The University of the State of New York

The State Education Department
State Review Officer
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No. 15-016

Application of the BOARD OF EDUCATION OF THE WAPPINGERS CENTRAL SCHOOL DISTRICT for review of a determination of a hearing officer relating to the provision of educational services to a student with a disability

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

Gina DeCrescenzo, P.C., attorneys for respondents, Gina M. DeCrescenzo, 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 district) appeals from the decision of an impartial hearing officer (IHO) which found that it failed to offer an appropriate educational program to respondents' (the parents') daughter and ordered it to reimburse the parents for their daughter's tuition costs at the Maplebrook School (Maplebrook) for the 2012-13 and 2013-14 school years. The appeal must be sustained in part.

II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law § 4402; see 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[*l*]).

New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding "any matter relating to the

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

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

The student in this case had received a diagnosis of pervasive developmental disorder–not otherwise specified (PDD-NOS) and had a history of global developmental delays, as well as deficits in her receptive and expressive language skills (Joint Exs. 109 at pp. 2, 16; 122 at p. 1). The student had a history of academic, social/emotional, and behavioral needs, and, since the fifth grade, experienced auditory and visual hallucinations (Joint Exs. 122 at p. 4; 133 at p. 1; 238 at pp. 2-3). During the 2009-10 and 2010-11 school years, she attended special classes in a district public school, in which she received instruction using the general education curriculum and achieved Regents credits (Tr. pp. 307-08, 563).

On February 23, 2012, the CSE convened to conduct the student's annual review and develop her IEP for the 2012-13 school year (Joint Ex. 114 at p. 1). Finding the student remained eligible for special education as a student with an other health-impairment, the February 2012 CSE

recommended a daily 42-minute period of 15:1+1 special class instruction in Regents social studies and a daily 42-minute period of 12:1+1 special class instruction in reading (id. at pp. 1, 13).[1, 2] In addition, the February 2012 CSE recommended eight 30-minute psychological counseling sessions per year and two 42-minute small group (3:1) speech-language therapy sessions per six-day cycle, as well as participation in adaptive physical education (id. at pp. 1, 13, 14). The IEP comments denoted that the student's previously assigned 1:1 aide would be discontinued in order to allow the student to become more independent (id. at p. 1).

In a letter dated April 13, 2012, the student's psychiatrist informed the district that the student was experiencing acute symptoms of inexplicable anxiety, had received a diagnosis of generalized anxiety disorder, and was unable to attend school (Tr. p. 381, Joint Ex. 112 at p. 1; see Tr. pp. 873-75). On April 30, 2012, the CSE reconvened for the purposes of creating an IEP for the remainder of the student's 2011-12 school year that recommended home instruction until the student's treating psychiatrist cleared the student to return to school (Tr. p. 971; Joint Ex. 115 at pp. 1, 13). The student received home instruction for the remainder of the 2011-12 school year (Joint Ex. 70 at p. 1).

On June 21, 2012, the CSE reconvened at the parents' request to modify the student's IEP for the 2012-13 school year, in light of the student's poor performance on end-of-year exams, including her failed attempts at two Regents exams (U.S. history and English) (Joint Exs. 67 at p. 10; 119 at p. 2). As documented in the June 2012 IEP comments, the parents proposed allowing the student to complete her remaining diploma requirements over two years, instead of one, in order lessen the student's workload and stress level (Joint Ex. 119 at p. 2 see Tr. p. 564; Joint Ex. 67 at p. 10). The June 2012 IEP indicated the student would repeat the failed Regents classes and another high school course (economics and government) in a self-contained setting (Joint Ex. 119 at pp. 1-2, 14).[3] The IEP also recommended a daily resource room, speech-language therapy, and increased the recommended the student's psychological counseling mandate to two 30-minute sessions per month (id. at pp. 1, 14). The June 2012 CSE also recommended the student attend an abbreviated school day (five periods) and removed the previously recommended reading class because it class was not available during the student's truncated school day (id. at p. 2).

In summer 2012 the student attended a summer camp (see Joint Ex. 123). During June and July 2012, a private clinical psychologist evaluated the student (see Joint Ex. 122). The hearing record shows the private psychologist and the district school psychologist discussed the evaluation in August 2012 and, again, in September 2012 (Tr. p. 416; Joint Ex. 67 at p. 12).

At the parents' request the CSE reconvened again on September 25, 2012 to discuss the student's then-current "programming, transportation needs and school-to-work options" (Joint Ex.

[1] The student's eligibility for special education programs and related services as a student with an other health-impairment is no longer disputed on appeal (see 34 CFR 300.8[c][9]; 8 NYCRR 200.1[zz][10]).

[2] The IEP alternately refers to the recommended "reading" service as a special class and as a resource room (Joint Ex. 114 at p. 1).

[3] The June 2012 IEP does not list the special classes for English or economics and government under "recommended special education programs and services" section of the IEP; they are mentioned in the comments section of the IEP only (see Joint Ex. 119 at pp. 2, 14).

125 at p. 2). The September 2012 IEP largely continued the program and services recommended in the June 2012 IEP (compare Joint Ex. 119 at pp. 1-2, 14-15, with Joint Ex. 125 at pp. 1-2, 14-15).[4] In addition, the meeting notes indicated that the CSE "agreed to place [the student] in a work program in the areas of food services or child care services" (Joint Ex. 125 at p. 2).

On November 8, 2012, the CSE reconvened once more at the parents' request, in order to discuss the student's increasing anxiety and difficulty functioning in the public high school (Tr. p. 979; Joint Ex. 224 at p. 1; see Tr. pp. 467-77). The parents expressed their concerns that the student was either sleeping for excessive amounts time or staying up all night perseverating on thoughts concerning transitioning between classes (Joint Ex. 224 at p. 1). In addition, while the district staff had observed the negative impact of the student's anxiety on the student's "education and overall quality of life," they reported that her school-to-work experience was positive (id.). In response, the CSE recommended that the student attend the school-to-work program for an additional day per week (totaling three days per week) (id.). The November 2012 IEP also noted the parents' "strong feelings" in favor of enrolling the student in an out-of-district placement, but minutes from that meeting indicate that the parents also expressed concern with a residential placement at the time (Joint Exs. 132 at p. 2; 224 at p. 1). According to the meeting minutes, the CSE agreed to "explore out of district options" (Joint Ex. 132 at p. 2). The November 2012 IEP included most of the same special education services included on the September 2012 IEP but discontinued the recommendation for adaptive physical education (compare Joint Ex. 125 at p. 15, with Joint Ex. 224 at pp. 12-13).

In a document entitled "Justification for an Out of District Search" dated November 16, 2012 document, the district set forth a rationale for seeking an out-of-district placement for the student (see Joint Ex. 133 at pp. 1-3). Beginning in late November 2012, the district sent out referral packets to out-of-district day programs (see Joint Ex. 134).

On January 15, 2013, the CSE reconvened to discuss an out-of-district day program for the student for the remainder of her 2012-13 school year (Joint Ex. 137 at pp. 1-2). The parents informed the CSE that they no longer felt the public high school could meet the student's needs, as her "anxieties . . . prevent[ed] her from being academically, socially and emotionally successful" (id. at p. 2). The parents further informed the January 2013 CSE that, based on their visit to the Karafin School (Karafin), they found it to be inappropriate (id.). According to the IEP, the parents declined a visit to another State-approved nonpublic school because they felt "any program with students with a classification of emotional disturbance [would] not be good for [the student]" (id.). The parents notified the district that they were considering enrolling the student at Maplebrook at that time, while "pursuing legal options" (id.). As a result of the January 2013 CSE meeting, an IEP was generated recommending temporary home instruction, while the CSE continued to search for an appropriate placement and explore residential programs (id. at pp. 1-2, 14-15).[5]

[4] The IEP may incorrectly indicate the student would participate in adapted physical education class three times per day, rather than three times per six-day cycle as noted in an earlier IEP (compare Joint Ex. 125 at p. 15, with Joint Ex. 119 at p. 15).

[5] The Commissioner of Education has not approved Maplebrook School as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d]; 200.7).

By email dated February 5, 2013, the parents informed the CSE chairperson of their intention to unilaterally place the student at Maplebrook, a private boarding school (Joint Ex. 219).

On February 20, 2013, the CSE convened once again to discuss the student's program and placement (Joint Ex. 146 at p. 2). The February 2013 CSE recommended an 8:1+1special class at Karafin, as well as two 30-minute psychological counseling sessions per month, and two 42-minute small group (3:1) speech-language therapy sessions per six-day cycle (id. at pp. 1-2, 17). The February 2013 IEP indicated that three possible State-approved nonpublic day programs were discussed and the district staff believed only one of them, Karafin, was an appropriate placement for the student (id. at p. 2). However, the IEP also reflected that the parents disagreed with the recommendation (id.). According to the February 2013 IEP, the CSE chairperson suggested that "a parent-agreeable programming be explored beyond the region" and the parents responded that they would "get back to" the CSE chairperson about this suggestion (id.). The February 2013 IEP also indicated that, when the student's Regents scores were reviewed, the parents stated the student was no longer diploma-bound, as it was "too stressful" for her, although the school-to-work program had been a "success" for the student (id.).

On February 21, 2013, the parents signed an enrollment contract with Maplebrook for the student's attendance during the 2012-13 school year from February 24, 2013 through June 2, 2013 (see Joint Ex. 3). On April 13, 2013, the parents signed an enrollment contract for a 12-month school year program at Maplebrook for the 2013-14 school year (see Joint Ex. 4).

On June 21, 2013, the CSE convened to conduct the student's annual review and develop her IEP for the 2013-14 school year (Joint Ex. 156 at pp. 1-2).[6] The June 2013 IEP indicated that the CSE would send out referral packets to State-approved nonpublic residential schools that might meet the student's needs and then reconvene in August 2013 "to determine the appropriate educational placement for the student" (id.). In the interim, the June 2013 CSE continued to recommend the 8:1+1 special class placement at Karafin with related services (id. at pp. 1, 18). On June 27, 2013, the district sent referral packets to at least six State-approved nonpublic residential programs (see Joint Exs. 211-16).

In an email, dated August 5, 2013, the parents informed the district of their intention to unilaterally place the student at Maplebrook for the 2013-14 school year (see Joint Ex. 207).

On August 19, 2013, the CSE reconvened to discuss the student's placement for the 2013-14 school year and to review the responses the district had received to the referral packets (Joint Ex. 201 at p. 1). The hearing record shows that a few of the nonpublic residential programs declined to accept the student and the parents did not schedule an intake at another based on their perception that it was inappropriate (Tr. pp. 108, 1019; Joint Exs. 201 at p. 1; 208; 209; 210). The August 2013 CSE continued to recommend the special education program and related services set forth in the June 2013 IEP (Joint Exs. 156 at pp. 1, 18; 201 at pp. 1, 17). In addition, the IEP referenced a special education day program within the district for the parents to consider (Joint Ex.

[6] Although the June 2013 CSE convened to conduct the student's annual review and develop an IEP for the 2013-14 school year, the IEP reflected implementation dates during the 2012-13 school year, which were likely copied from the student's February 2013 IEP in error (see Joint Ex. 156 at pp. 1, 2).

201 at p. 1).[7] According to the August 2013 IEP, the parents were "adamantly opposed" to the CSE's recommendations and that, therefore, the student would continue at Maplebrook for the 2013-14 school year (Joint Ex. 201 at p. 1).

A. Due Process Complaint Notice

In a due process complaint, dated September 17, 2013, the parents alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2012-13 and 2013-14 school years (see Joint Ex. 205 at pp. 4, 5).

For both disputed school years, the parents alleged that the CSEs improperly found the student eligible for special education as a student with an other health-impairment, declining to consider the eligibility classification of autism despite the diagnosis of PDD-NOS offered in a private evaluation report (Joint Ex. 205 at p. 4).

With respect to the recommended placements for both the 2012-13 and 2013-14 school years, the parents alleged that the district failed to offer a program that could "adequately address[] [the student's] academic, physical, social and emotional needs" (Joint Ex. 205 at p. 4). In addition, the parents argued that the district failed to consider private, therapeutic residential options, in contravention of the recommendations of private providers, including Maplebrook, the parents' preferred school (id.). Specific to the 2012-13 school year, the parents asserted that, despite the district's acknowledgement that it could not meet the student's unique needs, it failed to offer the student an appropriate out-of-district program and, subsequently, failed to conduct an adequate search for an appropriate school (id.). For the 2013-14 school year, the parents alleged that the district failed to timely present the student's information to approved out-of-district residential programs (id.). The parents also asserted that the recommendation that the student attend Karafin was not appropriate (id.).

As for the unilateral placement, the parents asserted that residential program at Maplebrook provided educational instruction and related services specially designed to meet the student's unique needs and, in particular, her "social difficulties and anxiety," her "difficulties managing her emotional well-being," and her interfering behaviors (Joint Ex. 204 at p. 5). The parents also alleged that equitable considerations weighed in favor of the requested relief as the parents always cooperated with the district, commissioned private evaluations, meaningfully participated in the CSE process, and timely expressed their disagreements with the CSEs' recommendations (id.). For relief, the parents requested that the IHO order the district to: annul the student's IEP; develop an appropriate IEP, consisting of, among other things, recommendation for a residential placement; reimburse them for the cost of the student's tuition at Maplebrook for the 2012-13 and 2013-14 school years, including the summer 2013; directly pay for the student's future attendance at Maplebrook; and provide "any further relief, including compensatory education" found appropriate by the IHO (id. at p. 6).

[7] According to the hearing record, the day program in the district consisted of a "behavior program," in which instruction was provided in general education classrooms with integrated co-teaching (ICT) services (see Tr. pp. 35-39).

B. Impartial Hearing Officer Decision

An impartial hearing convened on March 13, 2014 and concluded on May 22, 2014 after six days of proceedings (Tr. pp. 1-1101). In a decision dated December 29, 2014, the IHO determined that the district failed to offer the student a FAPE for the 2012-13 and 2013-14 school years, that Maplebrook was an appropriate unilateral placement, and that equitable considerations weighed in favor of the parents' request for tuition reimbursement (see IHO Decision at pp. 15-22).[8]

First, the IHO found that, although the student exhibited characteristics consistent with an eligibility classification of autism, the CSEs did not err in deeming the student eligible for special education as a student with an other health-impairment, noting that the private evaluation from 1997, which the parents referenced in their due process complaint notice in support of their claim, but was not introduced by either of the parties into the hearing record (IHO Decision at p. 13). The IHO however, recommended that, at the next CSE meeting concerning the student, the matter of classification be "reviewed anew" (id.).[9]

With respect to the parents' assertion that the IEP failed to offer the student an appropriate program, the IHO noted the district's acknowledgement that it could not meet the student's needs in November 2012, as well as information about the student's unique needs set forth in the district's November 2012 justification for an out-of-district placement search for the student and the August 2012 private psychological assessment report (IHO Decision at pp. 13-16). Turning to February 2013 IEP's recommendation for Karafin, the IHO noted the parents' reasons for rejecting Karafin—that the school was not residential and did not offer a vocational or school-to-work program—and, further, concluded, that "the testimony was convincing that overall environment [at Karafin] was not conducive to helping the [s]tudent" (id. at pp. 15-16). In so finding, the IHO also noted the high risks associated with an inappropriate placement of the student, given the reports about the student's mental health from the private psychologist (id. at p. 16). Further, the IHO found Karafin particularly inappropriate given the student's removal from school and need for psychiatric care preceding the February 2013 IEP (id. at p. 17). The IHO noted testimony from the parents that Karafin was an "unstructured environment" and that the district school psychologist expressed to them disappointment with the school (id.). Thus, the IHO found that such an environment

[8] There was no exhibit list attached to the IHO's decision and no documentation in the hearing record regarding what, if anything, transpired during the seven months after the final day of the hearing and the IHO's decision (8 NYCRR 200.1[j][5]).

[9] As neither party appeals the IHO's findings relative to the eligibility classification, this determination is final and binding upon both parties and will not be further addressed (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; see M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6-*7, *10 [S.D.N.Y. Mar. 21, 2013]). I would suggest to the parties that if the student's eligibility for special education is undisputed—which is extremely likely to be the case, then the CSE should instead focus consideration of whether the evaluation of the student is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified (34 CFR 300.304[c][6]; 8 NYCRR 200.4[b][6][ix] [emphasis added]), or whether the proposed services are appropriate to address those needs rather than using up resources debating which disability category is the "best" for an unquestionably eligible student.

unsuitable for the student "already driven to home instruction as a result of inexplicable anxiety" (id.).

As for the 2013-14 school year, the IHO determined that, since the district continued to recommend Karafin in the June and August 2013 IEPs, his rationale set forth with respect to the inappropriateness of such placement for the 2012-13 school year was "likewise applicable" (IHO Decision at p. 18).

With respect to Maplebrook, the IHO first dismissed the district's objection to the school because it was not on the list of State-approved nonpublic schools, noting that a private school need only be "proper under the Act," and that the choice of an unapproved school was not, by itself, a bar to reimbursement (IHO Decision at p. 19). The IHO then found that Maplebrook was appropriate, "not merely because it [wa]s a residential school," but because it "accommodated the [s]tudent's vital needs" and "guarded the [s]tudent's fragile psychological state while providing educational development" (id. at p. 20). Specifically, the IHO found that Maplebrook offered the student a therapeutic setting, including access to a school psychologist and therapeutic horseback riding (id.). The IHO found the unilateral placement consistent with the recommendations of the student's private psychologist for a structured setting that would minimize the chance of psychotic process (id. at pp. 20-21). Further, the IHO noted that Maplebrook provided a school-to-work program (id. at p. 20). Finally, the IHO also found that the student had shown educational progress at Maplebrook (id. at p. 21).

With respect to equitable considerations, the IHO determined that the parents provided the district with adequate notice of their intent to unilaterally place the student (IHO Decision at p. 22). As a remedy, the IHO ordered the district to reimburse the parents and/or directly pay to Maplebrook the student's tuition costs for the 2012-13 and 2013-14 school years, minus the cost differential for the two months that the student attended a day program at Maplebrook, rather than a residential program (id. at p. 23).

IV. Appeal for State-Level Review

The district appeals, seeking to overturn the IHO's determinations that the district did not offer the student a FAPE for the 2012-13 and 2013-14 school years, that Maplebrook was an appropriate unilateral placement for the student, and that equitable considerations supported the parents claims for relief. Specifically, the district asserts that the IHO failed to consider and weigh the testimony or evidence offered by the district with regard to the recommended educational placement. Contrary to the IHO's determinations, the district asserts that the CSEs appropriately recommended the out-of-district day program at Karafin for the student for the latter portion of the 2012-13 school year and the entirety of the 2013-14 school year based on the information before the CSEs. The district asserts that Karafin was appropriate as it was a State-approved nonpublic school for emotionally fragile students and it had a ratio of 24 teachers to no more than 84 students. The district further argues that, consistent with the student's needs, Karafin offered a therapeutic environment, speech-language therapy, and counseling through a full-time counselor and psychologist.

With respect to the unilateral placement, the district asserts that the IHO erred in finding Maplebrook appropriate, arguing that Maplebrook was only approved by the State as a secondary

school and was described by the principal as a boarding school, rather than a residential placement. With respect to academics, the district notes that the student did not take Regents or Regents Competency Tests at Maplebrook. As to the student's social/emotional needs, the district argues that Maplebrook was inappropriate for the student in that there was no psychologist on duty after school hours, Maplebrook was not equipped to handle students with needs such as the student in this appeal, and did not employ staff trained in crisis intervention. In addition, the district asserts that, in developing its own IEPs for the student, Maplebrook failed to develop social/emotional goals or recommend strategies to address unstructured times during the day, which were difficult for the student. In addition, the district argues that Maplebrook did not have a behavioral intervention plan (BIP) for the student, despite reports of the student's hallucinations and disciplinary concerns. In terms of the student's experiences at the school, the district alleges that, when the student had known hallucinations, Maplebrook's staff was at a loss as to how to respond. The district argues that Maplebrook did not properly monitor the student's movements, given her continued growing anxiety, disciplinary concerns, and hallucinations. Notwithstanding that Maplebrook was a boarding school, the district argues that it failed to provide strategies for the student to address her known sleep deprivation issues.

The district also appeals the IHO's determination with respect to equitable considerations, asserting that the parents refused to allow the district to conduct triennial testing on the student, failed to cooperate in the intake process at one of the recommended State-approved nonpublic schools, and working with an attorney to procure public funding for Maplebrook prior to the district's recommendation to seek a nonpublic school site in September 2012.

In an answer, the parents respond to the district's petition by admitting and denying the allegations raised therein and assert that the IHO properly found that the district failed to offer the student a FAPE for the 2012-13 and 2013-14 school years, that Maplebrook was an appropriate unilateral placement, and that equitable considerations supported their request for relief.

V. Applicable Standards

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

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

districts must comply with the checklist of procedures for developing a student's IEP and indicated that "[m]ultiple procedural violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not" (R.E., 694 F.3d at 190-91), the Court has also explained that not all procedural errors render an IEP legally inadequate under the IDEA (M.H., 685 F.3d at 245; A.C. v. Bd. of Educ., 553 F.3d 165, 172 [2d Cir. 2009]; 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 procedural violations are alleged, an administrative officer may find that a student did not receive a FAPE only if the procedural inadequacies (a) impeded the student's right to a FAPE, (b) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 [2007]; R.E., 694 F.3d at 190; M.H., 685 F.3d at 245; A.H. v. Dep't of Educ., 394 Fed. App'x 718, 720, 2010 WL 3242234 [2d Cir. Aug. 16, 2010]; E.H. v. Bd. of Educ., 2008 WL 3930028, at *7 [N.D.N.Y. Aug. 21, 2008], aff'd, 361 Fed. App'x 156, 2009 WL 3326627 [2d Cir. Oct. 16, 2009]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007], aff'd, 293 Fed. App'x 20, 2008 WL 3852180 [2d Cir. Aug. 19, 2008]).

The IDEA directs that, in general, an IHO's decision must be made on substantive grounds based on a determination of whether the student received a FAPE (20 U.S.C. § 1415[f][3][E][i]). A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction" (Rowley, 458 U.S. at 203). However, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP" (Walczak, 142 F.3d at 130; see Rowley, 458 U.S. at 189). The statute ensures an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents" (Walczak, 142 F.3d at 132, quoting Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 [2d Cir. 1989] [citations omitted]; see Grim, 346 F.3d at 379). Additionally, school districts are not required to "maximize" the potential of students with disabilities (Rowley, 458 U.S. at 189, 199; Grim, 346 F.3d at 379; Walczak, 142 F.3d at 132). Nonetheless, a school district must provide "an IEP that is 'likely to produce progress, not regression,' and . . . affords the student with an opportunity greater than mere 'trivial advancement'" (Cerra, 427 F.3d at 195, quoting Walczak, 142 F.3d at 130 [citations omitted]; see T.P., 554 F.3d at 254; P. v. Newington Bd. of Educ., 546 F.3d 111, 118-19 [2d Cir. 2008]; Perricelli, 2007 WL 465211, at *15). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]; see Rowley, 458 U.S. at 192). The student's recommended program must also be provided in the least restrictive environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 CFR 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see Newington, 546 F.3d at 114; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132; G.B. v. Tuxedo Union Free Sch. Dist., 751 F. Supp. 2d 552, 573-80 [S.D.N.Y. 2010], aff'd, 486 Fed. App'x 954, 2012 WL 4946429 [2d Cir. Oct. 18, 2012]; E.G. v. City Sch. Dist. of New Rochelle, 606 F. Supp. 2d 384, 388 [S.D.N.Y. 2009]; Patskin v. Bd. of Educ., 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]).

An appropriate educational program begins with an IEP that includes a statement of the student's present levels of academic achievement and functional performance (see 34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]; Tarlowe v. New York City Bd. of Educ., 2008 WL 2736027, at *6 [S.D.N.Y. July 3, 2008] [noting that a CSE must consider, among other things, the

"results of the initial evaluation or most recent evaluation" of the student, as well as the "'academic, developmental, and functional needs'" of the student]), establishes annual goals designed to meet the student's needs resulting from the student's disability and enable him or her to make progress in the general education curriculum (see 34 CFR 300.320[a][2][i], [2][i][A]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (see 34 CFR 300.320[a][4]; 8 NYCRR 200.4[d][2][v]; see also Application of the Dep't of Educ., Appeal No. 07-018; Application of a Child with a Disability, Appeal No. 06-059; Application of the Dep't of Educ., Appeal No. 06-029; Application of a Child with a Disability, Appeal No. 04-046; Application of a Child with a Disability, Appeal No. 02-014; Application of a Child with a Disability, Appeal No. 01-095; Application of a Child Suspected of Having a Disability, Appeal No. 93-9).

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

The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see R.E., 694 F.3d at 184-85; 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. February 2013 and August 2013 IEPs

Initially, I must clarify which CSE recommendations shall be considered for the purposes of determining if the district offered the student a FAPE for the 2012-13 and 2013-14 school years. There were six IEPs developed for the student's 2012-13 school year, with each IEP modifying and superseding the prior IEP (see generally Joint Exs. 114, 119, 125, 137, 146, 224). The student received the program and services set forth as set forth in the first five IEPs (the last being the January 2013 IEP) and the parents unilaterally placed the student within several days following the February 2013 CSE meeting and resultant IEP at which point the parties' disagreement over an out of district placement came to a head (see Joint Exs. 3; 205 at pp. 1-6). Therefore, the February 2013 IEP recommending Karafin, which immediately preceded the parents' unilateral placement of the student will be reviewed for purposes of determining whether or not the district offered the student a FAPE (see generally Joint Ex. 146). Similarly, for the 2013-14 school year, the August 2013 IEP superseded the June 2013 IEP and, therefore, became the IEP that was the subject of review for purposes of the administrative proceedings (see generally Joint Ex. 201; see also McCallion v. Mamaroneck Union Free Sch. Dist., 2013 WL 237846, at *8 [S.D.N.Y. Jan. 22,

2013] [finding the later developed IEP to be "the operative IEP"]; Application of the Dep't of Educ., Appeal No. 12-215).

As noted above, the crux of this dispute is whether the CSE's recommendation to place the student at Karafin for the remainder of the student's 2012-13 school year, as well as for the entirety of the 2013-14 school year, was appropriate. The parties do not contest that the student should attend a therapeutic setting in an out-of-district placement (see Tr. pp. 58, 127, 250-51, 882-83; Joint Exs. 118; 133 at pp. 1-3; see generally, Joint Ex. 205).[10]

As to the student's needs, the hearing record shows that, at the time of the February 2013 and August 2013 CSE meetings, the student had deficits in reading, mathematics, writing, and, within the social/emotional realm, experienced anxiety, auditory and visual hallucinations, atypical internalizations of thoughts and emotions, social disinhibition, a sense of inadequacy, and poor interpersonal skills (Tr. p. 251; Joint Exs. 119 at pp. 14-16; 122 at p. 2). While the student exhibited multiple deficits across all domains, she had relative strengths in verbal comprehension, decoding, sentence construction, oral reading fluency, and written expression (Joint Ex. 122 at p. 2). Overall, the evidence in the hearing record shows that the student required a small class setting, individualized instruction, as well as ongoing support to help the student manage anxiety in a nurturing environment, with "therapeutically trained" staff (Joint Exs. 118 at p. 1; 133 at p. 3).

The IHO relied upon and the parents continue to cite an August 2013 private psychological assessment report to support the finding that Karafin was insufficiently supportive to address the student's needs (see IHO Decision at pp. 13-17; see generally Joint Ex. 122). The August 2012 psychological assessment report indicated the student was assessed both while on medications, as well as when she was without their influence and the psychologist noted a qualitative difference in the student's responses, with an increased presentation of anxiety, distractibility, perseveration, and over excitation when the student was not medicated (Joint Ex. 122 at p. 2). The private psychologist confirmed that the student was "clearly on the "pervasive developmental disorder spectrum" as evidenced by "processing and executive functioning difficulties" (id. at p. 4). Furthermore, the private psychologist opined, the student's "recent, psychotic-like behaviors . . . were likely part of a prodromal thought-disorder combined with neurological factors" (id.). The private psychologist also suggested that the student's thought disorder might not be "schizophrenic in nature" and might be related to an early brain injury (id. at pp. 4-5). The private psychologist also identified "visual overstimulation, complex emotional stimuli, and insufficient activity" as specific triggers for the student's "distressed delusional perceptions," and suggested the student would be "highly challenged" to remain in a high school setting, even with a small class setting (id. at p. 5). The private psychologist recommended, among other things, that the student would

[10] The IHO's implication that the district's search for an out-of-district placement constituted an "admi[ssion]" that it could not provide her with a FAPE was erroneous (see IHO Decision at p. 14). A CSE must consider and recommend an appropriate placement within the district if a placement will confer an educational benefit to a student in the LRE, but as it attempts to meet its obligations under the Act, there is nothing which precludes a CSE from considering the placement possibilities in a more restrictive program for a student at risk of requiring a residential placement, as long as the recommended placement in the IEP is ultimately in the student's LRE (20 U.S.C. § 1412[a][5][A]; 34 CFR 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see also Newington, 546 F.3d at 114; Gagliardo, 489 F.3d at 108).

"require an educational setting that minimize[d] the likelihood of psychotic process in the form of distressed visual delusions and/or hallucinations to emerge" (id.).

To address the student's needs, Karafin offered small structured classes in a therapeutic environment, along with increased direct instruction, counseling, staff trained in behavioral techniques and strategies, and speech-language therapy (Tr. pp. 95, 103-04, 116-119, 124-25, 228-29, 240-244). According to the hearing record, Karafin also had a school psychologist and a counselor on staff that would have been available for the student's social/emotional needs (Tr. pp. 240-44). The director at Karafin testified that the small classes and the small school environment at Karafin would help the student with her social anxiety and ease interactions with peers (Tr. p. 252).[11]

The CSE chairperson testified that providing the student with a therapeutic environment was a high priority—a conclusion supported by the student's private psychiatrist (Tr. pp. 127, 882-83; see Joint Ex. 118 at p. 1).[12] The CSE chairperson testified that Karafin offered such an environment consistent the recommendations in the August 2012 psychological assessment report (Tr. pp. 116-17; see Joint Ex. 122 at p. 5). When asked why she continued to feel that the Karafin was appropriate for the student, the CSE chairperson reported that other district students had been placed at the school and Karafin had "proven themselves to be well rounded in their academics, in their vocational program, [and] in their therapeutic component for students . . . who suffer from any type of mental health issues" (Tr. p. 32).

In addition to placement at Karafin, the student's IEPs offered further supports and accommodations to help her achieve her annual goals in the recommended therapeutic day program. The hearing record shows that both the February 2013 and August 2013 IEPs reflected measurable and appropriate reading, writing, speech-language, social/emotional/behavioral annual goals as well as career/vocational/transitional goals that were consistent with the student's functioning, strengths, and deficits in written expression and verbal expression (Joint Exs. 146 at p. 16; 201 at p. 16). Both IEPs recommended supports/accommodations, including refocusing and redirection, directions read/explained, checks for understanding, reteaching, provision of additional set of textbooks, provision of copies of class notes, monitoring for stress and anxiety, praise and positive reinforcement, reminders to use coping strategies for stress, and classes with a small student-to-teacher ratio (Joint Exs. 146 at pp. 14, 17; 201 at pp. 14, 17). Further, both IEPs

[11] The district argues that the IHO erred in not weighing or considering the testimony of the director, to which the parents respond that, as the director did not attend the CSE meetings for the student, his testimony was of limited weight. Consistent with the parent's assertion, when recommending a nonpublic school placement, a district must ensure that a representative from that nonpublic school attend the CSE meeting (see 34 CFR 300.325[a]; 8 NYCRR 200.4[d][4][i][a]). However, in this instance, the parents and the student visited the school, accompanied by the district school psychologist and the then-current CSE-chairperson, where they met with the Karafin director and toured the program (Tr. pp. 233-34, 428, 485). Therefore, the parents had some insight into how the program could address the student's needs.

[12] The IHO and the parents put much weight on the purported statement of the district school psychologist, after visiting Karafin with the parents, that Karafin was not appropriate for the student (see IHO Decision at p. 17; Tr. pp. 1007-08). Even if the district school psychologist made such a statement, she was but one member of the CSE and the placement recommendation must be weighed against the student's needs, not a hearsay report of one CSE member's opinion.

recommended that the student receive speech-language therapy and counseling (Joint Exs. 146 at pp. 1, 17; 201 at pp. 1, 17).

As to the setting at Karafin, the concerns set forth by the IHO, including that the school was housed in an old office building, the classrooms were cluttered, all wall space was walls filled, creating a distracting environment, and that lunch was delivered by a food truck and the student ate in the gymnasium, even if true, do not support a finding that Karafin was inappropriate (IHO Decision at p. 17). Initially, these identified concerns do not conflict with any provisions in the student's IEPs (see generally Joint Exs. 146; 201). Furthermore, many of the observations were not of a static nature—such that it is impossible on the record before the IHO to know whether or not, by the time the student enrolled, the walls, for example, would not have been emptied of "clutter," or what was objectionable about the fact that the building was formerly used as an "office building" prior its conversion into a school. Moreover, given the therapeutic nature of the program, the evidence in the hearing record supports a finding that the student could receive educational benefit at Karafin and, even if not perfect, it was appropriate notwithstanding the environmental factors the IHO cited.

Finally, in finding Karafin inappropriate, the IHO noted the parents' reasoning for rejecting Karafin included that it was not a residential placement (IHO Decision at pp. 15-16).[13] However, the evidence in the hearing record does not support a finding that the student needed a residential placement in order to receive educational benefits. A residential placement is one of the most restrictive educational placements available for a student and it is well settled that a residential placement is not appropriate unless it is required for a student to benefit from his or her educational program (M.H. v Monroe-Woodbury Cent. Sch. Dist., 296 Fed Appx 126, 128, 2008 WL 4507592 [2d Cir 2008]; Walczak, 142 F.3d at 122; Mrs. B., 103 F.3d at 1121-22; see Educ. L. § 4402[2][b][2]; 8 NYCRR 200.6[j][iii][d]).[14] No evaluative information reviewed by the CSEs, including documents prepared by the student's private providers, included mention of a residential placement for the student and the parents' themselves rightly expressed hesitation when consideration of a residential placement was first raised at the November 2012 CSE meeting (see Joint Exs. 118 at p. 1; 122 at p. 5; 132 at p. 2). While the CSEs were obliged to approach the student's serious needs with care, the IDEA further required the district to offer the student a FAPE in the LRE, and the hearing record supports a finding that Karafin represented the correct balance.

Based upon the foregoing, the evidence in the hearing record demonstrates that in light of the student's academic, language, and social/emotional needs, the CSE's decision to recommend a placement at Karafin was reasonably calculated to enable the student to receive educational benefits for the latter portion of the 2012-13 and the entirety of the 2013-14 school years in the LRE (Gagliardo, 489 F.3d at 112; Frank G. v. Bd. of Educ., 459 F.3d 356, 364-65 [2d Cir. 2006]).

[13] The IHO did not indicate the extent to which the recommendation for a therapeutic day program (as opposed to residential program) at Karafin contributed to his determination that Karafin was inappropriate, if at all (see IHO Decision at pp. 13-21).

[14] The Second Circuit has stated that "[w]hile some children's disabilities may indeed be so acute as to require that they be educated in residential facilities, it is appropriate to proceed cautiously whenever considering such highly restrictive placements. . . . The norm in American public education is for children to be educated in day programs while they reside at home and receive the support of their families" (Walczak, 142 F.3d at 132).

B. Unilateral Placement

Even assuming for the sake of argument that the district had failed to offer the student a FAPE for either school year in question, the hearing record does not support a finding that Maplebrook was an appropriate unilateral placement for the student. 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 must offer an educational program which meets the student's special education needs (see Gagliardo, 489 F.3d at 112, 115; Walczak, 142 F.3d at 129; Matrejek, 471 F. Supp. 2d at 419). 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 (id. at 14). Parents seeking reimbursement "bear the burden of demonstrating that their private placement was appropriate, even if the IEP was inappropriate" (Gagliardo, 489 F.3d at 112; see M.S. v. Bd. of Educ., 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., 459 F.3d 356, 364; see Rowley, 458 U.S. at 207). Parents need not show that the placement provides every special service necessary to maximize the student's potential (Frank G., 459 F.3d at 364-65). When determining whether 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; Berger v. Medina City Sch. Dist., 348 F.3d 513, 522 [6th Cir. 2003] [stating "evidence of academic progress at a private school does not itself establish that the private placement offers adequate and appropriate education under the IDEA"]). A private placement is only appropriate if it provides education instruction specially designed to meet the unique needs of a student (20 U.S.C. § 1401[29]; 34 CFR 300.39[a][1]; Educ. Law § 4401[1]; 8 NYCRR 200.1[ww]; Rowley, 458 U.S. at 188-89; Gagliardo, 489 F.3d at 114-15 [noting that even though the unilateral placement provided special education, the evidence did not show that it provided special education services specifically needed by the student]; Frank G., 459 F.3d at 365; Stevens v. New York City Dep't of Educ., 2010 WL 1005165, at *9 [S.D.N.Y. Mar. 18, 2010]).

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

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

> handicapped child, supported by such services as are necessary to permit the child to benefit from instruction.

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

Maplebrook was described by its principal as an international coed boarding school for students with learning disabilities, including some students with an emotional disturbance (Tr. pp. 592, 630-31). With regard to social/emotional support, the Maplebrook principal testified that all students had a mentor they could seek out should the need arise (Tr. p. 602). According to the hearing record, the student's mentor at Maplebrook also happened to be the school psychologist and met with the student once a week to talk about any concerns the student may have had (Tr. p. 474). The Maplebrook school psychologist testified that the role of the mentor was not necessarily a counseling function but that, if it became necessary, the student could be seen for an individual counseling session; however, the psychologist was only at the school during the day (Tr. pp. 602, 759). The Maplebrook principal also testified that he had received training in crisis prevention but that no one, including himself, was trained in crisis intervention (Tr. p. 655). Staff members to whom the student could turn for social/emotional support at Maplebrook included her mentor, the head of school, the school nurse, and the principal (Tr. p. 602).

With these social/emotional supports available, the hearing record shows that the student struggled significantly at Maplebrook and did not receive the therapeutic type of environment she needed in order to receive educational benefit. The hearing record provides evidence of the school's attempts to manage the student's social/emotional challenges while attending Maplebrook (Joint Exs. 11 at pp. 1-2; 50 at p. 1). The student's discipline record listed multiple incidents of "inappropriate conduct" (id.). The hearing record reflects that, in response to these difficulties, school staff either administered medication to the student at her request or contacted the parents, who alternately spoke with the student on the telephone or brought her home for a period of time (Tr. pp. 627, 652; Joint Ex. 11 at pp. 1-2). When queried about one particular event, the Maplebrook principal was unsure if the student had been able to seek out help prior to the incident (Tr. p. 681). However, the hearing record shows that the student had shared her concern with both the principal and the school psychologist on the morning of day of the incident (Joint Ex. 50 at p. 1). Further, after this particular incident, the student was taken off of a residential student status and placed into a day student status for a period of almost two months (Tr. pp. 682-83). The principal also testified that there was not a specific plan in place to help the student with her anxiety; rather, the staff at Maplebrook relied on a generalized plan, including ensuring that the staff kept an eye out for the student if she was feeling anxious, taking her to a quiet place and, if needed, to bring her to a nurse (Tr. pp. 680-81). Thus, while the Maplebrook school psychologist pointed to the value of the student's participation in the yearbook club, cheerleading, and horseback riding program as evidence of why Maplebook was appropriate, she failed to articulate how Maplebrook met the student's significant mental health needs that necessitated a therapeutic environment (Tr. p. 767).

Based on the foregoing, although the hearing record supports the student's need for a therapeutic environment, it does not support the parents' assertion that Maplebrook provided adequate services to address this need (Joint Exs. 11; 50). Therefore, the hearing record does not support a finding that Maplebrook was an appropriate unilateral placement to meet the student's social/emotional needs (Gagliardo, 489 F.3d at 112; see Frank G., 459 F.3d at 364-65).

VII. Conclusion

Having determined that the evidence in the hearing record establishes that the district offered the student a FAPE for the 2012-13 and 2013-14 school years and that Maplebrook was not an appropriate unilateral placement for the student, the necessary inquiry is at an end and there is no need to reach the issue of whether equitable considerations supported an award of tuition reimbursement (see Burlington, 471 U.S. at 370; M.C. v. Voluntown Bd. of Educ., 226 F.3d 30, 66 [2d Cir. 2000]).

THE APPEAL IS SUSTAINED.

IT IS ORDERED that the IHO's decision, dated December 29, 2014, is modified by reversing those portions which found that the district failed to offer the student a FAPE for the 2012-13 and 2013-14 school year and that Maplebrook was an appropriate unilateral placement; and

IT IS FURTHER ORDERED that the IHO's decision, dated December 29, 2014, is modified by reversing that portions which ordered the district to reimburse the parents and/or directly fund the costs of student's tuition at Maplebrook for the 2012-13 and 2013-14 school years.

Dated: **Albany, New York**
March 30, 2015

JUSTYN P. BATES
STATE REVIEW OFFICER