language with staff, particularly when frustrated (Parent Ex. I at p. 1). The student also made progress in his ability to understand how his emotions impacted his behavior and responses (*id.*). In addition, the student evidenced progress in his ability to develop interpersonal relationships and to understand and respond to conflicts (*id.* at pp. 1-2). The residential report also noted that although the student had made great improvement, he continued to need assistance with critical thinking skills, that he often discussed inappropriate topics in social settings, and struggled with passing room (organization) checks (*id.*). The tutorial progress report primarily detailed the strategies the student used to improve his understanding of word relationships, improve word and passage comprehension, and compose effective written responses (Parent Ex. J). The student's remedial language specialist reported that the student completed work promptly and proactively engaged with her in the tutorial setting but struggled to remain engaged and complete assignments in the skills lab (*id.* at pp. 1-2). The student received a grade of "pass" for tutorial (Parent Ex. K at p. 4).

The academic progress report provided grades for classwork, homework, participation, and assessment in each of the student's classes, along with an overall class grade and narrative description of the student's performance (Parent Ex. K). The student passed all of his core academic subjects with overall grades of "B" in chemistry and in literary analysis and composition, "B+" in United States history, and "A-" in algebra I (*id.* at pp. 1-4). For wellness the student received a grade of "C" and for social pragmatics the student received a grade of "A" (*id.* at p. 6). The student's chemistry teacher reported that the student's "notable strength" was in his ability to retain and recall information from units earlier in the year and indicated that the student understood and retained concepts that students traditionally struggled with (*id.* at p. 1). According to the chemistry teacher, the student was slow to edit his written work, but his performance improved with the use of self-assessment rubrics (*id.* at pp. 1-2). The student's teacher for literary analysis and composition reported that the student excelled in making text-to-self connections and multimedia activities related to academic topics (*id.* at p. 2). The student's teacher reported that the student was most successful in completing an assignment when each task was divided and presented to him incrementally and that it was important for the length of the student's assignments to be reduced and to prioritize quality over quantity (*id.* at pp. 2-3). The teacher noted that the student tended to become anxious with traditional quizzes and that she employed alternate means of assessing the student (*id.* at p. 3). The student's U.S. History teacher reported that the student was "diligent in his work and followed classroom expectations proficiently" (*id.*). However, the teacher also noted that the student "always demonstrated effort when assignments provoked his interest but was inconsistent in his attention when less engaged by [] curriculum topics" (*id.*). The student's algebra I teacher reported that the student's investment in the curriculum "increased significantly from the first semester," that the student demonstrated a "solid work ethic" as the year progressed, and success became more of a priority for the student (*id.* at p. 4). The teacher also reported that the student's critical thinking skills had improved (*id.*). According to the algebra I teacher, instead of asking for guidance, the student tended to rush through an assignment when he

was unsure of a concept or problem, in the hope that his work would not be reviewed (*id.*). With regard to the student's social pragmatics class, the teacher indicated that the student consistently arrived for class on time, prepared, and ready to learn (*id.* at p. 7). She reported that the student asked questions, even when it made him feel uncomfortable (*id.*). The teacher noted that the student struggled to maintain a high level of participation throughout the semester and struggled at times to negotiate the executive function components of assignments and in-class activities (*id.*).

The student's mother testified that MBS was "one hundred percent appropriate" for the student (Tr. p. 105). She indicated that she was in contact with the faculty at MBS and felt the student "without a doubt" needed the residential program at the school in order to make progress (Tr. p. 105). She reported that in conjunction with the student's significant learning disabilities, social issues arose (Tr. p. 105). According to the student's mother, when the student attended Forman, it became apparent to the parents that he needed around the clock supervision, "constant interaction with his decision making," repetitive and constant reinforcement, and he needed to be "in the moment" to be able to understand the consequences of his choices (Tr. pp.105-06). The student's mother testified there had been many times at MBS where the student was about to do something and staff was able to "catch him in the moment" and tell him to think about the direction of his choices (Tr. p. 106). She noted that because MBS is a residential program it had staff that "changed over" (Tr. p. 106). She opined that if the student were at home with only his parents, he would have been in a juvenile detention program by the time of the hearing (Tr. p. 106).

With regard to the student's progress, the student's mother indicated that the parents had enrolled the student in a wilderness program, but that because the student had done so well at MBS they put that option on hold (Tr. p. 107). The student's mother explained that because of MBS's repetitive interaction with the student about consequences, he started to force himself to think about what might occur and how much better it felt to make good decisions rather than bad ones (Tr. p. 107).

(Tr. p. 108). She reported that the student "had made such good decisions" and had calls with MBS weekly, and that in conjunction with the therapist the student was seeing for his attachment disorder the student was starting to understand why he was trying to fill his emotional voids (Tr. p.108).

Overall, based on the foregoing, the hearing record supports a finding that MBS offered specially designed instruction to address the student's individual needs in the areas of academics, particularly with respect to social pragmatics, as well as in the areas of social/emotional and executive functioning, and that the student demonstrated progress while attending MBS for the 2019-20 school year, and therefore, MBS constituted an appropriate placement for the student for the 2019-20 school year. Although aspects of the instruction, supports and services provided to the student at MBS were integral to the school's program and therefore available to all students in attendance, courts analyzing the appropriateness of unilateral placements have in some instances embraced the consideration of evidence of a private school's "general educational milieu" in finding a placement sufficient for purposes of tuition reimbursement (*see, e.g., T.K.*, 810 F.3d 878; *W.A. v. Hendrick Hudson Cent. Sch. Dist.*, 2016 WL 6915271, at *26-*36 [S.D.N.Y. Nov. 23,

2016]).²¹ Moreover, there is sufficient evidence in the hearing record concerning individualization of the school's programmatic elements to address the student's unique needs such that reliance on the "general milieu" principle is not necessary in this instance to determine that the parents met their burden with respect to the appropriateness of MBS as a unilateral placement.

To the extent the district argues that the restrictiveness of the student's placement as a residential student at MBS precludes a finding that it was an inappropriate unilateral student, such argument is not compelling under the specific facts of this case. Generally, although the restrictiveness of the parents' unilateral placement is a factor that may be considered in determining whether the parents are entitled to an award of tuition reimbursement (Rafferty, 315 F.3d at 26-27; M.S., 231 F.3d at 105), parents are not held as strictly to the standard of placement in the LRE as are school districts (see Carter, 510 U.S. at 14-15; C.L., 744 F.3d at 839 [indicating that "while the restrictiveness of a private placement is a factor, by no means is it dispositive"]; D.D.-S., 506 Fed. App'x at 82). While the evidence in the hearing record may not support a finding that a residential program was required for the student, as noted above, the hearing record indicates that the student made progress at MBS and that MBS provided individualized instruction and supports to address the student's unique needs. Accordingly, considering the totality of the circumstances, LRE considerations do not outweigh the other indications in the hearing record that MBS was an appropriate placement for the student for the 2019-20 school year.

B. Equitable Considerations

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; R.E., 694 F.3d at 185, 194; M.C. v. Voluntown Bd. of Educ., 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"]; L.K. v. New York City Dep't of Educ., 674 Fed. App'x 100, 101 [2d Cir. Jan. 19, 2017]). 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]; 34 CFR 300.148[d]; E.M. v. New York City Dep't of Educ., 758 F.3d 442, 461 [2d Cir. 2014] [identifying factors relevant to equitable considerations, including whether the withdrawal of the student from public school was justified, whether the parent provided adequate notice, whether the amount of the private school tuition was reasonable, possible scholarships or other financial aid from the private school, and any fraud or collusion on the part of the parent or private school]; C.L., 744 F.3d at 840 [noting

²¹ Although the "general milieu" analysis does not overrule the principles found in earlier cases considering the appropriateness of unilateral placement, it does represent an apparent retreat from the standard, articulated in Gagliardo, that the unilateral placement must provide instruction specially designed to meet the student's unique needs, supported by services necessary to permit the student to benefit from instruction (Gagliardo, 489 F.3d at 112; see Frank G., 459 F.3d at 364-65).

that "[i]mportant to the equitable consideration is whether the parents obstructed or were uncooperative in the school district's efforts to meet its obligations under the IDEA").

Here, the hearing record demonstrates that equitable considerations weigh in favor of the parents. The parents at all times cooperated with the CSE process and to the extent any minor irregularities can be attributed to the parents as they navigated that process, none rose to the level of non-cooperation or violation of procedural requirements. Moreover, although the student was constrained to leave MBS's physical location due to the Covid-19 pandemic, such change in circumstances is not attributable to the parents for purposes of weighing the equities of the situation and, moreover, the student continued to receive many of the special education supports, services and individualized instruction to meet his unique needs through MBS's remote learning program. Accordingly, as equitable considerations favor the parents, there is no basis upon which to reduce the relief awarded by the IHO in this matter.

VII. Conclusion

Based on the foregoing, the evidence in the hearing record shows that because the unilateral placement of the student at MBS during the 2019-20 school year was appropriate and equitable considerations also support reimbursement of the student's tuition and costs as determined and ordered by the IHO, there is no basis upon which to disturb the IHO's decision. Accordingly, the necessary inquiry is at an end.

THE APPEAL IS DISMISSED.

**Dated: Albany, New York
September 10, 2020**

**CAROL H. HAUGE
STATE REVIEW OFFICER**