The University of the State of New York

The State Education Department
State Review Officer
www.sro.nysed.gov

No. 13-179

Application of a STUDENT SUSPECTED OF HAVING A DISABILITY, by his parent, for review of a determination of a hearing officer relating to the provision of educational services by the Board of Education of the Marlboro Central School District

Appearances:
Sussman and Watkins, attorneys for petitioner, Mary Jo Whateley, Esq., of counsel

Thomas, Drohan, Waxman, Petigrow & Mayle, LLP, attorneys for respondent, Neelanjan Choudhury, Esq., of counsel

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from a decision of an impartial hearing officer (IHO) which denied her request for an award of reimbursement for her son's tuition for the 2012-13 school year for the Ridge School (Ridge). 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]; 34 CFR 300.151-300.152, 300.506, 300.511; Educ. Law § 4404[1]; 8 NYCRR 200.5[h]-[l]).

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

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

III. Facts and Procedural History

At the time of the impartial hearing, the student was enrolled in Ridge (Tr. pp. 311, 357).[1, 2] The student functions below grade level with respect to reading comprehension, writing and math skills (Dist. Ex. 1 at pp. 6-7). Socially, the student acts inappropriately with his peers and often needs prompting to return to task to complete his work (id. at p. 7). The

[1] The Commissioner of Education has not approved Ridge as a school with which school districts may contract to instruct students with disabilities (Tr. pp. 183-84; see 8 NYCRR 200.1[d], 200.7).

[2] The student also receives therapy from a private psychologist; however, the parent is not requesting an award of reimbursement for that service (Tr. pp. 316, 339-41).

student also has difficulty with visual memory tasks, including sequencing (id.). In addition, the student exhibits difficulty in the areas of expressive, receptive and pragmatic language (Dist. Ex. 1 at p. 7; see Tr. pp. 359-60). The student has also received the following diagnoses: (1) "Asperger's disorder;" (2) Pervasive Developmental Disorder (PDD); (3) major depressive disorder; (4) post-traumatic stress disorder (PTSD); (5) "mild" Tourette syndrome (Tr. p. 313; Dist. Exs. 3; 7 at p. 1; Parent Ex. H at p. 6).[3] The student's eligibility for special education and related services as a student with an other health-impairment is not in dispute in this proceeding (Dist. Ex. 1 at p. 1; see 34 CFR 300.8[c][9]; 8 NYCRR 200.1[zz][9]).

The student attended middle school in the district; however, during the first or second week of the 2010-11 school year (sixth grade), the district placed him on home instruction for two hours per day due to reports that the student had been bullied in June 2010 (fifth grade) (Tr. pp. 296-302, 312-14; Dist. Exs. 4; 49-62).[4] On August 5, 2011, the CSE convened for a review of the student's program and to develop his IEP for the 2011-12 school year (seventh grade) (Dist. Ex. 1). For the 2011-12 school year, the August 2011 CSE recommended placement of the student in 15:1 special classes for social studies, science, math, and language arts, in addition to the provision of speech-language therapy to be delivered in a group of five students (id. at pp. 1, 11). During the August 2011 CSE meeting, the parent expressed that she wanted the student to attend Ridge to receive services in its math and reading curriculum; however, the CSE rejected the parent's request (id. at p. 2). The parent subsequently commenced an IDEA due process proceeding (IHO Ex. IV at p. 1; see Dist. Ex. 1 at p. 2).[5]

On December 17, 2011, the parent enrolled the student in Ridge (Tr. p. 357; Dist. Ex. 63). In a stipulation of settlement dated December 21, 2011, the parties reached a settlement of the parent's due process claims against the district in relation to the 2011-12 school year (IHO Ex. IV at p. 1; Parent Ex. C).

On July 18, 2012, the CSE convened to conduct the student's annual review and to develop his IEP for the 2012-13 school year (Tr. pp. 161-62). During the July 2012 CSE meeting, the CSE determined that an appropriate program was not available within the district, and consequently, proposed two out of district programs offered through the Board of Cooperative Educational Services (BOCES) that the parent to visit (Tr. pp. 191, 270-71, 273, 286, 318). In August 2012, without the student present, the parent visited both of the proposed programs; however, she concluded that neither program was appropriate to address the student's special education needs (Tr. pp. 68-69, 115-16, Parent Exs. E; F; G). By letter to the district director of pupil personnel services (director) dated August 23, 2012, the parent advised that she had yet to receive a copy of the student's 2012-13 IEP (see Tr. p. 147; Parent Ex. G). In any event, the parent further indicated to the district that she had visited each of the proposed BOCES programs, and that she did not believe that either program option could provide the student with a free appropriate public education (FAPE) (Parent Ex. G). Under the

[3] Neither party disputes the accuracy of the hearing record's characterization of the student's needs.

[4] The hearing record does not indicate if the student continued to receive home instruction during the period of September 2011 until December 2011, when the student enrolled in Ridge (Tr. p. 303).

[5] It appears from the context of the hearing record that the impartial hearing commenced in 2011 was in relation to claims asserted by the parent arising out the 2011-12 school year (IHO Ex. IV at p. 1; Parent Ex. C).

circumstances, the parent advised the district that for the 2012-13 school year, she planned to enroll the student in Ridge and seek an award of tuition reimbursement from the district (id.). The district did not reconvene the CSE following receipt of the parent's August 23, 2012 letter (Tr. pp. 198, 201).

A. Due Process Complaint Notice

By due process complaint notice dated August 31, 2012, the parent requested an impartial hearing (Parent Ex. A). With respect to her claim that the district did not offer the student a FAPE during the 2012-13 school year, the parent alleged, among other things, that the district did not develop an IEP for the student (id.). As relief, the parent sought an award of direct payment from the district of the student's tuition at Ridge for the 2012-13 school year to be provided at public expense, in addition to recovery of the costs of expenses related to tutoring (id.). The parent also invoked the student's right to pendency (id.).

B. Impartial Hearing Officer Decisions

On April 12, 2013, an impartial hearing convened, and after two days of proceedings, concluded on May 16, 2013 (Tr. pp. 1-542). In an interim decision dated May 28, 2013, the IHO ruled on the parent's request to establish Ridge as the student's pendency (stay-put) placement throughout the duration of the proceedings (IHO Ex. IV). Specifically, the IHO determined that the December 2011 stipulation of settlement between the parties was limited to the parent's claims that arose of the 2011-12 school year, and could not be construed as an agreement that Ridge constituted the student's pendency placement (IHO Ex. IV at p. 4; see also Parent Ex. C). Accordingly, the IHO denied the parent's application for an order directing the district to "fund the student's unilateral placement at Ridge during the pendency" of the proceedings (IHO Ex. IV at p. 5).[6]

In a final decision on the merits dated August 5, 2013, the IHO determined that the district failed to offer the student a FAPE, that Ridge was not an appropriate unilateral placement for the student, but that equitable considerations would have supported the parent's request for relief (IHO Decision at pp. 10-11, 17-19). First, the IHO found that the district conceded that it did not provide the student with a FAPE during the 2012-13 school year (id. at p. 10). Next, regarding the appropriateness of Ridge, the IHO concluded that the hearing record established that Ridge was not "reasonably calculated to enable the student to receive meaningful educational benefits" (id. at p. 14). Specifically, the IHO characterized the evidence regarding Ridge as "principally anecdotal," and she further found that the hearing record was equivocal regarding whether the program at Ridge was specifically tailored to meet the student's unique needs (id. at p. 17). The IHO indicated that the student only required program modifications with respect to math, and further explained that the student received the same modifications provided to the other enrolled students (id.). Furthermore, the IHO found that the hearing record offered minimal details regarding the instructional strategies used by Ridge personnel to address the student's deficits, particularly with respect to reading and math (id. at p. 17).

[6] The parent has not appealed the IHO's interim decision on pendency (see 8 NYCRR 279.10).

The IHO also found that Ridge did not conduct any formal assessments of the student to determine the student's levels, abilities or the type of program that he needed (IHO Decision at pp. 14-15). Regarding progress, given the lack of formal assessments of the student's abilities in the hearing record, the IHO indicated that there was no baseline level of skills against which claims of progress could be judged (id. at pp. 15-16).[7] Moreover, the IHO deemed the evidence with respect to the student's progress to be sparse (id.). For example, although the IHO determined that math was an area of weakness for the student, and that Ridge personnel administered tests at the end of various math book chapters in order to assess progress, she found that the hearing record offered no indication of how much the student advanced, and whether it was significant enough (id. at p. 16). The IHO further described the parent's claim that the student had progressed in English as "subjective," and also found that this claim was unsupported by any details in the hearing record (id.). In addition, the IHO noted that Ridge did not obtain any objective measure of the student's skills addressed in language pragmatics (id.). Moreover, although the IHO noted that Ridge provided the student with tests and quizzes, Ridge did not provide the student with numerical grades, and that the student's report cards were based solely on his effort and class participation, and lacked a description of the student's performance (id.). Furthermore, the IHO noted the absence of progress reports from the hearing record (id.). Lastly, the IHO determined that, in the absence of IEP goals with which to consult, Ridge personnel did not create specific measurable goals for the student to facilitate ongoing or subsequent evaluation of the effectiveness of the instruction and support provided to the student (id. at pp. 16-17).

Lastly, despite finding that Ridge did not serve as an appropriate unilateral private placement for the student, the IHO proceeded to render a determination with respect to whether equitable considerations would have supported the parent's request for relief (IHO Decision at pp. 17-19). Notwithstanding her conclusion that Ridge was not an appropriate unilateral private placement, the IHO determined that, in this instance, the parent had not acted with the requisite degree of unreasonableness or misconduct that would have precluded an award of reimbursement (id. at pp. 18-19). In any event, based on her finding that Ridge did not constitute an appropriate unilateral private placement for the student, the IHO dismissed the parent's claim for tuition costs (id. at p. 19).

IV. Appeal for State-Level Review

The parent appeals and requests a reversal of the IHO's decision and a finding that Ridge constituted an appropriate unilateral private placement for the student during the 2012-13 school year. The parent initially contends that the settlement agreement executed by the parties in December 2011 should be construed as including a tacit acknowledgement by the district that Ridge was an appropriate setting to meet the student's educational needs. Under the circumstances, and given that the district did not develop an IEP for the student for the 2012-13 school year, the parent argues that the district should be estopped from alleging that Ridge did not serve as an appropriate unilateral private placement for the student for the 2012-13 school year.

More specifically, the parent alleges that Ridge was appropriate to address the student's educational needs, in part because personnel read books aloud to the student during English, which

[7] The IHO noted that progress was not dispositive of a claim of appropriateness (IHO Decision at p. 17).

met the student's auditory learning needs. The parent further submits that Ridge provided the student with speech-language therapy, and that the student also received instruction in language pragmatics. Additionally, the parent maintains that Ridge addressed the student's math needs through the provision of a remedial math program and by reading aloud word problems. The parent also asserts that Ridge is appropriate to address the student's social/emotional needs through its social skills program, which includes extensive field trip opportunities, which also provide opportunities for experiential learning and are intertwined with classroom lessons. Furthermore, the parent asserts that the student receives weekly counseling sessions in a group setting at Ridge. The parent also argues that Ridge provides the student with OT.

The parent seeks a finding that Ridge is appropriate, in part because she maintains that the program offered to the student at Ridge has remedied a significant deficiency in the district-recommended program and in light of the progress that the student has made at Ridge. The parent notes that while previously enrolled in the district school, the student was subjected to bullying and peer harassment, and that he received home instruction on an inconsistent basis – which the parent contends that the hearing record reflects has been remedied during the student's enrollment at Ridge. Regarding progress, the parent asserts that the student has made social and emotional gains while enrolled at Ridge, and that as a result, he has become available for learning. Likewise, the parent notes that since the student began to attend Ridge, the student independently wakes himself up and gets ready for school. Furthermore, the parent asserts that based on the results of a New York State assessment in math, the student has made progress in math. Similarly, the parent points to an increase in the student's scores on the New York State English language arts (ELA) as evidence that the student has progressed in English.

As a remedy, the parent seeks an award of payment for the costs of the student's tuition at Ridge for 2012-13 school year to be provided at public expense.

The district submitted an answer, and requests a finding that the hearing record does not establish that Ridge constituted an appropriate unilateral private placement for the student for the 2012-13 school year. Preliminarily, the district asserts that the parent lacks standing to initiate a claim for tuition reimbursement at Ridge, because she has not incurred any expenses toward the student's tuition at Ridge. With respect to its assertion that Ridge did not serve as an appropriate unilateral private placement for the student, the district raises the following claims: (1) Ridge did not provide the student with individualized instruction, particularly with respect to English; (2) Ridge personnel could not provide the student with an appropriate amount of speech-language therapy; (3) Ridge did not accommodate or address the student's visual processing deficits; (4) Ridge personnel failed to assess the student's abilities or present levels of performance, by which to gauge what progress, if any, the student has made while enrolled in Ridge; (5) there is no objective measure of progress attained by the student during his enrollment in Ridge contained in the hearing record; and (6) Ridge personnel are not sufficiently qualified to provide special education instruction to the student. Under the circumstances, the district requests that the parent's request for an award of tuition reimbursement should be denied.

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 v. T.A., 557 U.S. 230, 239 [2009]; Bd. of Educ. v. Rowley, 458 U.S. 176, 206-07 [1982]).

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

In this instance, given that the IHO concluded that the district conceded that it did not offer the student a FAPE during the 2012-13 school year, I need not address this issue. Moreover, the district does not challenge the IHO's conclusions with respect to equitable conclusions. Accordingly, those determinations have become final and binding on the parties and will not be reviewed on appeal (34 CFR 300.514[d]; 8 NYCRR 200.5[j][5][v]). Therefore, I need only consider whether the parent's unilateral private placement of the student at Ridge was appropriate.

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 (471 U.S. at 370-71; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 111 [2d Cir. 2007]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 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 CFR 300.148).

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

Disability, Appeal No. 02-014; Application of a Child with a Disability, Appeal No. 01-105). Parents seeking reimbursement "bear the burden of demonstrating that their private placement was appropriate, even if the IEP was inappropriate" (Gagliardo, 489 F.3d at 112; see M.S. v. Bd. of Educ., 231 F.3d 96, 104 [2d Cir. 2000]). "Subject to certain limited exceptions, 'the same considerations and criteria that apply in determining whether the [s]chool [d]istrict's placement is appropriate should be considered in determining the appropriateness of the parents' placement…'" (Gagliardo, 489 F.3d at 112; Frank G. v. Bd. of Educ., 459 F.3d at 364 [2d Cir. 2006] [quoting Bd. of Educ. v. Rowley, 458 U.S. 176, 207 [1982]) 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 Gagliardo, 489 F.3d at 115 [citing Berger v. Medina City Sch. Dist., 348 F.3d 513, 522 [6th Cir. 2003] [stating "evidence of academic progress at a private school does not itself establish that the private placement offers adequate and appropriate education under the IDEA"]]). A private placement is only appropriate if it provides education instruction specially designed to meet the unique needs of a student (20 U.S.C. § 1401[29]; 34 CFR 300.39[a][1]; Educ. Law § 4401[1]; 8 NYCRR 200.1[ww]; Rowley, 458 U.S. at 188-89; Gagliardo, 489 F.3d at 114-15 [noting that even though the unilateral placement provided special education, the evidence did not show that it provided special education services specifically needed by the student]; Frank G., 459 F.3d at 365; Stevens v. New York City Dep't of Educ., 2010 WL 1005165, *9 [S.D.N.Y. Mar. 18, 2010]).

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

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

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

The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see M.P.G. v. New York City Dep't of Educ., 2010 WL 3398256, at *7 [S.D.N.Y. Aug. 27, 2010]).

VI. Discussion

A. Standing

As a preliminary matter, I will first address the district's claim that the parent is barred from seeking an award of tuition reimbursement in this matter, because she has not paid any monies toward the student's tuition at Ridge, nor does she owe any monies to Ridge. In essence, the district alleges that the parent lacks standing to assert a request for relief, because she has not incurred any debt toward the student's tuition at Ridge.

Under the IDEA and New York State law, a parent may seek an impartial hearing regarding "any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child" (20 U.S.C. § 1415[b][6][A]; Educ. Law § 4404[1]; Winkelman, 550 U.S. at 531). It was permissible for the parent to file a due process complaint notice asserting that the district had failed to offer the student a FAPE on the basis that the July 2012 CSE had not complied with the procedural requirements set forth in the IDEA, thereby resulting in a substantive denial of a FAPE (see Winkelman, 550 U.S. at 531, 533; 34 CFR 300.507[a], 8 NYCRR 200.5[i]; see also Parent Ex. A).

Although courts have disagreed on what is sufficient to constitute "injury in fact," the only courts that have addressed this issue in New York have found that the denial of a FAPE or of a procedural right created by the IDEA is sufficient to satisfy the "injury in fact" requirement (S.W. v. New York City Dep't of Educ., 646 F. Supp. 2d 346, 359-360 [S.D.N.Y.2009] [finding that a denial of a FAPE constituted an injury in fact which could be redressed by direct retrospective payment, but declining to address whether direct retrospective payment was an allowable remedy under the IDEA]; E.M. v. New York City Dep't of Educ., 2011 WL 1044905, at *6 [S.D.N.Y. March 14, 2011] [finding a denial of a FAPE or a procedural right under the IDEA was a statutorily created injury in fact to satisfy standing]; see also Heldman v. Sobol, 962 F.2d 148, 154-56 [2d Cir. 1992] [holding that the IDEA may create a statutory right, the alleged violation of which is an injury in fact]; see also Fetto v. Sergi, 181 F. Supp. 2d 53, 66 n.22 [D. Conn. 2001] [finding a denial of a FAPE was a statutorily created injury in fact]; but see Malone v. Nielson, 474 F.3d 934, 937 [7th Cir. 2007] [parents lacked standing on claim for reimbursement for services where student's estate, rather than parents, had actually expended resources]; Emery v. Roanoke City Sch. Bd., 432 F.3d 294, 299 [4th Cir. 2005] [finding a denial of a FAPE as an injury in fact could not be redressed by tuition reimbursement because the student's education had already been paid for by the student's father's insurance carrier]; Piedmont Behavioral Health Center LLC v. Stewart, 413 F. Supp. 2d 746, 755-56 [S.D. W.Va. 2006] [finding that the student and parent lacked an injury in fact because the private school had paid for education of student, rather than student or parent]).

Because courts have determined that a denial of a FAPE by a district is an injury in fact under the IDEA and because the parent's due process complaint notice includes such an assertion, the only other relevant factors here in determining standing are (1) whether the petitioner can maintain a proceeding as a parent of the student, and (2) whether the relief requested is likely to redress the injury (see Raines v. Byrd, 521 U.S. 811, 818-19 [1997]; S.W., 646 F. Supp. 2d at 359,

E.M., 2011 WL 1044905, at *6; see also Parent Ex. A).[8, 9] In this case, there is no dispute that the petitioner is the parent of the student within the meaning of the IDEA (Tr. p. 311; see 20 U.S.C. § 1401[23]; 34 CFR 300.30[a]; see also 8 NYCRR 200.1[ii]; Fuentes v. Bd. of Educ., 569 F.3d 46 [2d Cir. 2009]; Fuentes v. Bd. of Educ., 12 N.Y.3d 309, 314 [2009]). Consistent with the courts' determinations in S.W. and E.M., a parent's request for direct retrospective payment would redress the denial of a FAPE in circumstances where a private school has provided an education to the student and the parent has not made any payments to the private school (see S.W., 646 F. Supp. 2d at 359; E.M., 2011 WL 1044905, at *6). A request for tuition reimbursement could also redress the denial of a FAPE in circumstances where a private school has provided an education to the student and the parent has made or will make payments to the private school (see Burlington, 471 US at 369-370). The inquiry regarding standing ends here, without needing to determine whether the relief requested is in fact available (S.W., 646 F. Supp. 2d at 359; E.M., 2011 WL 1044905, at *6; see New York City Dep't of Educ. v. S.S., 2010 WL 983719, at *7-8 [S.D.N.Y. March 17, 2010] [finding the party had standing even though the relief requested was ultimately unavailable]).[10]

Here, given that there is no dispute that the district failed to offer the student a FAPE during the 2012-13 school year, and the parent has requested an award of the costs of tuition at Ridge in order to rectify the injury, I find that the district's assertion that the parent lacks standing is without merit (see S.W., 646 F. Supp. 2d at 359; E.M., 2011 WL 1044905, at *6; see also A.R. v. New York City Dep't of Educ., 2013 WL 5312537, at *10-*11 [S.D.N.Y. Sept. 23, 2013] [awarding direct payment upon judicial review upon the submission of additional evidence without requiring the parent to place any out-of-pocket expenses at risk]; Mr. and Mrs. A. v. New York City Dep't of Educ., 769 F.Supp.2d 403, 426-27 [S.D.N.Y. 2011]). Accordingly, before determining whether appropriate relief may include direct payment of the Ridge tuition costs, I must first consider whether the evidence contained in the hearing record supports a finding that Ridge constituted an appropriate unilateral private placement for the student during the 2012-13 school year. For the reasons more fully explained below, I agree with the impartial hearing officer that it does not.

---

[8] New York State regulations define the term "parent" as a birth or adoptive parent, a legally appointed guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child (8 NYCRR 200.1(ii); see also Fuentes v. Bd of Educ. of the City of N.Y., 569 F.3d 46 [2d Cir. 2009]; Fuentes v. Bd. of Educ. of the City of N.Y., 12 N.Y. 3d 309, 314 [2009].

[9] I note that the additional element of the doctrine of standing, requiring that the alleged injury in fact be "fairly traceable to the [district's] allegedly unlawful conduct," is not at issue here as it is both understood and undisputed that the district has the obligation to offer the student a FAPE (Raines, 521 U.S. at 818-19; see 20 U.S.C. § 1412[a][1][A]; 34 CFR 300.101[a]).

[10] For a more thorough analysis of relief and the viability of prospective and retrospective direct payment as an available remedy, there are a number of SRO decisions applying the district court's ruling in Mr. and Mrs. A., 769 F. Supp. 2d at 406 in the context of relief but only after making determinations that the district offered a FAPE , the ' unilateral placement was appropriate, and equitable considerations favored an award of the costs of the private school tuition (Application of a Student with a Disability, Appeal No. 12-036; Application of a Student with a Disability, Appeal No. 12-004; Application of the Dep't of Educ., Appeal No. 11-106; see also P.K. v. New York City Dep't of Educ. (Region 4), 819 F.Supp.2d 90, 118 [E.D.N.Y. 2011], aff'd, 2013 WL 2158587 [2d Cir. May 21, 2013]).

B. Appropriateness of Ridge

The hearing record describes Ridge, as an accredited day school for students in grades kindergarten through 12, whose student population consists of students who have a diagnosis of Asperger's syndrome or are considered high-functioning students with autism (Tr. pp. 355-36, 395-96). At the time of the impartial hearing, Ridge had an enrollment of eight students, ranging in ages from 13-19 (Tr. pp. 394-95). According to the assistant director of Ridge (assistant director), the school's primary goal is "to set up a safe school environment where the students are ready and open for instruction" (Tr. pp. 355-56). Ridge personnel follow the educational requirements set forth by the New York State Core Curriculum (Tr. pp. 360, 405-06). The school employs six individuals, which include three teachers employed on a full-time basis, one part-time teacher, a speech-language pathologist and an occupational therapist (Tr. pp. 361, 409-12).

1. Specially Designed Instruction

The district argues that the hearing record weighs against a finding of appropriateness of Ridge, in part because the evidence does not demonstrate Ridge offered the student any individualized instruction designed to meet his special education needs.[11] 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. As noted above, parents must 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). However, in this instance, there is very little evidence describing how Ridge's program was modified and tailored to address the student's unique special education needs, namely with respect to his deficits in the areas of reading comprehension, math, and speech-language needs in order to enable him to benefit from instruction (A.R., 2013 WL 5312537, at *6).

a. English/Social Studies/Science

The hearing record contains evidence that the student exhibits weaknesses in the area of reading comprehension (Dist. Ex. 1 at p. 6; Parent Ex. H at pp. 4, 6). Additionally, the assistant director described the student as an "auditory learner," and further noted that the student experienced difficulty when learning with more than one modality at a time (Tr. pp. 358-60). In any event, the assistant director testified that the student did not receive any curriculum modifications in English; rather, the student was working on "beginning [R]egents ninth grade

[11] Contrary to the parent's claim that the district's agreement to settle claims in relation to the 2011-12 school year should be deemed a "tacit acknowledgement of the appropriateness" of Ridge for the 2012-13 school year, I note that for purposes of a tuition reimbursement analysis, each school year is treated separately. Therefore, I will begin by addressing the appropriateness of Ridge during the 2012-13 school year (see Mrs. C. v. Voluntown Bd. of Educ., 226 F.3d 60, 67 [2d Cir. 2000] [examining the prongs of the Burlington/Carter test separately for each school year at issue]; Omidian v. Board of Educ., 2009 WL 904077, at *21-*26 [N.D.N.Y. Mar. 31 2009] [analyzing each year of a multi-year tuition reimbursement claim separately]; Student X v. New York City Dep't of Educ., 2008 WL 4890440, at *16 [E.D.N.Y. Oct. 30, 2008]). I further note that the settlement agreement between the parties expressly limited the agreement to claims that arose out of the 2011-12 school year, further provided that nothing contained in the parties' agreement shall constitute an admission that the district failed to provide an appropriate placement to the student (Parent Ex. C).

English in terms of reading and the understanding of the stories" (Tr. p. 384). The hearing record further reveals that the assistant director's characterization of the student as an auditory learner particularly manifested itself during English class; therefore, the student's English instructor read all books aloud to the class (Tr. pp. 359-60, 488). She added that when the book was finished, students watched a movie, when a movie was available, and compared and contrasted how the book differed from the film version (Tr. p. 360). However, the hearing record fails to describe how the activities of viewing movies and reading material aloud to the student addressed his identified deficits in reading comprehension or how these modifications accommodated the student as an "auditory learner" (see Tr. pp. 359-60; Parent Ex. H at pp. 4, 6). Additionally, without further elaboration, the assistant director indicated that the student's English classwork was also modified to the extent that there was little writing required of the student at that time, but the hearing record does not clarify whether this adaptation was designed to address the student's difficulty with the mechanics of writing or with the content area (Tr. p. 421; see Tr. p. 372; Dist. Ex. 1 at p. 6).

Next, while the student reportedly functioned below grade level in science and social studies, the evidence further reflects that all Ridge students, including the student in the instant case, enrolled in English, social studies and science received the same classroom modifications (Tr. pp. 422-23). Furthermore, the assistant director testified that the student's social studies and science curriculum were not modified for the student at Ridge (Tr. p. 384). Specifically, the assistant director testified that in social studies, the instructor read aloud the material to the class, and the students watched movies that were associated with the curriculum and participated in field trips that involved the science and social studies curriculum; however, the evidence in the hearing record fails to describe how such modifications were specially designed to meet the student's special education needs (Tr. pp. 421-22).

b. Math

The assistant director also testified that the student had demonstrated deficits in math (Tr. p. 375). She noted that while the student enjoyed math, he had difficulty setting up word problems and understanding what was being asked of him, which the assistant director described as "a language-based skill" (id.). The assistant director further testified that the student was functioning between two and two and half years below grade level in math (id.). To the extent that the parent claims that the student's math curriculum was individualized to meet his special education needs with respect to math, while the hearing record indicates that Ridge personnel utilized a specific program with the student that was designed to work on remedial math skills with him, the hearing record is sparsely developed with respect to how the program constituted specially designed instruction to meet his unique math needs (Tr. pp. 375, 383-84). The hearing record further reflects that the student's math curriculum at Ridge was modified to the extent that he worked on a level at which he was capable of working; however, there is no indication that this constituted specially designed instruction within the meaning of the IDEA (Tr. p. 423). Regarding the student's difficulty with word problems, the assistant director testified that the student's math instructor read the problems aloud, talked about "what different things mean," and how "to set it up so that" the student could arrive at the correct answer; however, the hearing record does not articulate how this accommodation provided the student with specially designed instruction tailored to address the student's needs in math (Tr. p. 424).

c. Speech-Language Needs

The student also is reported to have significant delays in the areas of expressive and receptive language and with respect to his pragmatic language (Dist. Ex. 1 at p. 7). According to the hearing record, the student received "direct service" at Ridge, two times per week in a group of two to four students, depending on who the group consisted of that day (Tr. pp. 360-61). However, the hearing record offers little evidence regarding the nature of the speech-language therapy that the student received at Ridge. The assistant director conceded that the speech-language pathologist could not assess the student, because the speech-language pathologist worked on a part-time basis and did not have testing materials of her own (Tr. pp. 496-97). The hearing record further reflects that the speech-language pathologist could not do "a lot" with the student, because the speech-language pathologist did not have an IEP from which to work, therefore, she assisted the English instructor with language pragmatics and the "vocabulary workshop series" (Tr. p. 496).[12] Regarding the student's difficulty with pragmatic speech, the assistant director explained that the student did not understand idioms, so Ridge personnel tried to integrate idioms when needed and when they were given in a textbook situation (Tr. p. 491). She added that Ridge personnel also encouraged "social computation" when appropriate, by orchestrating conversation among students (Tr. pp. 491-92). According to the assistant director, "social computation" took place during English, lunch, speech, on field trips and on a push-in basis (Tr. pp. 491-92). In any event, while there is some indication in the hearing record regarding strategies used at Ridge to improve the student's pragmatic language skills, the hearing record lacks sufficient evidence to establish how Ridge was addressing the student's receptive and expressive language deficits, and in assessing a particular placement's appropriateness, the inquiry must focus not on the general benefits a school may impart, but rather on the degree to which it addresses a student's particular needs (L.K. v. Northeast Sch. Dist., 932 F. Supp. 2d 467, 490 [S.D.N.Y. Mar. 19, 2013]). Examples of helpful information to establishing the appropriateness of the services would be session notes or some type of progress assessment from the student's speech-language therapist at Ridge, but none was offered in this instance (Tr. p. 442).[13] Nor did the student's speech-language therapist from Ridge testify at the impartial hearing. Under the circumstances, the evidence weighs against a finding that the speech-language services provided to the student at Ridge were appropriate for the student.

[12] According to the assistant director, in January 2012, she initially asked the district to provide her with access to the computer program used to draft the student's written IEP, which was not granted by the district (Tr. pp. 363-64, 439). In August 2012, the assistant director reiterated her request for access to the student's IEP, to which the district did not agree (Tr. p. 364). The assistant director testified that she needed access to the student's IEP in order to continue to make comments on the IEP and also to instruct off of the IEP, and work toward whatever goals the district has for him (Tr. p. 439). Without access to the student's IEP, the assistant director testified that she followed a "general education plan," but she did not follow goals and objectives that were developed by the district (Tr. p. 443). She added that without access to the student's IEP, she relied on information gleaned through observation in order to develop the student's education plan at Ridge (Tr. p. 365). While written consent from the parent to release the student's educational records would be required, it is unclear whether consent was requested of or obtained from the parent from either Ridge or the district.

[13] The parent testified that she did not know how often the student received speech-language therapy at Ridge, and she had not seen any session notes from the student's speech-language therapist (Tr. pp. 321, 328).

d. Social/Emotional Needs

Next, the hearing record reveals that the student exhibited difficulties within the social/emotional domain; however, as detailed below, the evidence in the hearing record depicting how Ridge addressed those needs is sparse (Tr. p. 497; Dist. Ex. 1 at p. 7). Specifically, the evidence shows that student acts inappropriately with peers, and sometimes teases and provokes other students (Dist. Ex. 1 at p. 7). Although his social skills are reportedly "emerging," the student generally does not initiate conversations (Tr. p. 372). He also has a tendency to "daydream" when a concept becomes too challenging for him instead of asking for assistance (Dist. Ex. 1 at p. 7). In addition, the student also reportedly "suffer[s] from some unawareness of his surroundings," and has exhibited some depressed mood and fascination with death, as well some neurological dysfunction (Parent Ex. H at p. 6). Here, the hearing record demonstrates that the student participated in group counseling at Ridge, during which time he worked on conversation skills; however, he did not receive individual counseling at Ridge (Tr. pp. 371-72, 498).[14] The assistant director provided the following description of the group counseling sessions offered at Ridge:

> Again, it's a series of observations and if a child is -- tends to hold back, we try to encourage them to be part of whatever is going on, conversationally and take part in what's going on not only in counseling but also hopefully that would transport over to taking part in class as well
>
> (Tr. p. 371).

According to the assistant director, Ridge personnel addressed the student's social/emotional needs by redirecting his conversations to make them more appropriate when the student engaged in socially inappropriate conversation or behavior (Tr. p. 497). However, the student's therapist did not testify at the impartial hearing and the hearing record does not include any evidence as to the nature of her services or how those services related to the student's unique social/emotional needs (see Tr. p. 442).[15] More specifically, there is no evidence in the hearing record to illustrate how Ridge addressed the student's emotional difficulties, particularly his difficulty with depression and his "fascination with death" (Parent Ex. H at p. 6). Furthermore, there is no evidence with respect to strategies employed by Ridge personnel to address the student's inattention and keep him in engaged in the lesson; rather, the assistant director testified that the student frequently put his head down while books were read aloud or while students watched movies (Tr. p. 381).

Additionally, students enrolled in Ridge take part in field trips, which the assistant director described as part of the school's social skills program, where students go out into the community, and talk about different jobs (Tr. p. 366). The assistant director described this aspect of Ridge's academic curriculum to be "experiential" (Tr. p. 369). According to the hearing record, Ridge

[14] According to the assistant director, the student did not receive individual counseling at Ridge, because Ridge personnel did not have access to his IEP that would have indicated that the student required the provision of counseling on an individual basis (Tr. p. 498).

[15] The parent also testified that she has never seen any session notes from the student's "emotional therapy" sessions at Ridge, nor did she know how often the student received therapy at Ridge for his social/emotional needs (Tr. pp. 321, 328).

personnel characterized these field trips as "an important part of our social skills development," because they provided students with opportunities to practice "appropriate socially acceptable behaviors" (Parent Ex. M). For example, the assistant director noted that students might take money with them to purchase lunch, and then they were responsible to pay for their own lunch, including tax and tip, and to make sure that they have enough money remaining in order to buy a souvenir (Tr. pp. 366-67). The hearing record reflects that the student in the instant case participated in a number of the field trips offered by Ridge, including bowling, a visit to a conservation center and a trip to Buddhist monastery (Tr. pp. 367-68). Notwithstanding the student's participation, the district correctly submits that the hearing record does not demonstrate how Ridge's field trips to visually stimulating venues were modified to address the student's visual processing deficits (see Parent Ex. H at p. 4). Nor does the hearing record articulate how the field trips in which the student took part at Ridge were specially designed to address the student's social/emotional deficits.

e. Fine and Gross Motor Needs

In addition, the student's handwriting has been described as "illegible," if he does not "take his time" (Dist. Ex. 1 at p. 6). Similarly, although she deemed the student's handwriting to be legible, the assistant director described the student's handwriting as "a little large and sloppy" and she testified that the student would benefit from the provision of OT (Tr. p. 372). According to the assistant director, the student received OT services in a group setting at Ridge; however, the hearing record offers a very limited description of the OT services provided to the student aside from working on his signature (Tr. p. 373; see Parent L at p. 2).[16] Again, examples of evidence that may have been helpful, but were not offered in this instance, would be session notes from the student's occupational therapist, or any progress assessment, or testimony offered the student's occupational therapist that described the services that addressed the student's deficits. The parent indicated that she had not seen any session notes gleaned from the student's OT sessions at Ridge, nor did she know how often the student received OT at Ridge (Tr. pp. 321, 328). Under the circumstances, there is insufficient evidence in the hearing record to conclude that Ridge provided the student with specially designed instruction designed to address the student's fine motor needs.

In addition, the student also participated in an "adaptive physical education" program at Ridge, which included activities such as bowling, visiting a Buddhist monastery, playing outside, yoga and engaging in cooperative play (Tr. p. 385; see Parent Exs. L at p. 1; M). The assistant director added that with respect to the student in the instant case, he participated in "adaptive physical education," because the student did not wish to take part in contact sports (Tr. p. 412). She further conceded that the activities in which students participated during "adaptive physical education" could be considered "regular" physical education classes; however, she deemed the program at Ridge to be an "adaptive physical education" program, because it was comprised of students with disabilities (Tr. p. 414). Under the circumstances, although Ridge personnel accommodated the student's refusal to take part in contact sports, the hearing record does not

[16] In a November 2012 newsletter, the executive director wrote that "[w]e have accomplished a number of nice projects [i]ncorporating learning modules with OT" and ongoing support from the occupational therapist employed at Ridge; however, the hearing record offers no further details regarding the OT projects and what involvement, if any, the student had or how these projects were related to his unique OT needs (Parent Ex. L at p. 2).

illustrate how the "adaptive physical education" program at Ridge provided the student with specially designed instruction tailored to meet the student's unique special education needs.

Based on the foregoing, the evidence contained in the hearing record weighs against a conclusion that it provided the student with specially designed instruction that addressed his unique special education needs during the 2012-13 school year, although I can understand the parent's desire to have the student educated at Ridge, it appears from the evidence provided in that Ridge largely offers students the kind of educational and environmental advantages and amenities that might be preferred by parents of any child, disabled or not (R.B. v. N.Y.C. Dep't. of Educ., 713 F. Supp.2d 235, 246 [S.D.N.Y. 2010] [quoting Gagliardo, 489 F.3d at 115]).

2. Progress

Although progress is not dispositive of a determination of appropriateness, some discussion of the evidence of progress is warranted. While evidence of progress at Ridge alone, or a lack thereof, would not by itself be sufficient to determine whether Ridge was appropriate; progress is nevertheless a relevant factor that may be considered (see Gagliardo, 489 F.3d at 115; see also Application of the Bd. of Educ., Appeal 11-078; Application of the Dep't of Educ., Appeal No. 11-051). Here, while the hearing record offers anecdotal information regarding the student's progress, there is no objective evidence that supports the parent's assertion that the student has progressed in his areas of need during his enrollment at Ridge.

In this case, prior to his enrollment at Ridge, the parent testified that the student could not make friends, and that he did not know how to speak or start a conversation (Tr. p. 316). However, the parent indicated that since the student has been in attendance at Ridge, socially and emotionally, the student was a different child, and that he understood how to get along with others more easily (Tr. p. 316). Contrary to the parent's testimony, although the assistant director indicated that the student was progressing "somewhat consistently," she noted that the student generally did not start conversations, and that Ridge personnel had to prod him to continue a conversation once it began (Tr. p. 372).[17] In addition, while the assistant director noted that the student did not engage in behaviors that interfered with his learning, she testified that the student frequently put his head down when the class was reading or watching a movie (compare Tr. p. 381, with Dist. Ex. 1 at p. 7).[18] Notwithstanding the assistant director's testimony that Ridge personnel had met its objective of setting up the student so that he felt safe in school and ready for instruction, the hearing record does not contain any objective evidence to substantiate this assertion (Tr. p. 389; see Tr. p. 442).

With respect to the student's academic needs, the assistant director stated that Ridge personnel did not conduct any formal assessments of the student in order to ascertain his levels or abilities (Tr. p. 402; see Tr. p. 358). When asked if any assessments were conducted at the end of

[17] Notwithstanding her statement that the student was progressing somewhat consistently in the social/emotional domain, the assistant director did not identify any specific examples of the student's progress in this area (see Tr. p. 372).

[18] Although the student put his head down while the instructor read the book aloud or showed a movie, the assistant director testified that when questioned about the subject matter, the student was "on target" (Tr. p. 381).

the 2011-12 school year, the assistant director stated that the student was administered the seventh grade ELA and math State assessments and that Ridge personnel's determination that the student had progressed was in part based on the results of those examinations (Tr. p. 402). According to the assistant director, as indicators to determine the student's progress in math and English, Ridge personnel relied on results from the State assessments, math tests at the end of the chapters in the math book, and subjective observation (id.). The hearing record includes the student's score reports for 2009, 2010, and 2012 New York State ELA and math examinations (Parent Exs. I; J; K; CC).[19] The student obtained a score of level one on the sixth grade state math and ELA State assessments given in 2010, and a score of one and two respectively on the seventh grade math and ELA State assessments administered in 2012 (Parent Ex. CC). Although the assistant director opined that the student had made progress during the 2011-12 school year, as a result of a "significant" increase in the student's scores on the ELA State assessment during the two years that the student took the examination, the district correctly submits that the parent's reliance on the results of the State assessments is misplaced (Tr. pp. 404-05). Specifically, there is no specific evidence in the hearing record to illustrate how the student's score corresponded to his grade level functioning (Tr. p. 380; Parent Ex. CC). The hearing record further reveals that the student attained the same score of level one in math in 2010 and in 2012, showing no increase in score—it demonstrates only that he was functioning below the standards (id.). Lastly, the hearing record contains the student's report card for the first marking period of the 2012-13 school year, reflecting that the student had attained the following grades: English, B+; math, B+; social studies (ancient history), B; science (earth science), B; however, during testimony, the assistant director conceded at the impartial hearing that the student's report card was not actually a record of his academic achievement (see Tr. pp. 419-20; Parent Ex. Q). Rather, the student's grades were based on effort and his level of class participation, and although Ridge administered tests and quizzes to the student, he was not assigned numeric grades (Tr. pp. 382-83; 419). Under the circumstances presented, given the very limited amount of objective information contained in the hearing record documenting the student's progress, the evidence does not support the conclusion that Ridge should be determined to be appropriate due to the progress, if any, that the student made there during the 2012-13 school year.

VII. Conclusion

Having determined that the parent did not establish the appropriateness of Ridge for the 2012-13 school year, it is not necessary to determine the issue of whether equitable considerations support the parent's claim, and the necessary inquiry is at an end (see MC v. Voluntown, 226 F.3d 60, 66 [2d Cir. 2000]; C.F., 2011 WL 5130101, at *12; D.D-S., 2011 WL 3919040, at *13 aff'd, 2012 WL 6684585 [2d Cir. Dec. 26, 2012]).

[19] The student did not take the State assessments in 2011 (Tr. pp. 404-05, Parent Ex. CC).

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

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
October 22, 2013

JUSTYN P. BATES
STATE REVIEW OFFICER