



The University of the State of New York

The State Education Department State Review Officer

No. 08-092

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:

Michael Best, Special Assistant Corporation Counsel, attorney for petitioner, Emily R. Goldman, Esq., of counsel

Skyer, Castro, Foley, and Gertsen, attorneys for respondents, Gregory Cangiano, Esq., of counsel

DECISION

Petitioner (the district) appeals from the decision of an impartial hearing officer which found that it failed to offer an appropriate educational program to respondents' (the parents') son and ordered it to reimburse the parents for their son's tuition costs at the Aaron School for the 2007-08 school year. The appeal must be sustained.

The hearing record is sparse regarding the student's educational history. At the time of the impartial hearing in May and June 2008, the student was attending the Aaron School where his parents had unilaterally enrolled him since February 2003 (Tr. pp. 53-55; Parent Ex. K at p. 1). Previously, the student had attended a private placement for kindergarten and part of first grade (Tr. pp. 53-54). The Aaron School has not been approved by the Commissioner of Education as a school with which districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7). The student's eligibility for special education programs and services as a student with an other health impairment (OHI) is not in dispute in this appeal (see 34 C.F.R. § 300.8[c][9]; 8 NYCRR 200.1[zz][10]).

The hearing record reflects that the student may have received diagnoses of an attention deficit hyperactivity disorder (ADHD) and "dyslexia" (Tr. p. 51; Parent Ex. C at p. 5). The hearing record generally describes the student's needs as primarily deficits in behavior, attention, and impulsivity, as well as deficits in social functioning and sensory processing (Tr. p. 142; Parent Exs. C at p. 4; K). When he does not understand directions or when he finds his work overwhelming, the student becomes very anxious, cries, or bites his nails (Tr. pp. 135-36). The

hearing record indicates that at the time of the impartial hearing, the student had difficulty staying still, staying focused, not interrupting his teacher, and not moving around (Tr. p. 59). According to the student's teacher at the Aaron School, the student tended to hug other students and move around the classroom in an "awkward manner" by moving his arms around, running around the room, and jumping over things (Tr. p. 131).

On June 14, 2007, the Committee on Special Education (CSE) convened for an annual review and to develop the student's individualized education program (IEP) for the 2007-08 school year (Parent Ex. C at p. 1). The CSE meeting was attended by the student's mother, a district school psychologist,¹ a district social worker, an additional parent member, a district special education teacher, and a special education teacher from the Aaron School (*id.* at p. 2). The CSE determined that the student was eligible for special education programs and services as a student with an OHI and recommended placement in a district 12:1+1 special education class in a community school, with related services of occupational therapy (OT) two times per week for 30-minute sessions and speech-language therapy two times per week for 30-minute sessions (*id.* at pp. 4, 13, 15). The CSE also recommended that the student be given extended time for tests, testing in a separate location, and directions read and reread aloud (*id.* at p. 15).

By Final Notice of Recommendation (FNR) dated June 27, 2007, the district notified the parents of their son's placement in a 12:1+1 ratio special class in one of the district's community schools (Parent Ex. D). By letter dated August 20, 2007, the parents notified the district that they were rejecting the June 14, 2007 IEP, unilaterally enrolling their son at the Aaron School for the 2007-08 school year, requesting tuition reimbursement for the 2007-08 school year, and requesting transportation for the student to and from the Aaron School (Parent Ex. B).

In a due process complaint notice dated December 10, 2007, the parents requested an impartial hearing and alleged that the district failed to offer their son a free appropriate public education (FAPE) on procedural and substantive grounds (Parent Ex. A). Specifically, the parents asserted that: (1) the CSE was improperly composed because it lacked a regular education teacher (*id.* at p. 1); (2) the CSE failed to use accepted tests and evaluations to measure their son's present levels of performance and instead impermissibly relied on "teacher estimates" (*id.* at p. 2); (3) the CSE developed generic, vague, immeasurable and inadequate goals and objectives for their son (*id.* at pp. 2-3); (4) the CSE failed to consider alternative placements, including a general education setting (*id.* at p. 3); and (5) the district's FNR failed to identify a specific class placement (*id.*). As relief, the parents sought tuition reimbursement for the Aaron School for the 2007-08 school year (*id.*).

An impartial hearing was held on May 7, 2008 and June 10, 2008 (Tr. pp. 1, 92).² By decision dated July 30, 2008, the impartial hearing officer determined that the district failed to meet its burden to demonstrate that it had offered the student a FAPE during the 2007-08 school year (IHO Decision at p. 6). The impartial hearing officer further determined that the parents met

¹ The district's psychologist inadvertently signed in as the educational evaluator (Tr. p. 12; Parent Ex. C at p. 2).

² The hearing record does not explain the delay in conducting the impartial hearing. While the parents' due process complaint notice is dated December 10, 2007, the impartial hearing did not convene for nearly five months. The impartial hearing officer is reminded to comply with State regulations with regard to convening the impartial hearing (*see* 8 NYCRR 200.5[j][3][iii], [j][5][i]).

their burden to establish that the Aaron School was an appropriate placement for the student (id. at p. 7). She found that the hearing record established that the student was grouped with students of similar age, academic and developmental needs and attended classes at the Aaron School according to his functional level (id.). She further found the Aaron School appropriate because the student benefited from a small group environment, received counseling and speech-therapy, and "seems to have made progress in academic subjects as well as socially and emotionally" (id.). Lastly, the impartial hearing officer concluded that equitable considerations supported the parents' request for tuition reimbursement (id. at pp. 7-8). She noted that the parents cooperated with the CSE and found the fact that they had signed an enrollment contract with the Aaron School prior to the June 14, 2007 CSE meeting an insufficient ground upon which to deny the parents' tuition reimbursement request (id. at p. 7). Accordingly, the impartial hearing officer awarded tuition reimbursement to the parents for the student's 2007-08 school year at the Aaron School (id. at p. 8).

This appeal by the district ensued. The district challenges those portions of the impartial hearing officer's decision wherein the impartial hearing officer found that the Aaron School was an appropriate placement for the student and that the equities favored the parents' request for tuition reimbursement.³ The district argues that the parents failed to show that the Aaron School was an appropriate placement for the student because: (1) they did not produce objective evidence or adduce any testimony that showed the student made academic or social progress at the Aaron School; (2) they failed to show that the student was receiving the necessary service of OT while at the Aaron School; and (3) the student is unable to interact with typically developing peers at the Aaron School. The district contends that the impartial hearing officer also erroneously determined that equities weigh in the parents' favor because the hearing record demonstrates that the parents signed an enrollment contract with the Aaron School and paid a non-refundable deposit to the school prior to the June 14, 2007 CSE meeting. With regard to equitable considerations, the district further argues that the parents failed to provide timely notice of their rejection of the recommended public school program that provided sufficient specificity of the parents' concerns with the district's recommended program. The district requests that the impartial hearing officer's decision awarding tuition reimbursement be vacated.

The parents answered, requesting that the impartial hearing officer's decision be upheld in its entirety.

Two purposes of the Individuals with Disabilities Education Act (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

³ I note that the district does not appeal that part of the decision wherein the impartial hearing officer determined that the district failed to offer a FAPE to the student. An impartial hearing officer's decision is final and binding upon the parties unless appealed to a State Review Officer (34 C.F.R. § 300.514[a]; 8 NYCRR 200.5[k]). Consequently, the impartial hearing officer's determination that the district failed to offer the student a FAPE is final and binding upon the parties (see Application of a Student with a Disability, Appeal No. 08-046; Application of the Dep't of Educ., Appeal No. 08-025; Application of a Child with a Disability, Appeal No. 07-050; Application of a Child with a Disability, Appeal No. 07-026; Application of a Child Suspected of Having a Disability, Appeal No. 06-092; Application of a Child with a Disability, Appeal No. 06-085; Application of a Child with a Disability, Appeal No. 04-024; Application of a Child with a Disability, Appeal No. 03-108; Application of a Child with a Disability, Appeal No. 02-100).

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 Bd. of Educ. v. Rowley, 458 U.S. 176, 206-07 [1982]).

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). While school districts are required to comply with all IDEA procedures, not all procedural errors render an IEP legally inadequate under the IDEA (Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]; Perricelli v. Carmel Cent. Sch. Dist., 2007 WL 465211, at *10 [S.D.N.Y. Feb. 9, 2007]). Under the IDEA, if a procedural violation is 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 C.F.R. § 300.513[a][2]; E.H. v. Bd. of Educ., 2008 WL 3930028, at *7 [N.D.N.Y. Aug. 21, 2008]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007] aff'd, 2008 WL 3852180 [2d Cir. Aug. 19, 2008]).

A 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]). 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 (Burlington, 471 U.S. at 370-71; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 111 [2d Cir. 2007]; Cerra, 427 F.3d at 192 [2d Cir. 2005]). "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 C.F.R. § 300.148).

A private school placement must be "proper under the Act" (Carter, 510 U.S. at 12, 15; Burlington, 471 U.S. at 370), i.e., the private school offered an educational program that met the student's special education needs (see Gagliardo, 489 F.3d at 112, 115; Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998]; Matrejek, 471 F. Supp. 2d at 419 [S.D.N.Y. 2007]). A parent's failure to select a program approved by the state in favor of an unapproved option is not by itself a bar to reimbursement (Carter, 510 U.S. at 14). The private school need not employ certified special education teachers or have its own IEP for the student (Carter, 510 U.S. 7; Application of the Bd. of Educ., Appeal No. 08-016; Application of the Bd. of Educ., Appeal No. 07-097; Application of a Child with a Disability, Appeal No. 07-038; Application of a Child with a Disability, Appeal No. 02-014; Application of a Child with a Disability, Appeal No. 01-105). Parents seeking reimbursement "bear the burden of demonstrating that their private placement was appropriate, even if the IEP was inappropriate" (Gagliardo, 489 F.3d at 112; see M.S. v. Bd. of Educ., 231 F.3d 96, 104 [2d Cir. 2000]). "Subject to certain limited exceptions, 'the same considerations and criteria that apply in determining whether the [s]chool [d]istrict's

placement is appropriate should be considered in determining the appropriateness of the parents' placement..." (Gagliardo, 489 F.3d at 112; Frank G. v. Bd. of Educ., 459 F.3d 356, 364 [2d Cir. 2006] [quoting Rowley, 458 U.S. at 207 and identifying exceptions]). Parents need not show that the placement provides every special service necessary to maximize the student's potential (Frank G., 459 F.3d at 364-65). When determining whether the parents' unilateral placement is appropriate, "[u]ltimately, the issue turns on" whether that placement is "reasonably calculated to enable the child to receive educational benefits" (Frank G., 459 F.3d at 364; see also Gagliardo, 489 F.3d at 112). While evidence of progress at a private school is relevant, it does not itself establish that a private placement is appropriate (Gagliardo, 489 F.3d at 115 [citing Berger v. Medina City Sch. Dist., 348 F.3d 513, 522 [6th Cir. 2003] [stating "evidence of academic progress at a private school does not itself establish that the private placement offers adequate and appropriate education under the IDEA"]]). A "private placement is only appropriate if it provides 'education instruction specifically designed to meet the unique needs of a handicapped child'" (Gagliardo, 489 F.3d at 115 [citing Frank G., 459 F.3d at 365 [quoting Rowley, 458 U.S. at 188-89] [emphasis added]]).

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

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

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

In 2007, the New York State Legislature amended the Education Law to place the burden of production and persuasion upon the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of production and persuasion regarding the appropriateness of such placement (Educ. Law § 4404[1][c], as amended by Ch. 583 of the Laws of 2007). The amended statute took effect for impartial hearings commenced on or after October 14, 2007 (see Application of the Bd. of Educ., Appeal No. 08-016).

As noted above, the district does not appeal that portion of the impartial hearing officer's decision that found the district failed to offer a FAPE to the student. Therefore, that issue is not before me on appeal.

Turning to the appropriateness of the parents' unilateral placement of the student at the Aaron School for the 2007-08 school year, I find that the impartial hearing officer incorrectly determined that the parents met their burden to demonstrate that the Aaron School was appropriate to meet the student's special education needs (see Gagliardo, 489 F.3d at 112, 115; Frank G., 459 F.3d at 363).

Although the hearing record provides general information about the Aaron School, it contains insufficient information regarding the educational services provided to the student or how the educational services at the Aaron School met the student's identified special education needs. According to the hearing record, the Aaron School has an enrollment of approximately 114 to 120 children (Tr. p. 123). For the 2007-08 school year, the student was in a fifth grade class with a total of 10 children, staffed by the teacher and an assistant (Tr. p. 125; Parent Ex. K at p. 1). The student's teacher testified that although the students in her class have learning disabilities, PPD [sic],⁴ attention disabilities, and language-based disabilities, the range of the group is "pretty homogeneous" (Tr. p. 139). The students in the class are between 10 and 12 years of age (Tr. p. 138). She stated that the Aaron School provides no mainstreaming opportunities because "it's a self-contained school" (Tr. p. 124).

The student's teacher testified that she teaches a regular fifth grade curriculum for science and social studies (Tr. p. 123). Although she uses a fifth grade writing curriculum, the teacher noted that she teaches writing to each student's specific level (id.). For reading and math, students are grouped across grades according to their ability levels (Tr. p. 124). The hearing record does not identify a specific reading or math curriculum used with the student. A February 2008 mid-year report described the student as an "active participant" in a mid-fourth grade level math group (Parent Ex. K at p. 2). Although the same mid-year report noted that the student participated in a comprehension reading group that approached a fifth grade academic level, testimony by the classroom teacher indicated that she was not the student's instructor for reading (Tr. p. 127; Parent Ex. K at p. 2). She stated that she knew the size of the student's reading group to be four to five students, but she could only "guess" that the student's reading class was probably similar to the reading group that she taught (Tr. pp. 127-28).⁵

When asked to describe a typical day for the student at the Aaron School, the teacher reported that when the student arrives at school he "needs to unpack" and come into the classroom (Tr. p. 128). A daily schedule is displayed on the wall and discussed so that students know what the schedule is for the day (id.). The class has a morning meeting (id.). The teacher indicated that the students may have language arts, writing or handwriting, and then reading group (id.). This is followed by science, social studies or specials⁶ (Tr. p. 129). Class periods are 45 minutes long (id.). The student eats lunch in a lunchroom with three classes of 11 or 12 students per class

⁴ The correct abbreviation, "PDD" stands for pervasive developmental disorder. The student's classroom teacher at Aaron School defined "PPD" as "high functioning autism" (Tr. p. 139).

⁵ The teacher testified that the reading group that she taught used trade books and discussed text, terms, language, inferencing, understanding, comprehension, and relating subject matter to self and to other texts (Tr. p. 127). Her reading group also worked on vocabulary and spelling (id.).

⁶ The hearing record reflects specials to be art, computer, music, library, and gym (Tr. pp. 129-30; Parent Ex. K at pp. 3-5).

monitored by three adults (Tr. p. 130). Whenever students walk in the hallways, teachers monitor their transition from one room to another (*id.*). After every class period, the students "mark their personal successes," so that in this student's case, he can reflect back on whether or not he has been doing what he should do throughout the school day (Tr. pp. 130-31). The teacher reported that the student is responsible to "self monitor" his impulsive behavior and his ability to control his body; such as walking into rooms appropriately, sitting quietly when he is supposed to be sitting, and raising his hand to speak without calling out (Tr. pp. 131-32). Afternoon sessions consist of "whatever we're teaching," either social studies, study skills, high-level thinking skills, language, or the class goes to a park, a "couple of blocks away and back" (Tr. p. 130). At the end of the day, the student remains in the classroom with the teacher until his parents come for him (*id.*).

Although the student's teacher was able to describe a general day for all students at the Aaron School and opined that the student's placement for 2007-08 was appropriate because the student functioned better in small groupings of students (Tr. p. 137), the hearing record does not demonstrate how the Aaron School provides this student with individualized instruction specific to his identified needs. The student's Aaron School teacher testified that the student's deficits were primarily in the areas of behavior, attention, and impulsivity (Tr. p. 142). The parent also indicated that the "biggest issue" for the student was his inability to stay still, stay focused, not interrupt the teacher, and not move around (Tr. p. 59). Although the student's teacher indicated that the student self-monitors his impulsive behavior and his ability to control his body (Tr. pp. 131-32), the hearing record does not define the process of self-monitoring, specify how this student monitors himself, or how the staff at the Aaron School assist the student in his self-monitoring. The teacher also testified that after every class period, students "mark their personal successes," and in this student's case, he can reflect back on whether or not he has been doing what he should do throughout the school day (Tr. pp. 130-31); however, the teacher does not describe what it means to mark success, what specifically the student is required to reflect back on, and if or how he is guided through this process.

The hearing record is sparse for specific information regarding modifications used in the classroom. The teacher indicated that when the student does not follow directions, "Generally, we go up to him and work with him on a one-to-one type basis. Myself or my assistant will walk over there and help him out" (Tr. p. 136). The February 2008 mid-year report reflects the use of verbal and non-verbal reminders to help the student be aware of his behavior during academic instruction (Parent Ex. K at p. 3). The hearing record also reflects that in science, strategies such as "stop, plot, go, and so" and "give me five" were used to calm the student and to make him aware of what he was doing; however, the hearing record does not explain what these strategies are or how they provide educational benefit for the student (*id.* at p. 3).

Regarding related services, the teacher reported that the student was generally pulled out of study skills, community service time, social skills time, or on occasion gym class to see a learning specialist two times per week in a group of 2:1 for assistance with written language expression (Tr. pp. 133, 141). The student also attends a 5:1 peer group class with a counselor one time per week for approximately one-half hour (Tr. p. 133). When asked to describe the social skills curriculum at the Aaron School, the teacher indicated that "it goes throughout the whole day" and "they get pulled out for peer group with a counselor" (Tr. p. 124). The teacher testified that she did not sit in on the peer group class taught by the counselor and did not know "exactly what goes on, on a day-to-day basis" (Tr. p. 132). The February 2008 mid-year report indicates that the

student receives one 30-minute speech-language therapy session per week in a group of 2:1 (Parent Ex. K at p. 1).

The teacher reported that the student had made "some progress" (Tr. p. 135). She noted that when he did not understand directions or when he found his work overwhelming, the student became very anxious, tended to cry, or bite his nails (Tr. pp. 135-36). The teacher stated that at the beginning of the school year the student had more incidences of becoming tearful and anxious when instructions were given (Tr. p. 136). At the time of the impartial hearing, the teacher stated that the student seemed to understand directions to a "fairly good degree" but he still displayed crying, nail biting, and anxiety (id.).

Narrative comments regarding the student's academic subjects in the February 2008 mid-year report from the Aaron School stated that the student was creative in the visual arts and in his writing (Parent Ex. K at p. 1). When engaged in an activity, he was described as "bring[ing] a sense of intensity to the moment and all that surrounds him" (id.). The student was reported to be well liked by his teachers and his peers (id.). He volunteered as a mentor to a younger child in science, which required him to work beyond the requirements of his fifth grade science class by helping to prepare lessons for the younger class (id.). The February 2008 mid-year report indicated that the student was approaching the fifth grade academic level in his comprehension reading group (id. at p. 2). In math, he participated in a mid-fourth grade level group and learned to solve long multiplication and division equations, and he could identify relative vocabulary terms (id.). In writing, the student completed all written assignments in a timely manner, but needed to work on editing, complete sentence structure, noun-verb agreement, and punctuation (id.). Regarding handwriting, the Handwriting Without Tears: Cursive Success program was used to practice cursive writing (id.). According to the mid-year report, the student "can have a good cursive handwriting when he takes his time" (id.).⁷

The February 2008 mid-year report also indicated that the student had a good working knowledge of social studies; he joined in class discussions easily, and had good note taking skills (Parent Ex. K at p. 3). When answering questions in his book or on worksheets he required verbal reminders to answer in complete sentences (id.). The student would also call out answers when others were trying to speak (id.).

The February 2008 mid-year report stated that the student "loves every topic" covered in science (Parent Ex. K at p. 3). However, the report indicated that "sometimes his enthusiasm becomes excessive and he loses contact with where his body is and what he is doing" (id.). In both science and social studies, verbal and nonverbal cuing was used to help the student monitor himself (id.). In science, unexplained strategies such as "stop, plot, go, and so" and "give me five" were used to calm the student and to make them aware of what he was doing (id.). Future goals listed in the mid-year report were as follows: (1) Respect to the space of others (2) Raise hand and wait to be called on to speak (3) Remain in seat for duration of lesson being taught (4) Become more

⁷ The hearing record includes no occupational therapy (OT) evaluation; however, the district psychologist who attended the June 14, 2007 CSE meeting testified that the CSE recommended the continuation of OT as a related service per the parents' request despite a lack of an OT evaluation report or an occupational therapist at that CSE meeting (Tr. pp. 37-38). The psychologist further testified that the CSE had an Aaron School report that indicated in the physical education section that the student had sensory issues (Tr. p. 38).

aware of when he loses focus and refocus himself without teacher prompting (5) Edit work for correct punctuation, spelling, grammar, and word usage (id. at p. 5).

I find that the hearing record does not sufficiently describe the specialized instruction that the student received to address his academic deficits and the February 2008 mid-year report provided only generalized information about the student's academic performance. Although the mid-year report indicates that the student's "struggles" in school could be attributed to his impulsivity and his learning disability and the student's mother testified that the student "may be dyslexic" (Tr. p. 51; Parent Ex. K at p. 1), the hearing record contains no documentary evidence such as medical, psychological, or educational evaluations regarding the student's learning disabilities, provides no specific details regarding a possible diagnosis of dyslexia, nor defines what the mid-year report refers to as the student's learning disability. While the hearing record also appears to suggest that the student may have social emotional needs (Tr. pp. 135-36), there is insufficient information regarding how the student's specific needs are addressed in this area. The student's teacher testified that the student received counseling at the Aaron School; however, she did not specify what the counseling entailed and indicated that since she did not sit in on the peer group class taught by the counselor she did not know "exactly what goes on, on a day-to-day basis" (Tr. p. 132).

In view of the above information, I note that while the hearing record provides general information about the Aaron School, the parents did not meet their burden to demonstrate how the program and services provided at the Aaron School are specially designed to meet the student's unique needs for the 2007-08 school year, and thus, the parents are not entitled to tuition reimbursement (Gagliardo, 489 F.3d at 115). A unilateral private placement is only appropriate if it provides "education instruction specifically designed to meet the unique needs of a handicapped child" (Gagliardo, 489 F.3d at 115 [emphasis added] [quoting Frank G., 459 F.3d at 365]; see also Rowley, 458 U.S. at 188-89). Having decided that the parents failed to meet the second criterion for an award of tuition reimbursement, the necessary inquiry is at an end and I need not reach the issue of whether equitable considerations support the parents' claim (see M.C. v. Voluntown Bd. of Educ., 226 F.3d 60, 66 [2d Cir. 2000]).

I have considered the parties' remaining contentions and find that it is unnecessary to address them in light of my decisions herein.

THE APPEAL IS SUSTAINED.

IT IS ORDERED that the impartial hearing officer's decision dated July 30, 2008 is annulled to the extent that it found that the Aaron School was an appropriate placement and awarded the parents reimbursement for the student's tuition at the Aaron School for the 2007-08 school year.

**Dated: Albany, New York
October 17, 2008**

**PAUL F. KELLY
STATE REVIEW OFFICER**