



# The University of the State of New York

## The State Education Department

State Review Officer

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No. 24-178

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

### **Appearances:**

Gulkowitz Berger LLP, attorneys for petitioner, by Shaya M. Berger, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Nate Munk, Esq.

## **DECISION**

### **I. Introduction**

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from a decision of an impartial hearing officer (IHO) which denied her request that respondent (the district) fund the costs of the services delivered to her daughter by Always a Step Ahead, Inc. (Step Ahead) at specified rates for the 2023-24 school year. The appeal must be dismissed.

### **II. Overview—Administrative Procedures**

When a student who resides in New York is eligible for special education services and attends a nonpublic school, Article 73 of the New York State Education Law allows for the creation of an individualized education services program (IESP) under the State's so-called "dual enrollment" statute (see Educ. Law § 3602-c). The task of creating an IESP is assigned to the same committee that designs educational programming for students with disabilities under the IDEA (20 U.S.C. §§ 1400-1482), namely 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, State law provides that

"[r]eview of the recommendation of the committee on special education may be obtained by the parent or person in parental relation of the pupil pursuant to the provisions of [Education Law § 4404]," which effectuates the due process provisions called for by the IDEA (Educ. Law § 3602-c[2][b][1]). 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**

A CSE convened on December 5, 2022, determined that the student was eligible for special education as a student with a speech or language impairment, and developed an IESP to be

implemented beginning December 6, 2022 (Parent Ex. B at p. 1).<sup>1</sup> The CSE recommended that the student receive three periods per week of direct group special education teacher support services (SETSS), two 30-minute sessions per week of individual speech-language therapy, and two 30-minute sessions per week of individual occupational therapy (OT) (*id.* at p. 9).

The student was parentally placed at a nonpublic religious school for the 2023-24 school year (*see* Parent Ex. G at p. 1).

In a due process complaint notice dated January 16, 2024, the parent alleged that the district denied the student a free appropriate public education (FAPE) and/or equitable services under State law for the 2023-24 school year (*see* Parent Ex. A). Specifically, the parent alleged that she agreed with the IESP developed by the CSE on December 5, 2022 and that the student required the same services for the 2023-24 school year (*id.* at p. 1). However, the parent asserted that the district failed provide the student with the SETSS and related services mandated in the December 2022 IESP, and therefore denied the student a FAPE for the 2023-24 school year (*id.*). The parent also alleged that she was unable to locate any providers willing to work with the student at the district's "standard rates" but found providers willing to provide the student with services but at a higher rate than the standard district rates (*id.*). As relief, the parent sought an order directing the district to fund three sessions per week of SETSS at an enhanced rate for the 2023-24 school year and awarding all related services recommended in the December 2022 IESP for the 2023-2024 school year either via issuance of related services authorizations (RSAs) for such services if accepted by the parent's chosen providers or via direct funding to each of the parent's chosen providers at the rate each charged, even if the rate was higher than the standard district rate for such service (*id.* at p. 2). The parent also requested a pendency hearing (*id.*).

On February 21, 2024, the parent electronically signed a document on Step Ahead's letterhead indicating she was "aware" of the rates charged by Step Ahead for SETSS and related services and that such services would be provided to the student consistent with the mandates set forth in the December 2022 IESP (Parent Ex. F).<sup>2</sup>

An impartial hearing convened before the Office of Administrative Trials and Hearings (OATH) on March 5, 2024 and concluded the same day (Tr. pp. 1-16). In a decision dated March 27, 2024, the IHO found that the district's failure to implement the student's December 2022 IESP denied the student a FAPE for the 2023-24 school year (IHO Decision at p. 4). Turning to the parent's unilaterally obtained speech-language therapy and OT services, the IHO found that the parent had not met burden of demonstrating the appropriateness of the services provided to the student by Step Ahead (*id.* at pp. 5-6). Regarding speech-language therapy, the IHO determined the hearing record lacked any speech-language therapy progress reports, session notes, schedule, or any other documentary evidence that discussed specific speech-language therapy goals that were created for student, or specified what areas of need were addressed with student (*id.* at p. 6). The IHO also determined there was no evidence presented that showed how student progressed

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<sup>1</sup> The student's eligibility for special education as a student with a speech or language impairment is not in dispute (*see* 34 CFR 300.8[c][11]; 8 NYCRR 200.1[zz][11]).

<sup>2</sup> The Commissioner of Education has not approved Step Ahead as a private school or agency with which districts may contract to instruct students with disabilities (*see* 8 NYCRR 200.1[d], 200.7).

because of the speech-language therapy services (id.). Regarding OT services, the IHO determined that the student's OT progress report was "vague and lacked specificity" (id.). The IHO determined the OT progress report "generally characterized [the s]tudent's progress but that there were "no details or specifics given in the OT report that described areas of concern and focus, how [the p]rovider was addressing [the s]tudent's specific needs, and whether substantive progress was made" (id.). The IHO also noted that the director of Step Ahead testified that she did not develop the curriculum, draft progress reports or assist in any techniques and methodologies that were used during the sessions with the student (id.). Based on such findings, the IHO determined the evidence did not support that the services provided by Step Ahead were specially designed to address the student's identified needs and, as such, denied the parent's requested relief for the 2023-24 school year (id.).

#### **IV. Appeal for State-Level Review**

The parent appeals, alleging that the IHO erred in denying her requested relief. The parent argues that a Burlington/Carter analysis should not apply to an equitable services case such as the present matter and that, therefore, the burden of production and persuasion should remain entirely with the district. The parent argues that, because the district failed to offer proof of an appropriate program or funding for that program for the 2023-24 school year, she should be entitled for funding to her providers for delivering to the student the last agreed upon educational program. Further, the parent argues that, even under the Burlington/Carter standard, her requested relief should be granted. The parent argues that she used the services of an agency who employed appropriately credentialed/license providers for each service for which funding was requested and there was no evidence introduced showing the rates charged were unreasonable. The parent also argues there was evidence of detailed discussions, goals, and frequency of the services and thus it is not possible that such "program" could be deemed inappropriate. Additionally, the parent argues the IHO erred and had no legal basis in finding that progress was a factor in determining the appropriateness of Step Ahead's services. The parent asserts that the hearing record supports an award for direct funding of the OT and speech-language services provided to the student during the 2023-24 school year by Step Ahead. The parent requests that the IHO's decision to be reversed and a finding directing the district to fund the student's Step Ahead OT and speech-language therapy at the contract rate.

In an answer, the district argues that the IHO correctly determined the parent failed to satisfy her burden and requests the parent's request for review be dismissed.

#### **V. Applicable Standards**

A board of education must offer a FAPE to each student with a disability residing in the school district who requires special education services or programs (20 U.S.C. § 1412[a][1][A]; Educ. Law § 4402[2][a], [b][2]). However, the IDEA confers no individual entitlement to special education or related services upon students who are enrolled by their parents in nonpublic schools (see 34 CFR 300.137[a]). Although districts are required by the IDEA to participate in a consultation process for making special education services available to students who are enrolled privately by their parents in nonpublic schools, such students are not individually entitled under the IDEA to receive some or all of the special education and related services they would receive if enrolled in a public school (see 34 CFR 300.134, 300.137[a], [c], 300.138[b]).

However, under State law, parents of a student with a disability who have privately enrolled their child in a nonpublic school may seek to obtain educational "services" for their child by filing a request for such services in the public school district of location where the nonpublic school is located on or before the first day of June preceding the school year for which the request for services is made (Educ. Law § 3602-c[2]).<sup>3</sup> "Boards of education of all school districts of the state shall furnish services to students who are residents of this state and who attend nonpublic schools located in such school districts, upon the written request of the parent" (Educ. Law § 3602-c[2][a]). In such circumstances, the district of location's CSE must review the request for services and "develop an [IESP] for the student based on the student's individual needs in the same manner and with the same contents as an [IEP]" (Educ. Law § 3602-c[2][b][1]). The CSE must "assure that special education programs and services are made available to students with disabilities attending nonpublic schools located within the school district on an equitable basis, as compared to special education programs and services provided to other students with disabilities attending public or nonpublic schools located within the school district (*id.*).<sup>4</sup> Thus, under State law an eligible New York State resident student may be voluntarily enrolled by a parent in a nonpublic school, but at the same time the student is also enrolled in the public school district, that is dually enrolled, for the purpose of receiving special education programming under Education Law § 3602-c, dual enrollment services for which a public school district may be held accountable through an impartial hearing.

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. v. New York City Dep't of Educ.*, 694 F.3d 167, 184-85 [2d Cir. 2012]).

## VI. Discussion

In this matter, the student has been parentally placed in a nonpublic school and the parent does not seek tuition reimbursement from the district for the cost of the student's placement in the nonpublic school. Instead, the parent alleged that the district failed to implement the student's mandated public special education services under the State's dual enrollment statute for the 2023-

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<sup>3</sup> State law provides that "services" includes "education for students with disabilities," which means "special educational programs designed to serve persons who meet the definition of children with disabilities set forth in [Education Law § 4401(1)]" (Educ. Law § 3602-c[1][a], [d]).

<sup>4</sup> State guidance explains that providing services on an "equitable basis" means that "special education services are provided to parentally placed nonpublic school students with disabilities in the same manner as compared to other students with disabilities attending public or nonpublic schools located within the school district" ("Chapter 378 of the Laws of 2007—Guidance on Parentally Placed Nonpublic Elementary and Secondary School Students with Disabilities Pursuant to the Individuals with Disabilities Education Act (IDEA) 2004 and New York State (NYS) Education Law Section 3602-c," Attachment 1 (Questions and Answers), VESID Mem. [Sept. 2007], available at <https://www.nysed.gov/special-education/guidance-parentally-placed-nonpublic-elementary-and-secondary-school-students>). The guidance document further provides that "parentally placed nonpublic students must be provided services based on need and the same range of services provided by the district of location to its public school students must be made available to nonpublic students, taking into account the student's placement in the nonpublic school program" (*id.*). The guidance has recently been reorganized on the State's web site and the paginated pdf versions of the documents previously available do not currently appear there, having been updated with web based versions.

24 school year and, as a self-help remedy, she unilaterally obtained private speech-language therapy and OT from Step Ahead without the consent of the school district officials, and then commenced due process to obtain remuneration for the costs thereof. Generally, districts who fail to comply with their statutory mandates to provide special education can be made to pay for special education services privately obtained for which a parent paid or became legally obligated to pay, a process that is essentially the same as the federal process under IDEA. Accordingly, the issue in this matter is whether the parent is entitled to public funding of the costs of the private services. "Parents who are dissatisfied with their child's education can unilaterally change their child's placement . . . and can, for example, pay for private services, including private schooling. They do so, however, at their own financial risk. They can obtain retroactive reimbursement from the school district after the [IESP] dispute is resolved, if they satisfy a three-part test that has come to be known as the Burlington-Carter test" (Ventura de Paulino v. New York City Dep't of Educ., 959 F.3d 519, 526 [2d Cir. 2020] [internal quotations and citations omitted]; see Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 14 [1993] [finding that the "Parents' failure to select a program known to be approved by the State in favor of an unapproved option is not itself a bar to reimbursement."]).

Accordingly, contrary to the parent's position on appeal, her request for district funding of privately obtained services must be assessed under this framework. 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 (Carter, 510 U.S. 7; Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369-70 [1985]; R.E., 694 F.3d at 184-85; T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 252 [2d Cir. 2009]).<sup>5</sup> In Burlington, the Court found that Congress intended retroactive reimbursement to parents by school officials as an available remedy in a proper case under the IDEA (471 U.S. at 370-71; see Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 111 [2d Cir. 2007]; Cerra 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).

Turning to a review of the appropriateness of the unilaterally obtained services, the federal standard is instructive. A private school placement must be "proper under the Act" (Carter, 510 U.S. at 12, 15; Burlington, 471 U.S. at 370), i.e., the private school offered an educational program which met the student's special education needs (see Gagliardo, 489 F.3d at 112, 115; Walczak, 142 F.3d at 129). Citing the Rowley standard, the Supreme Court has explained that "when a public school system has defaulted on its obligations under the Act, a private school placement is 'proper under the Act' if the education provided by the private school is 'reasonably calculated to enable the child to receive educational benefits'" (Carter, 510 U.S. at 11; see Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 203-04 [1982]). A parent's failure to select a program approved by the State in favor of an unapproved option is not itself a bar to

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<sup>5</sup> State law provides that the parent has the obligation to establish that a unilateral placement is appropriate, which in this case is the special education that the parent obtained from AIM and the private speech-language therapy provider for the student (Educ. Law § 4404[1][c]).

reimbursement (Carter, 510 U.S. at 14). The private school need not employ certified special education teachers or have its own IEP for the student (Carter, 510 U.S. at 13-14). Parents seeking reimbursement "bear the burden of demonstrating that their private placement was appropriate, even if the IEP was inappropriate" (Gagliardo, 489 F.3d at 112; see M.S. v. Bd. of Educ. of the City Sch. Dist. of Yonkers, 231 F.3d 96, 104 [2d Cir. 2000]). "Subject to certain limited exceptions, 'the same considerations and criteria that apply in determining whether the [s]chool [d]istrict's placement is appropriate should be considered in determining the appropriateness of the parents' placement'" (Gagliardo, 489 F.3d at 112, quoting Frank G. v. Bd. of Educ. of Hyde Park, 459 F.3d 356, 364 [2d Cir. 2006]; see Rowley, 458 U.S. at 207). Parents need not show that the placement provides every special service necessary to maximize the student's potential (Frank G., 459 F.3d at 364-65). When determining whether a unilateral placement is appropriate, "[u]ltimately, the issue turns on" whether the placement is "reasonably calculated to enable the child to receive educational benefits" (Frank G., 459 F.3d at 364; see Gagliardo, 489 F.3d at 115; Berger v. Medina City Sch. Dist., 348 F.3d 513, 522 [6th Cir. 2003] ["evidence of academic progress at a private school does not itself establish that the private placement offers adequate and appropriate education under the IDEA"]). A private placement is appropriate if it provides instruction specially designed to meet the unique needs of a student (20 U.S.C. § 1401[29]; Educ. Law § 4401[1]; 34 CFR 300.39[a][1]; 8 NYCRR 200.1[ww]; Hardison v. Bd. of Educ. of the Oneonta City Sch. Dist., 773 F.3d 372, 386 [2d Cir. 2014]; C.L. v. Scarsdale Union Free Sch. Dist., 744 F.3d 826, 836 [2d Cir. 2014]; Gagliardo, 489 F.3d at 114-15; Frank G., 459 F.3d at 365).

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

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

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

### **A. Student's Needs**

A brief discussion of the student's needs is needed to resolve the issues in dispute on appeal. Information about the student's special education needs comes from the December 2022 IESP, which referenced a "previous IESP" that did not indicate the date it was developed (Parent Ex. B at p. 1). At the time of the December 2022 CSE meeting, the student was eight years old and in

second grade, and she received SETSS "outside of school" (*id.* at p. 2; *see* Parent Ex. G at p. 1). According to the December 2022 IESP, cognitive assessment results indicated that the student's "verbal and non-verbal scores f[ell] in the [a]verage to [l]ow [a]verage range" and her overall academic performance as measured by achievement testing was in the below average range (Parent Ex. B at p. 1). The teacher progress report reflected in the IESP indicated that the student was reading at a "mid second grade level," her reading decoding, fluency, and comprehension skills were "weak," and, although she was able to retain factual information, she had difficulty with inferential skills (*id.*). In writing, the student tended to make grammatical errors and her sentence structure was poor (*id.*). According to the IESP, the student wrote in "fragments and her sentences [we]re very simple with a lot of repetition" (*id.*). In math, the IESP indicated that the student was "in the lowest math group," and she had difficulty with place value and word problems (*id.*). The student worked slowly to complete class assignment and required individualized attention to clarify questions and instructions (*id.*).

In the area of speech-language skills, the December 2022 IESP reflected reports that the student received services twice weekly for 30-minute sessions to address "moderate receptive and expressive language delays" (Parent Ex. B at p. 2). According to the IESP, the student exhibited difficulty answering "wh" questions, retelling narratives, using vocabulary, and sequencing events and following directions in the classroom (*id.*). Additionally, the student exhibited "significant delays in her phonemic awareness skills, specifically with segmenting and blending words" as such, she demonstrated "poor reading skills" (*id.*). The IESP reflected reports that, although the student was at times "resistant" to attend therapy sessions and therefore progress was "slow," the student demonstrated progress in reading and comprehending passages, phonemic awareness and vocabulary skills, and increasing expressive language skills (*id.*).

Regarding social development, the December 2022 IESP reflected teacher reports that the student cried frequently, had a low frustration tolerance, displayed "inappropriate" behavior, did not follow rules, bothered other students during small group instruction, and had "poor listening skills" (Parent Ex. B at p. 3). The student exhibited "trouble relating socially with others" and gained attention from peers by doing "inappropriate things" (*id.*). Although the IESP did not mandate that the student receive counseling services, the student was then-currently receiving "guidance in small group and individualized sessions provided by the school" (*id.* at pp. 3, 9).

In the area of physical development, the December 2022 IESP reflected information from the student's "previous IESP" that her "learning," behavior, executive functioning, attention, hand, sensory motor, vestibular, and motor planning skills, and her proprioceptive awareness, were areas of concern (Parent Ex. B at p. 3). The student was otherwise reported to be in "good health" (*id.*).

Supports identified by the December 2022 CSE to address the student's management needs included praise and encouragement, tasks broken down into smaller units, check for understanding, preferential seating near the teacher, repetition, preview and review of material, multisensory approach to learning, graphic organizers, visual and verbal prompts and cues, modeling, and reminders (Parent Ex. B at p. 3).



## **B. Services Provided by Step Ahead**

As for evidence of services provided to the student by Step Ahead during the 2023-24 school year, the hearing record includes the letter signed by the parent stating her awareness of her financial obligation for services, a copy of the certification/licensure of two providers, and a December 2023 OT progress report (Parent Exs. D; F; G). The director of Step Ahead (director) testified that her agency provided two 30-minute sessions per week each of "speech and OT" to the student during the 2023-24 school year (Tr. pp. 7, 8).

Regarding OT, the director identified the occupational therapist by name, and the hearing record contains a document reflecting that the provider held a license to practice OT (Tr. p. 8; Dist. Ex. D at p. 1). In a progress report dated December 24, 2023, the occupational therapist reported that the student received two 30-minute sessions of OT per week at school (Parent Exs. D at p. 1; G at p. 1). The occupational therapist reported that the student had difficulty with sensory processing and sustaining attention to task (Parent Ex. G at p. 1). Her difficulty with self-regulation resulted in the student becoming frustrated and at times, physical with classmates (*id.*). Additionally, the student exhibited "poor personal space," and difficulty with body and safety awareness (*id.*). The student demonstrated decreased focus and attention and was frequently distracted by stimuli in her environment (*id.*). According to the progress report, the student "often be[came] hyperactive and require[d] frequent redirection to sustain attention to the task at hand" (*id.*). The occupational therapist reported that the student benefitted from individual sessions "using a very structured schedule to help her transition from one task to the other" and sessions focused on the student's executive functioning skills, focus and attention skills, and improving self-regulation (*id.*).

The occupational therapist developed annual goals for the student to attend for 20 minutes, follow two to three step directions, and complete challenging tasks without frustration given sensory input and re-directional cues (Parent Ex. G at p. 1). Another annual goal was for the student to demonstrate improved fine motor and self-help skills by tying shoelaces independently, using a pincer grasp to manipulate small objects without dropping them, and using an appropriate grasp and pressure on writing utensils (*id.* at pp. 1-2). According to the progress report, the student showed "slight progress toward OT goals" but would benefit from continued OT services (*id.* at p. 2). New goals for the student were to improve sensory processing and integration skills, her ability to identify and regulate emotions, and improve attention span and focus (*id.*).

Regarding speech-language therapy, the director identified the speech-language therapist by name, and the hearing record contains a document identifying her as holding a "Speech and Language Disabilities Initial Certificate" (Tr. p. 8; Dist. Ex. D at p. 2). However, there is no other information in the hearing record regarding the speech-language therapy services delivered to the student during the 2023-24 school year, such as the dates of service, progress or session notes, goals, or testimony identifying how the speech-language therapy provided specially designed instruction to the student.

Additionally, although the parent's contract with Step Ahead indicated her awareness that the services provided to the student were consistent with the December 2022 IESP and of the rate Step Ahead charged for SETSS, Step Ahead did not provide SETSS to the student during the 2023-24 school year (see Tr. p. 9; Parent Ex. F). The director testified that the company did not provide

the student with SETSS because "the services [we]re not being done in school for the SETSS, and it [wa]s difficult to find an afterschool provider" (Tr. p. 9).

Thus, although the hearing record includes some information about how the services from Step Ahead addressed the student's attention and fine motor skills, there is no evidence that the student's reading writing, or math skills were addressed or how the speech-language therapy addressed the student's receptive and expressive language delays (see Parent Ex. B at pp. 1-2). Although parents need not show that a unilateral placement provides every special service necessary to maximize the student's potential (Frank G., 459 F.3d at 364-65), the program as a whole must still be "reasonably calculated to enable the child to receive educational benefits" (Carter, 510 U.S. at 11, 13-14, quoting Rowley, 458 U.S. at 203-04). Given the evidence presented, there is no basis in the hearing record to disturb the IHO's finding that the parent failed to meet her burden to demonstrate that the unilaterally obtained services provided by Step Ahead were appropriate for the student during the 2023-24 school year. Accordingly, I find the parent failed to meet her burden to prove that the unilaterally obtained services were specially designed to meet the student's needs under the totality of the circumstances.

## **VII. Conclusion**

Having determined that the evidence in the hearing record supports the IHO's finding that the parent failed to establish the appropriateness of the unilaterally obtained services provided by Step Ahead for the 2023-24 school year, the necessary inquiry is at an end and there is no need to reach the issue of whether equitable considerations support an award of district funding or reimbursement for the costs thereof (see M.C. v. Voluntown Bd. of Educ., 226 F.3d 60, 66 [2d Cir. 2000]).

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

**THE APPEAL IS DISMISSED.**

**Dated: Albany, New York  
June 21, 2024**

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**SARAH L. HARRINGTON  
STATE REVIEW OFFICER**