



The University of the State of New York

The State Education Department

State Review Officer

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No. 24-395

Application of a STUDENT WITH A DISABILITY, by his parents, 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:

Thivierge & Rothberg, PC, attorneys for petitioners, by Randi M. Rothberg, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Irene Dimoh, 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. Petitioners (the parents) appeal from the decision of an impartial hearing officer (IHO) which denied their request to be reimbursed for the costs of their son's tuition at the SINAI School (SINAI) for the 2021-22 school year. The appeal must be sustained.

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 evidence in the hearing record regarding the student's educational history is sparse. Briefly, a CSE convened in August 2021, and finding the student eligible to receive special education as a student with an other health impairment, developed an individualized education services program (August 2021 IESP) that included recommendations for the student to receive special education teacher support services (SETSS) and counseling services for the 2021-22 school

year (see Parent Ex. K ¶¶ 3-4).^{1, 2, 3, 4} The evidence reveals that, at the start of the 2021-22 school year, the student attended a general education program (see Parent Exs. J ¶ 9; K ¶ 5). On October 14, 2021, the parents executed a tuition contract with SINAI for the student's attendance during the 2021-22 school year (see Parent Ex. E; see also Parent Ex. F).⁵

In a letter to the district dated October 15, 2021, the parents indicated that the student, who was eligible to receive special education as a student with an other health impairment, "formerly attended school at [a nonpublic school] and received services" from the district (Parent Ex. B). The parents further indicated that, "[a]s discussed at [our] last meeting with the [district], [the student] was struggling" and required a "more intensive special education program" for the 2021-22 school year (id.). The parents requested that the district convene an "IEP meeting" to "discuss alternate options" for the student (id.). At that time, the parents noted their willingness to consider "any options (including public school options)" for the student (id.). The parents further noted that the student had been accepted to "SINAI at [the nonpublic school]" for the 2021-22 school year, and they believed it was an appropriate program for the student (id.). The parents reserved their

¹ The student's eligibility for special education as a student with an other health impairment is not in dispute (see 34 CFR 300.8[c][9]; 8 NYCRR 200.1[zz][10]).

² SETSS is not defined in the State continuum of special education services (see 8 NYCRR 200.6). As has been laid out in prior administrative proceedings, the term is not used anywhere other than within this school district and a static and reliable definition of "SETSS" does not exist among parents, practitioners, and the district.

³ The August 2021 IESP was not entered into the hearing record as evidence (see generally Tr. pp. 1-95; Parent Exs. A-K).

⁴ 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 Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482), namely a local CSE that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law §§ 3602-c; 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]).

⁵ Evidence in the hearing record describes SINAI as a "series of special education schools providing highly individualized programming and specialized therapeutic services to meet the specific needs of each" student (Parent Ex. C). In addition, the evidence reflects that all SINAI elementary schools provided an "inclusive educational environment within a partner mainstream day school that play[ed] a key role in motivating [the] students and meeting their educational and social goals" (id.). SINAI serves students with a "wide range of developmental, intellectual, and complex learning disabilities" and students are grouped into "multi-graded classrooms according to their social, academic, and emotional profiles to create appropriate peer groups" (id.). For academics, students work in "even smaller groups or one-on-one with a teacher, based on their individual learning needs in each subject" (id.). According to the evidence, SINAI classrooms average between five to nine students with two to three credentialed teachers (id.). In addition, SINAI offers OT, PT, language therapy, counseling, social skill groups, and play therapy, which may be delivered individually or in groups and as either a pull-out or push-in service (id.). SINAI schools also provide an "on-site psychologist or social worker, who works with students on developing their emotional, behavioral, and social growth" (id.).

right to place the student at SINAI and to seek reimbursement for the costs of his tuition at SINAI if the district did not recommend an appropriate program for him (*id.*).

Evidence in the hearing record reveals that the student began attending SINAI in mid-to late-October 2021 as a third grade student (chronologically) (*see* Parent Ex. J ¶ 9; *see also* Parent Ex. D).

Based on a prior written notice, dated February 16, 2022, included as part of the administrative hearing record provided to the Office of State Review, the district convened a CSE meeting on January 18, 2022 and developed an IEP for the student (January 2022 IEP), which included recommendations for the student to attend a 12:1+1 special class placement and to receive counseling services (*see* Prior Written Not. at p. 1).⁶ The prior written notice indicated that, in developing the January 2022 IEP, the CSE reviewed and considered the student's August 2021 IESP, a February 2020 psychoeducational evaluation, and a January 2022 "[v]erbal [t]eacher [r]eport" (*id.*).⁷ The prior written notice also indicated that the student was "diagnosed with [an] Attention Deficit Hyperactivity Disorder [ADHD] and Oppositional Defiant Disorder [ODD]" (*id.* at p. 2). The notice reflected that the student was "below grade level" in academics "(as indicated in his [February 2020] psycho-educational evaluation" in the areas of "reading comprehension, math problem solving, and numerical operations)" (*id.*). The notice also reflected that, as reported by the student's school, he was "on a second grade level" in reading and mathematics, he demonstrated "concerns with socialization," and "[t]hese concerns negatively effect[ed] progress in the general education curriculum" (*id.*). As a result, the prior written notice indicated that the student would "benefit from a small structured setting" (*id.*).

A. Due Process Complaint Notice

By due process complaint notice dated June 30, 2023, the parents alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2021-22 school year (*see* Parent Ex. A at p. 1). The parents indicated that, although they met with the district in August 2021, they did not receive the student's IESP until October 2021, and only after requesting it from the district (*id.* at p. 2). According to the parents, the untimely IESP was "not sufficiently intensive" for the student, who had been having "a lot of difficulty in a general education program

⁶ The district provided the February 2022 prior written notice with the hearing record submitted on appeal categorizing it in its certification of the record as a document required to be part of the record by State regulation. State regulation specifically requires that the hearing record shall include, among other things, "the due process complaint notice and any response to the [due process] complaint" (8 NYCRR 200.5[j][5][vi]; 279.9[a]). State and federal regulation provide that, if the school district has not sent a prior written notice to the parent regarding the subject matter of the parent's due process complaint notice, the district shall provide a response to the parent within 10 days of receiving the complaint (8 NYCRR 200.5[i][4][i] *see* 34 CFR 300.508[e]). It appears that the district interprets these regulations as requiring it to submit the February 2022 prior written notice as part of the hearing record as the district's response to the due process complaint notice. In the future, the district should present the prior written notice that it purports to relate to the subject matter of the due process complaint notice during the impartial hearing as an exhibit to be entered into evidence, thereby ensuring the parent has an opportunity to address the existence or content of the document.

⁷ The January 2022 IEP was not entered into the hearing record as evidence (*see generally* Tr. pp. 1-95; Parent Exs. A-K).

with supports, both academically and behaviorally" (id.). The parents indicated that, in a letter to the district dated October 15, 2021, they requested an "IEP meeting" because the student was "struggling" and he "required a more intensive special education program" for the 2021-22 school year (id.). Ultimately, the parents alleged that the district failed to meet the student's needs for the 2021-22 school year (id.). As relief, the parents requested an order directing the district to reimburse or fund the costs of the student's tuition and expenses at SINAI for the 2021-22 school year (id. at pp. 2-3).

B. Impartial Hearing Officer Decision

On July 31, 2023, the parties proceeded to an impartial hearing, which concluded on July 16, 2024, after 12 total days of proceedings (see Tr. pp. 1-95). In a decision dated August 7, 2024, the IHO determined that the district failed to offer the student a FAPE for the 2021-22 school year and that the parents failed to sustain their burden to establish the appropriateness of the student's unilateral placement at SINAI (see IHO Decision at pp. 9-10). Consequently, the IHO denied the parents' request for reimbursement or funding of the costs of the student's tuition at SINAI for the 2021-22 school year (id. at p. 10).

In finding that the parents failed to sustain their burden of proof, the IHO initially noted that the parents had not presented any documentary evidence establishing the student's "diagnoses and disabilities, such as a prior evaluation, assessments, or IEP" (IHO Decision at p. 9). The IHO found that, absent such evidence, it was "impossible to discern the [s]tudent's starting point for the purposes of determining whether a program would provide educational benefits or instruction that [wa]s designed to meet" the student's needs (id.). The IHO also found that the hearing record was devoid of "any evidence" that the student's unilateral placement assessed the student to determine his needs (id.).

Next, the IHO found that, although the unilateral placement created an educational plan for the student, the hearing record lacked evidence "describing how the program was created and what data, if any, was relied upon when determining whether the program" would address the student's needs (IHO Decision at p. 9). For example, the IHO noted that the hearing record failed to "mention any intake process, such as conducting an internal assessment, reviewing the [s]tudent's past records or IEPs, or evaluating any other data that would be helpful and likely necessary" to develop the student's individualized program (id.).

When examining the parents' evidence specific to the instruction the student received at SINAI, the IHO found that it consisted of the educational plan and the SINAI director's testimony, "which largely mirrored" the information in the educational plan (IHO Decision at p. 9). The IHO noted that, although the student's educational plan included progress reports, the information therein was a narrative, with "brief" and "vague" descriptions of the student's "struggles and progress" (id. at pp. 9-10). Overall, the IHO determined that the progress reports embedded within the educational plan failed to provide "any detail as to how the program, and the related services, constitute[d] specially designed instruction" (id. at p. 10). The IHO noted that the use of terms such as "'one-on-one teacher supports' or 'prompting' fail[ed] to describe with any detail the specific strategies utilized to assist" the student and to "ensure educational benefit" (id.).

Having found that the hearing record failed to include sufficient evidence of the student's needs or how the unilateral placement addressed those needs, the IHO concluded that the parents failed to sustain their burden of proof and denied their requested relief (see IHO Decision at p. 10).

IV. Appeal for State-Level Review

The parents appeal, arguing that the IHO erred by finding that SINAI was not an appropriate unilateral placement for the student for the 2021-22 school year. More specifically, the parents contend that the IHO erred by finding that they failed to establish the student's educational needs or how SINAI addressed those needs. The parents also argue that the IHO did not make any findings with respect to equitable considerations.⁸

In an answer, the district responds to the parents' allegations and generally argues to uphold the IHO's decision in its entirety.

V. Applicable Standards

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see generally Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 239 [2009]; Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206-07 [1982]). A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; T.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 151, 160 [2d Cir. 2014]; R.E. v. New York City Dep't of Educ., 694 F.3d 167, 189-90 [2d Cir. 2012]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 [2d Cir. 2012]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]).

A 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. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 252 [2d Cir. 2009]). 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, 427 F.3d at 192). "Reimbursement merely requires [a district] to belatedly pay

⁸ Here, neither party has appealed from the IHO's finding that the district did not meet its burden that it provided the student a free appropriate public education for the 2021- 22 school year because it failed to appear at the impartial hearing and present a case (IHO Decision at p. 10). Accordingly, that finding has become final and binding on the parties and will not be reviewed on appeal (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]).

expenses that it should have paid all along and would have borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148).

A private school placement must be "proper under the Act" (Carter, 510 U.S. at 12, 15; Burlington, 471 U.S. at 370), i.e., the private school offered an educational program which met the student's special education needs (see Gagliardo, 489 F.3d at 112, 115; Walczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998]). A parent's failure to select a program approved by the State in favor of an unapproved option is not itself a bar to reimbursement (Carter, 510 U.S. at 14). The private school need not employ certified special education teachers or have its own IEP for the student (Carter, 510 U.S. at 13-14). Parents seeking reimbursement "bear the burden of demonstrating that their private placement was appropriate, even if the IEP was inappropriate" (Gagliardo, 489 F.3d at 112; see M.S. v. Bd. of Educ. of the City Sch. Dist. of Yonkers, 231 F.3d 96, 104 [2d Cir. 2000]). "Subject to certain limited exceptions, 'the same considerations and criteria that apply in determining whether the [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).

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

VI. Discussion—Unilateral Placement at SINAI

As noted above, to qualify for reimbursement under the IDEA, parents must demonstrate that the unilateral placement provided instruction specially designed to meet the student's unique needs, supported by services necessary to permit the student to benefit from instruction (Gagliardo, 489 F.3d at 112; see Frank G., 459 F.3d at 364-65). Regulations define specially designed instruction, in part, as "adapting, as appropriate to the needs of an eligible student under this Part, the content, methodology, or delivery of instruction to address the unique needs that result from the student's disability" (8 NYCRR 200.1[vv]; see 34 CFR 300.39[b][3]).

A. The Student's Needs

Initially, a determination regarding the appropriateness of a unilateral placement involves identifying the student's needs. Here, the IHO found that the parent failed to sufficiently identify the student's needs, and relatedly, how SINAI met those needs by providing specially designed instruction.

However, to the extent the IHO faulted the parent for not identifying the student's needs, such a rationale has been found to improperly switch the responsibility for identifying the student's needs from the district to the parent (see A.D. v. Bd. of Educ. of City Sch. Dist. of City of New York, 690 F. Supp. 2d 193, 208 [S.D.N.Y. 2010] [finding that a unilateral placement was appropriate even where the private school reports were alleged by the district to be incomplete or inaccurate and finding that the fault for such inaccuracy or incomplete assessment of the student's needs lies with the district]). Moreover, a review of the evidence in the hearing record demonstrates that information concerning the student's needs was embedded within the educational plan developed for the 2021-22 school year by SINAI, as well as within the affidavit testimony by SINAI's director (see generally Parent Exs. H; J).

Turning first to a review of the director's affidavit, her testimony reveals that the student "presented with delayed academics, limited frustration tolerance, sensory processing concerns, and considerable difficulty sustaining focus and attention" (Parent Ex. J ¶ 9). She also testified that the student's "schedule was developed by taking into account [the student's] academic and social-emotional needs," as well as "what related services would be appropriate" for the student (id. ¶ 13). The director testified that the "skills that [the student] worked on" included "appropriate focusing, attending and classroom behavior, listening comprehension, reading fluency and comprehension, language and communication, responding to questions, and social skills"; moreover, she explained that these skills were "relevant for all of his programming" at SINAI (id. ¶ 15). She further testified that "all of his instruction throughout the school week"—regardless of

whether the course was sectarian or nonsectarian in nature—worked on the same skills, to wit, "appropriate class participation and behavior, sustaining attention and following along with the material, identifying a story's main idea, answering text-based questions, making text-to-self connections, sequencing, and language and communications" (*id.* ¶ 17). The student worked on "appropriate social and communication skills"; reading comprehension skills and reading speed and fluency; mathematics problem-solving, mathematics word problems, skip counting, and multiplication; and engaging with classmates (*id.* ¶¶ 20-24). The director testified that the student worked on writing during his OT sessions ("mechanical writing skills"), which included improving his ability to construct sentences; using punctuation; identifying parts of speech, conjunctions, and question words; generating topic sentences; developing sentence details; and generating and using "Quick Outlines" (*id.* ¶¶ 25-26). With respect to his classroom behavior, the director testified that the student "required 1:1 support from a teacher due to his impulsivity and behavioral concerns" (*id.* ¶ 27).

In addition, the director testified that she helped to create the student's educational plan for the 2021-22 school year, as well as his class schedule, and she "oversaw [the student's] overall programming and progress" (Parent Ex. J ¶ 11). The director worked "collaboratively" with the student's "classroom team" to make sure that the student's program "appropriately addressed [his] academic, language/communication, social, and emotional needs" (*id.*).

With respect to related services, the director testified that the student participated in adapted physical education, art therapy, counseling (one 28-minute session per week in a group), language therapy (one 28-minute session per week in a group and two 28-minute sessions per week individually), and OT (one 28-minute session per week jointly with language therapy in a group, two 28-minute sessions per week individually, two 28-minute sessions per week in a group for writing, and one 28-minute session per week in a group) (*see* Parent Exs. J ¶ 33; H at pp. 3-4).

Based on the information gleaned from the director's testimony, the student demonstrated needs in the areas of academics—including reading comprehension and reading fluency, mathematics, and writing—behavior, attention and focus, and social/emotional issues.

Next, a review of the student's SINAI educational plan for the 2021-22 school year reveals similar needs. For example, the educational plan demonstrates that the student participated in adapted physical education and related services (OT, language therapy, art therapy, counseling) in addition to receiving academic instruction in the areas of reading comprehension, mathematics, writing, science and social studies, art, and nonsecular studies (i.e., Tefillah [Prayer], Hebrew Reading, Parsha/Chagim/Chumash) (*see generally* Parent Ex. H). The student's educational plan also included goals for each of these areas targeting more specific needs and reflected the student's progress therein through the use of a numerical rating scale and narrative explanations (*id.*).

In addition to the foregoing evidence, the district's prior written notice relating to the development of the student's January 2022 IEP, reflects information concerning the student's diagnoses and needs (*see* Prior Written Not. at p. 1). For example, the prior written notice indicates that the student was "diagnosed with [an] Attention Deficit Hyperactivity Disorder [ADHD] and Oppositional Defiant Disorder [ODD]" (*id.* at p. 2). The notice reflected the student's academic delays in "reading comprehension, math problem solving, and numerical operations" (i.e., he was

"below grade level" in academics as reflected in the student's February 2020 psychoeducational evaluation) (*id.*). Additionally, the prior written notice documented that, at the time of the January 2022 CSE meeting, the student was "on a second grade level" in reading and mathematics, he demonstrated "concerns with socialization," and "[t]hese concerns negatively effect[ed] progress in the general education curriculum" (*id.*). According to the prior written notice, the student would "benefit from a small structured setting" (*id.*). And while the prior written notice was not presented as evidence for the IHO to consider, the prior written notice mirrors the student's needs as described in the director's testimony and as addressed within the student's educational plan for the 2021-22 school year at SINAI.

Thus, overall, the hearing record contains sufficient evidence of the student's needs, albeit not through evaluations or assessments, as the IHO believed to be necessary to establish the student's needs.

B. Unilateral Placement at SINAI

Next, the IHO found that the hearing record also lacked sufficient evidence to establish that SINAI provided the student with specially designed instruction to meet his needs (*see* IHO Decision at p. 10). Upon review, the evidence in the hearing record does not support the IHO's determination.

The SINAI director testified that, given the student's needs, he required the "small classes and individualized special education supports of a self-contained program" (Parent Ex. J ¶ 9). As a result, the director explained that, for the 2021-22 school year as a third grade student, he "was placed in a class with eight other students, all of whom were within a close age range" and all of whom "presented with language-based learning difficulties" (*id.* ¶ 12). The student's classmates "also presented with attentional concerns" (*id.*). Within the classroom, which was staffed with "[t]hree experienced, Master's level teachers," the students were "often broke[n] into smaller groups for academic instruction" allowing for the provision of "a lot of individual support and smaller group instruction" (*id.*).

The director described the student's school day, and his participation therein, based on the courses included in his schedule (*compare* Parent Ex. J ¶¶ 14-40, *with* Parent Ex. I). For example, the director explained that every morning after his arrival, the student took a few minutes to transition, which "allowed him to confer with his teachers to prepare his supplies, homework folder and materials for the day ahead" (Parent Ex. J ¶ 14). In addition to his academic, secular courses, the student's schedule included participation in several nonsecular courses; however, as noted previously, the director testified that the student continued to work on skills that were "relevant to all of his programming" even within his nonsecular courses (*id.* ¶¶ 15-17). To support the "consistent application of the supports that [the student] needed for success at school," he had the same teachers across all secular and nonsecular courses (*id.* ¶ 17).

During "Morning Meeting," the director testified that SINAI used the "Responsive Classroom curriculum" to teach students to participate responsibly in the classroom community, and to engage in "pro-social behavior"—which was "especially important for [the student]"—and included "sharing information, showing interest in peers' shared information, asking relevant questions, and agreeing or disagreeing appropriately and respectfully" (Parent Ex. J ¶ 18 [emphasis

in original]). As a part of morning meeting, the students worked on greeting others, sharing information, playing games, brainstorming topics, attention, and participation (id. ¶ 19). According to her testimony, the student required "support and work" in the areas of "partner work and perspective taking" (id. ¶ 18). The director also testified that morning meeting provided the student with the "important opportunity" to work on "sustaining attention and participating appropriately in a group activity," as well as providing him with the opportunity to less formally work on "appropriate social and communication skills" (id. ¶ 20).

Next, the director testified about the area of reading comprehension, noting specifically that, "[g]iven his level of need for reading skills," the student received nine periods per week of small group instruction in reading comprehension (Parent Ex. J ¶ 21). According to the director, the classroom "used trade books," and the student "relied on tools such as graphic organizers and a lot of teacher support" (id.). The student worked on sequencing, recalling facts, as well as cross-checking and self-correcting while reading "on level" texts (id.). In addition, the student worked on identifying problems and solutions in a story, recalling events in a story with the proper sequence, identifying story elements, predicting and confirming the meanings of unfamiliar words, identifying characteristics of different genres, distinguishing between fiction and nonfiction, and answering text-based questions (id.). According to the director, the student made slow, but steady, progress in reading comprehension, and could read short passages independently, answer text-based questions, and make inferences (id. ¶ 22). In addition, the director testified that the student could sequence events, as well as identify the setting, main character, problem, and solution in a story (id.). The student was working on increasing his reading speed and fluency, and with teacher support, he had learned to go back to the text to find answers he did not recall (id.).

In addition to the director's testimony, the student's educational plan identified specific goals targeted in reading comprehension, such as sequencing events in a story using the terms first, next, and last; recalling facts in nonfiction text; monitoring and self-correcting when reading grade level text; identifying the problems and solutions from a story; retelling and correctly sequencing events from a story; identifying setting and main characters from a story; using context to derive meaning of unknown words; identifying characteristics of literary genres; distinguishing between fiction and nonfiction text; and answering comprehension questions based on a passage (see Parent Ex. H at p. 5). Based on the numerical rating system, the student consistently achieved "3" and "4" on all tasks, which indicated that he could either recall material with prompts and utilize the skill with assistance ("3") or recall material independently and independently utilize the skill, albeit inconsistently (4") (id.). Progress reported within the educational plan reflects that the student made progress and continued to improve his reading comprehension skills through the conclusion of the school year (id.).⁹

In the area of mathematics, the director testified that the student received instruction in a small group four times per week using "Jump Math" and "Stern Math" multisensory instructional programs at the second and third grade levels, as well as teacher-made materials, manipulatives,

⁹ The director explained that, to assess the student's performance, SINAI used "informal assessment[s], class work and homework, and quizzes" (Parent Ex. J ¶ 42). She further testified that some of SINAI's "academic programming ran sequentially so the students' skills were tested at the conclusion of each segment to determine readiness to move on" (id.).

drills, and mathematics games (Parent Ex. J ¶ 23). Based on her testimony—and as reflected in the specific goals targeted within the educational plan—the student was working on units involving, among other things, three-digit numbers, two-step word problems, "strategies for large numbers," skip counting, multiplication of numbers from zero to ten, and division (*id.*; Parent Ex. H at pp. 6-7). The director explained that, although the student initially had difficulty engaging in group lessons, the student "gradually grew more willing to join his peers and engage in instruction," which resulted in the student's improved performance by showing "greater fluency with addition, subtraction, and then multiplication, and he was learning to answer word problems with support" (Parent Ex. J ¶ 24).

As reported in the educational plan, the student made progress in mathematics and consistently maintained a numerical rating of "3" on the majority of all tasks (Parent Ex. H at pp. 6-7). Consistent with the director's testimony, it was reported that the student made progress in his ability to participate during mathematics instruction, but "on many days he [wa]s difficult to engage and w[ould] not participate in much of the learning" (*id.* at p. 7). It was further noted that, "[w]ith much teacher support," the student learned to "break apart numbers into expanded form," which, as a strategy, helped him to understand place value (*id.*). The student received "daily review of basic addition and subtraction facts to help him gain some accuracy," and had reportedly made progress in his addition and subtraction skills (*id.*). Given support, the student could add three-digit numbers and regroup, and he was currently learning multiplication facts and was using drills and mathematics games to build his accuracy and fluency (*id.*). By the end of the school year, it was reported that the student had become "more fluent in the multiplication tables from zero through ten" (*id.*). According to the educational plan, by providing the student with "songs and other strategies," he could "find the correct answer to most multiplication problems" but he continued to need "support to understand and to answer basic word problems that use[d] addition, subtraction and multiplication" (*id.*). It was further noted that the student needed "teacher support to keep him on task throughout math lessons and activities" (*id.*).

Next, the director turned to the student's participation in his writing and OT group, which used "Judith C. Hochman's Basic Writing Skills" and teacher-made materials and focused on both the content and mechanics of writing (Parent Ex. J ¶ 25 [emphasis in original]). The director testified that the student worked on identifying sentences versus fragments, punctuation, parts of speech, conjunctions, question words, generating topic sentences, developing sentence details, and generating and using "Quick Outlines" (*id.* ¶ 26; *see* Parent Ex. H at pp. 8-9 [reflecting complete list of goals targeted in writing]). According to the director, the student "improved his skills meaningfully across the board," and by the end of the school year, he had "achieved a score of '5' . . . for four of his instructional targets," which represented the highest numerical rating in the educational plan (Parent Ex. J ¶ 26; *see* Parent Ex. H at p. 8).¹⁰ She noted, however, that while he had "good ideas to get onto paper," the student needed "a lot of teacher supports to prepare his writing assignments" (Parent Ex. J ¶ 26). She further testified that, "[b]y the end of the school year, with breaks and a lot of individual support," he could write a correctly capitalized and

¹⁰ A numerical rating of "5" indicated that the student "[a]pplie[d] material" and "[c]onsistently and effectively utilize[d] the skill" (Parent Ex. H at p. 9).

punctuated sentence, as well as "prepare a paragraph outline, and then turn it into a paragraph" (*id.*).

With respect to progress in writing, the student's educational plan reflects that the student consistently achieved numerical ratings of "3" and "4" on all targeted tasks, in addition to the rating of "5" already mentioned (Parent Ex. H at pp. 8-9). While noting the student's progress during the school year, the educational plan continued to note that the student needed "reminders" for the correct use of capitalization and punctuation, to "slow down" to produce correctly formed letters, and that he required "[f]requent breaks and one-on-one teacher support" to complete writing assignments (*id.* at p. 9).

In the areas of science and social studies, the director testified that the student received instruction in science three times per week for half the year and then he received instruction in social studies three times per week for the other half of the year; instruction consisted of using teacher-created materials, maps, and the "Scholastic News periodical" (Parent Ex. J ¶ 27 [emphasis in original]). She explained that the student "frequently required 1:1 support from a teacher due to his impulsivity and behavioral concerns during the earlier part of the school year"; however, he "slowly improved his skills throughout the school year" (*id.*). According to her testimony—and as reflected by the goals targeted in the educational plan—the student worked on a variety of "units involving the Solar System, current events, non-fiction texts, and writing/presenting" (*id.*; see Parent Ex. H at p. 10).

With regard to progress, the educational plan reflects that the student consistently achieved a numerical rating of "2" across a majority of tasks, and a "3" on some tasks (Parent Ex. H at p. 10). In the narrative report, it was noted that the student's "impulsivity and behavior, requiring 1:1 support," continued to interfere with his ability to participate in "whole class lessons" (*id.*). However, it was also noted that during the second half of the school year, the student was "more available for learning" (*id.*). With the "help of a rubric and consistent teacher support," the student could use information he learned to create a presentation on "PicCollage" (*id.*).

In addition to the foregoing, the student also received small group instruction in "Hebrew Reading" two times per week using a multisensory reading program called "Klei Kriah (Tools for Reading), Volume 3" (Parent Ex. J ¶ 28 [emphasis in original]). Instruction was provided in English, had no religious content, and focused on reading multisyllabic words, reading with increasing fluency, and "reading words with a specific vowel (Shva Na)" (*id.* [emphasis in original]; see Parent Ex. H at p. 12). According to the director's testimony, the student needed "a lot of support for focusing and attending, as well as for behavior," which was addressed by creating a "structured schedule with movement and coloring breaks for him" (Parent Ex. J ¶ 28). The director also testified that the student's "reading fluency improved measurably," noting further that the student's "skills improved, [and] he showed greater comfort with reading longer Hebrew phrases and sentences" (*id.* ¶ 29). To support the student in Hebrew reading, his teacher used "flashcards"; "broke his instruction into smaller, more manageable units"; and "provided a lot of direct support" (*id.*).

With respect to progress in Hebrew reading, the student achieved a numerical rating of "4" in a majority of the goals targeted (Parent Ex. H at p. 12). While noting improvement, the narrative

report of progress in the educational plan indicated that the student continued to have difficulty staying focused, he refused to participate, and was disruptive (id.).¹¹ By the end of the school year, the student's reading accuracy and fluency had continued to improve, but it was reported that he still had difficulty staying on task and sometimes refused to do his work (id.). The student's motivation and ability to stay on task was improved with the use of movement breaks and incentives (id.). It was further noted that the student benefitted from the use of flash cards and having tasks broken down in order to make progress in reading (id.).

Turning to the student's related services at SINAI, the director testified that all of the "related service therapists" on staff were "certified/licensed in their respective disciplines" (Parent Ex. J ¶ 34). She also testified that, in art therapy, the student worked on "expressing his feelings through art, positively interacting appropriately with his peers, and increasing his frustration tolerance" (id.; see Parent Ex. H at p. 15). A review of the educational plan reveals that the student consistently achieved a numerical rating of "3" on all targeted goals, and had shown improvement in his ability to engage during art (Parent Ex. H at p. 15). According to reports on progress, art therapy provided the student with opportunities to "interact with his peers and follow directions in a structured but less academic setting" (id.). The student worked on "distanc[ing] himself from distractions," his "willingness to engage with the art material," and managing his frustrations (id.). To address his needs, the teachers encouraged him to "select materials and subject matter of his artwork," as well as "encourage[ing] him to speak respectfully to his peers and teachers" (id.).

With respect to language therapy, the director testified that the student worked on "word retrieval, using descriptive words when writing, and comprehension" (Parent Ex. J ¶ 38; see Parent Ex. H at p. 16). In addition, the director testified that the student used "language games, picture cards, and comprehension word sheets," and his skills improved "slowly and steadily over the course of the school year" (id. ¶ 38). More specifically, the director noted improvements in the student's ability to "follow directions," "answer basic questions about a story," and "define vocabulary words while reading" (id.). She also noted that the student had worked on "retelling an event with proper sequencing and details, and peer communication" (id.).

Reports of progress in the student's educational plan reflect that he consistently achieved a numerical rating of "2" on a majority of the goals targeted (see Parent Ex. H at p. 16). It was noted that the student could "write a simple sentence," but he needed "multiple prompts to use more descriptive language and expand his sentences" (id.). In addition, the student could "answer basic wh- questions but he ha[d] difficulty answering questions including higher level thinking" (id.). The student was "beginning to use contextual cues to identify vocabulary words but he require[d] cueing to identify words as scaffolding decrease[d]" (id.). By the end of the school year, the student could "follow directions well," "answer basic questions about a story and define vocabulary words during reading" (id.). However, it was noted that the student had "difficulty retelling an event in sequence and with adequate detailing" and "engaging in a conversation with peers" (id.). To address these needs, the student's language therapy focused on "increasing these

¹¹ The educational plan included similar reports of the student's difficulties with attention, willingness to engage in instruction, and overall behavior exhibited during prayer (Tefillah) and Parsha/Chagim/Chumash (see Parent Ex. H at pp. 11, 13). To address these needs, the educational plan noted that teachers used prompts, movement breaks, grounding activities (such as coloring), and "quiet time outside the classroom" (id.).

skills through role playing, sequencing cards, age appropriate stories, games, flashcards and worksheets" (id.).

Next, the director testified about the student's participation in OT, which she described as being "devoted to improving his writing skills" (Parent Ex. J ¶ 39). The director testified that, to assist the student, he was provided with "supports such as adaptive paper, a slant board, and the multisensory Handwriting Without Tears program (id. [emphasis in original]). According to the director, the student worked on several other areas in OT as well, including the following: "body awareness and sensory processing; motor planning and movement; visual perceptual and perceptual motor skills; hand strengthening; postural control and stamina; organization; attention; sequencing; functional shoulder, arm, and hand control for fine motor tasks; and core strength and postural stability" (id.; see Parent Ex. H at pp. 17-18 [identifying approximately 21 goals to address the student's OT needs]). She noted that the student improved his skills over the course of the school year, which resulted in an increased overall performance in school throughout the day (see Parent Ex. J ¶ 39).

With respect to progress, the student's educational plan reflects that although he may have more consistently achieved a numerical rating of "2" during the first report of progress, he improved in all goals targeted and consistently achieved numerical ratings of "3" and "4" thereafter (Parent Ex. H at pp. 17-18). In the narrative description of progress, it was noted that the student improved in his handwriting, body awareness, postural control, upper body strength, motor planning, attention, and motivation (id. at p. 18). However, it was also noted that the student continued to need improvement with his attending and focusing skills, as well as following directions (id.). By the end of the school year, the progress report indicated that the student had continued to make progress in OT, exhibiting improved motivation, attention span, body awareness, handwriting skills, upper body strength, and motor planning (id.). To address his needs in this area, the student's OT supports included the "Handwriting Without Tears" program, adaptive paper, a slant board, and upper body and trunk exercises (id.).

The director also testified about the student's participation in adapted physical education (see Parent Ex. J ¶ 35). According to her testimony, the student worked on "demonstrating good sportsmanship; showing flexibility towards non-preferred activities; demonstrating awareness of popular group athletics games; executing movement and grading force while kicking a soccer ball; completing a four- to five-step obstacle course; and executing a series of five exercises" (id.; see Parent Ex. H at p. 20 [identifying goals targeted in adapted physical education]). In addition, he worked on his ability to kick a ball, complete a five-step obstacle course, and perform exercises with symmetrical and asymmetrical movement patterns such as jumping jacks (see Parent Ex. H at p. 20). To address his needs, the student was provided cues and reminders to pay attention and follow rules (id.). According to the educational plan, the student's participation and ability to follow rules had improved, but he still had difficulty with sportsmanship and participation in non-preferred activities (id.). The student consistently achieved numerical ratings of "3" and "4" on all goals targeted by the end of the school year (id.).

In the area of social/emotional instruction, the student's educational plan included approximately 15 goals targeted during the 2021-22 school year (see Parent Ex. H at p. 22). For example, it was noted that the student was working on following a daily schedule, transitioning

from one activity to another, following directions given both individually and to a group, raising his hand to speak in class, and asking for permission to leave or touch someone else's things (id.). In addition, the student was working on walking appropriately in the halls, ignoring inappropriate behavior of others, participating in a group activity, and engaging in turn taking (id.). According to the educational plan, the student achieved numerical ratings that ranged from "1" to "3" on all targeted goals (id.). The narrative reports of progress indicated that the student had made some progress in his ability to follow his schedule, focus on a lesson, and respond to teacher instructions; however, it was noted that he continued to need reminders and "a lot" of reinforcement to maintain skills (id.). In addition to the skills above, the student worked on having a good relationship with peers, as he was sometimes "hurtful or bothersome" towards them (id.). The student had difficulty speaking respectfully to others when upset; to address this behavior, he was encouraged to acknowledge his feelings and use strategies for self-control to reduce his negative feelings (id.). In addition, SINAI used a behavior chart throughout the day to remind him to act appropriately (id.). By the end of the school year, the narrative reports of progress described the student as making inconsistent progress in his ability to follow his schedule, focus on a lesson, and respond to teacher instructions (id. at p. 23). It was also noted that, at times, the student responded to receiving checks on his chart, and at other times he required prompting and one-to-one teacher support (id.). In addition, the student had difficulty transitioning and with "first time listening" (id.). The student continued to work on identifying and regulating his emotions, and he had begun to show improvement with his social interactions and self-awareness, initiating conversations with peers, and his ability to tell his teacher when something bothered him (id.).

Next, in the area of counseling, the director testified that the student worked on goals that were similar to those targeted in his classroom during a "Social Skills period" (Parent Ex. J ¶ 37). More specifically, the director noted that the student worked on the following skills: "following a daily schedule; transitioning; following directions; raising a hand before speaking; stopping to listen to directions or an adult calling his name; asking permission before leaving a room or touching items belonging to another; walking appropriately at school; ignoring others' inappropriate behaviors; maintaining group participation; and appropriate turn-taking" (id.; see Parent Ex. H at p. 24). The director further testified that, in addition, the student was working on frustration tolerance, asking an adult for help or for a break when a feeling overwhelmed, and decreasing impulsivity (see Parent Ex. J ¶ 37). According to the director, the student made slow, albeit inconsistent, gains in his ability to respond to teacher prompts to follow his schedule, in his peer interactions, becoming more self-aware and communicative with adults, and being remorseful when his behavior was inappropriate (id.).

With respect to progress in counseling, the student's educational plan reflects that he consistently achieved numerical ratings of "1" and "2" throughout the goals targeted during the 2021-22 school year (Parent Ex. H at p. 24). The narrative descriptions of progress indicated that the student resisted going to counseling, had difficulty communicating during sessions, and did not respond appropriately to basic questions (id.). It was noted that the student's impulsivity continued to limit his progress socially, however, by the end of the school year, it was reported that the student was more motivated to follow his "incentive plan" and was less resistant to following directions (id.). The student still needed prompts to follow his schedule and continued to avoid conversation, but was regulated by calming activities (id.). As reflected in the educational

plan, the student's teachers, therapists, and the school psychologist collaborated to target his impulsive behavior during the school day (*id.*).

In light of the foregoing evidence, and under the totality of the circumstances, the parents sufficiently demonstrated that the student's unilateral placement at SINAI Provided the student with a number of strategies, supports, and goals which constituted specially designed instruction to address the student's unique needs. While the IHO might have preferred more detailed evidence of how the student's program and the related services constituted specially designed instruction, the parents' evidence sufficiently describes the supports and strategies used to enable the student to make progress and, contrary to the IHO's decision, the parents were not obligated to meet their burden with specific types of evidence. In this instance, the evidence in the hearing record supported a finding of appropriateness. Accordingly, as the evidence in the hearing record supports a finding that the parents' unilateral placement at SINAI was appropriate for the student under a Burlington-Carter analysis, the IHO's contrary finding must be reversed.

As a final matter, the district has not—either during the impartial hearing or on appeal—raised any equitable considerations that would require a reduction of denial of an award of tuition reimbursement and review of the hearing record reveals none (20 U.S.C. § 1412[a][10][C][iii]; 34 CFR 300.148[d]; E.M. v. New York City Dep't of Educ., 758 F.3d 442, 461 [2d Cir. 2014] [identifying factors relevant to equitable considerations, including whether the withdrawal of the student from public school was justified, whether the parent provided adequate notice, whether the amount of the private school tuition was reasonable, possible scholarships or other financial aid from the private school, and any fraud or collusion on the part of the parent or private school]; C.L., 744 F.3d at 840 [noting that "[i]mportant to the equitable consideration is whether the parents obstructed or were uncooperative in the school district's efforts to meet its obligations under the IDEA"]).¹²

VII. Conclusion

Contrary to the IHO's decision, the evidence in the hearing record establishes that the parents' unilateral placement of the student at SINAI for the 2021-22 school year was appropriate to meet the student's needs. In addition, the district has not raised any concerns regarding equitable considerations, and a review of the hearing record reveals no basis for a reduction or denial of an award of tuition reimbursement on equitable grounds.

¹² In its answer, the district requests that, if it is found that the parents met their burden to prove the appropriateness of the unilateral placement, the matter be remanded to the IHO to consider equitable considerations. When an IHO has not addressed claims set forth in a due process complaint notice, an SRO may consider whether the case should be remanded to the IHO for a determination of the claims that the IHO did not address (8 NYCRR 279.10[c]; see Educ. Law § 4404[2]; F.B. v. New York City Dep't of Educ., 923 F. Supp. 2d 570, 589 [S.D.N.Y. 2013] [indicating that the SRO may remand matters to the IHO to address claims set forth in the due process complaint notice that were unaddressed by the IHO], citing J.F. v. New York City Dep't of Educ., 2012 WL 5984915, at *9 n.4 [S.D.N.Y. Nov. 27, 2012]; see also D.N. v. New York City Dep't of Educ., 2013 WL 245780, at *3 [S.D.N.Y. Jan. 22, 2013]). However, as the district has not identified any equitable concerns, it would not serve judicial economy to remand the matter for further proceedings.

THE APPEAL IS SUSTAINED.

IT IS ORDERED that the IHO's decision, dated August 7, 2024, is modified by reversing that portion which found that the parents failed to sustain their burden of proof to establish the appropriateness of the student's unilateral placement at SINAI for the 2021-22 school year; and,

IT IS FURTHER ORDERED that the district shall reimburse the parents for any out-of-pocket expenses paid and fund the remaining costs of the student's tuition at SINAI for the 2021-22 school year.

Dated: **Albany, New York**
 November 7, 2024

CAROL H. HAUGE
STATE REVIEW OFFICER