The University of the State of New York

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

No. 24-621

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:
The Law Office of Philippe Gerschel, attorneys for petitioner, by Philippe Gerschel, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Lindsay R. VanFleet, 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 failed to rule on his request to receive public funding from respondent (the district) for his daughter's private services delivered by Well Said Speech Service PLLC (Well Said) for the 2023-24 school year and dismissed his claim for a specific rate for services due to a lack of subject matter jurisdiction. The district cross-appeals from those portions of the IHO's decision which denied in-part its motion to dismiss for lack of subject matter jurisdiction, and which awarded the parent public funding for his daughter's private services delivered by Learning Learners LLC (Learning Learners). The appeal must be sustained in part. The cross-appeal must be sustained in part.

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 programing 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

On May 12, 2021 a committee on preschool special education (CPSE) convened to conduct the student's annual review and develop an IEP for the student with an implementation date of May 17, 2021 (Parent Ex. B at pp. 1-18). Finding the student eligible for special education as a preschool student with a disability, the May 2021 CPSE recommended the student receive seven hours per week of SEIT services in a group of three, two 30-minute sessions per week of speech-language therapy in a group of two, two 30-minute sessions per week of occupational therapy (OT) in a group of two, and one 30-minute session per week of counseling services in a group of two, with all services to be delivered at an early childhood program selected by the parent (Parent Ex. B at pp. 1, 15, 18).

A CSE convened on March 15, 2022 for a "T-5 re-evaluation" meeting in preparation for the student transitioning to school-age special education services during the 2022-23 school year (Parent Ex. D). Finding the student eligible for special education as a student with a speech or language impairment the CSE recommended the student receive five periods per week of group special education teacher support services (SETSS) and two individual 30-minute sessions per week of both speech-language therapy and individual OT (id. at pp. 1, 9;).[1] The IESP indicated that the student was parentally placed in a non-public school (id. at p. 12).

By prior written notice, dated March 20, 2022, the district advised the parent of the recommendations made by the March 15, 2022 CSE (Dist. Ex. 2). The prior written notice indicated that the parent conveyed that he was placing the student in a nonpublic school at his own expense and was seeking equitable services from the district, thus the CSE developed the March 2022 IESP (Dist. Ex. 2 at pp. 1-3; see Parent Ex. D).

By email dated May 15, 2023, sent to several district email addresses, and addressed to the "Chair of the CSE," the parent transmitted an attached letter dated May 15, 2023 with a subject line of "Notice of Residence to School District of Location and Request for Services" (Parent Ex. E). In the May 2023 letter, the parent notified the CSE of the student's address and unilateral school placement, and indicated that he would like the student to "receive all services that [the student] require[d] via the [district,]" and that the parent consented to the district providing all necessary special education and related services for the 2023-24 school year (id. at p. 2).

On August 10, 2023, the parent executed a contract with Learning Learners, in which Learning Learners agreed to "make every effort to implement" the services recommended in the May 2021 IEP; however, the contract only specifically identified "SETSS/SEITS at a rate of $210 per hour" for the 2023-24 school year (Parent Ex. F). The contract also provided that the parent would "retain counsel and file a due process complaint to obtain funding for the recommended services" set forth in the student's May 2021 IEP, and that the parent "confirm[ed]" that he was liable for the full cost of services delivered if he was unable to secure funding from the district (id. at p. 2).

[1] 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 within the district.

The parent, through his attorney, sent the CSE chairperson a letter, dated August 21, 2023, indicating the parent had "great concern" regarding the student's recommended placement and program for the 2023-24 school year (Parent Ex. C). The parent notified the district that he was "very concerned that the [CSE] removed the SEIT program and replaced it with so few periods of SETSS," further noting that the SEIT program was "serviced on a one to one basis" (id. at p. 2).[2] The parent alleged that the student required "either a continuation of the broader SEIT program," or an alternative program that was appropriate to address the student's needs (id.). The parent rejected the recommendations in the March 2022 IESP and indicated that he had "no choice" but to provide the student with the prior recommended services and seek reimbursement or direct payment from the district for the costs of those services (id. at p.3).

On September 5, 2023, the parent entered into a contract with Well Said to provide speech-language therapy to the student (Parent Ex. G). According to the agreement, the parent understood that Well Said "intend[ed] to provide" speech-language therapy services for the student at a rate of $300 per hour and the parent requested that Well Said provide for two 30-minute sessions per week for the 12-month 2023-24 school year "to whatever extent possible" (Parent Ex. G).

A. Due Process Complaint Notice

In a due process complaint notice, dated February 12, 2024, the parent alleged that the district denied the student a free appropriate public education (FAPE) for the 2023-24 school year (see Parent Ex. A). The parent objected to the CSE reducing the recommended services from seven periods per week of individual SEIT services to five periods per week of group SETSS and alleged that the student relied on SEIT services, and that she required a continuation of "the broader SEIT program" or an appropriate alternative hybrid program (Parent Ex. A at pp. 1-3). More specifically, the parent alleged that SETSS was "a more limited service that [did] not address the broader organizational, executive functioning, [and] social skills" needs that the student needed to meet her goals (id. at p. 3). The parent contended that, as the CSE had not recommended a proper placement for the student, the parent was forced to implement the SEIT program independently and seek reimbursement from the district (id.). The parent sought, among other things, findings that the March 2022 IESP was "outdated [and] expired," that the failure of the CSE to convene in a timely manner amounted to a denial of FAPE for the 2023-24 school year, and that the failure to recommend SEIT services resulted in a denial of a FAPE (id.). The parent further requested funding for the recommendations contained in the May 2021 CPSE IEP at the provider's contract rate for the 2023-24 school year and a bank of compensatory education equivalent to any services missed in the event the parent was unable to locate service providers for the student, at the prospected providers' contracted rates (id. at p. 4).[3]

[2] I note that this contradicts the recommendations in the student's May 2021 CPSE IEP, which recommended that the student receive SEIT services in a group of three (see Parent Ex. B at pp. 1, 15).

[3] The parent also included a pendency request as part of the due process complaint notice (Parent Ex. A at p. 2). Pendency for this proceeding was agreed to in a pendency implementation form, fully executed on March 21, 2024, which indicated pendency was based on the May 2021 CPSE IEP and included seven hours per week of group SEIT services, two 30-minute sessions per week of group speech-language therapy services, two 30-minute sessions per week of group OT, and one 30-minute session per week of group counseling, with all services delivered on a 10-month basis (Pendency Implementation Form; Tr. pp. 12-13).

B. Impartial Hearing Officer Decision

After a prehearing conference on March 18, 2024 (Tr. pp 1-9) and a status conference on April 16, 2024 (Tr. pp. 10-22), an impartial hearing convened and concluded on June 11, 2024 before an IHO appointed by the Office of Administrative Trials and Hearings (OATH) (Tr. pp. 23-94). The district did not present any witnesses and rested on the exhibits entered into the hearing record (Tr. pp. 28, 34).

The district filed a motion to dismiss dated September 13, 2024, alleging that the IHO did not have subject matter jurisdiction to hear the parent's claims (see generally Dist. Mot. to Dismiss). The parent submitted a memorandum of law in opposition to the district's motion, dated September 15, 2024 (see generally Parent Mem. of Law in Opp'n to Dist. Mot. to Dismiss).[4]

In a decision dated November 8, 2024, the IHO granted in part, and denied in part, the district's motion to dismiss for lack of subject matter jurisdiction (IHO Decision at pp. 9, 13-14). The IHO found that the due process complaint notice involved "permissible subject matter" that included the dispute as to the services recommended by the CSE; however, the IHO found that she did not have subject matter jurisdiction over any "enhanced rate claim" (IHO Decision at p. 9). According to the IHO, she did not have jurisdiction regarding rate disputes, which she described as disputes where there was no disagreement as to the services the student required and the parents found providers to implement services on their own (id. at p. 13). In addition, the IHO noted that her decision "hinge[d] on" the district's creation of an Enhanced Rate Equitable Service (ERES) Unit to address enhanced rate claims, which provided the same "end point" as parents would reach through the impartial hearing process (id.).[5]

Turning to the merits of the matter before her, the IHO found that the district failed to meet its burden in establishing that the student was provided with equitable services for the 2023-24 school year (IHO Decision at pp. 9-10). More specifically, the IHO found that the district failed to adequately justify the reduction of the student's "SETSS/SEIT services" between the May 2021 CPSE IEP and the March 2022 IESP (id.).[6] The IHO also found that the district failed to

[4] The district's motion and parents' response were submitted with the hearing record as supplemental documents.

[5] The IHO's reasoning for why she believed that she did not have subject matter jurisdiction over some of the parent's claims was included in an "appendix" to the IHO's decision (IHO Decision at pp. 9, 13-14). The appendix, however, is not an analysis of the facts presented in this case and is instead a general legal analysis of the IHO's understanding of subject matter jurisdiction in an impartial hearing for Section 3602-c claims (see IHO Decision pp. 13-14). It is worth noting that this appendix has conflicting and contradictory language to other key portions of the IHO's decision, such as claiming in the appendix that "there [was] no actual dispute or disagreement as to the CSE's recommendation that an IHO needs to preside over" and that "[t]here is nothing on which the IHO can make a permissible determination" (id. at p. 13), but in the body of the decision itself, the IHO denied the district's motion, in part, because the due process complaint notice "involve[d] permissible subject matter such as a dispute as to the services recommended by the CSE reducing the student's SEIT/SETSS services" (id. at p. 9). This is not the first matter before the Office of State Review where this IHO has included such contradictory language between the main body of the IHO decision and an attached appendix on subject matter jurisdiction (see Application of a Student with a Disability, Appeal No. 24-525).

[6] At times in the hearing record, the special education services provided to the student appear to be interchangeably referred to either broadly as "special education services" or as SEIT services or special education teacher support

implement the student's SETSS and related services for the 2023-24 school year, which in turn placed the responsibility of finding service providers on the parent (id. at p. 10). The IHO then found that Learning Learners provided appropriate SETSS to the student by a credentialed provider, and that the district failed to meet its burden to show that equitable considerations did not favor the parent (id.). The IHO ordered that the district fund the student's SETSS at a frequency of seven one-hour sessions per week for a maximum of 36-weeks for the 10-month 2023-24 school year, upon being presented with invoices and proof of attendance (id. at pp. 10-11). The IHO further noted that the parent was unable to find providers for the student's OT and counseling services and ordered the district to immediately implement or provide the parent with a request for service authorization (RSA) for 36 hours of OT and 18 hours of counseling services as compensatory education for the 2023-24 school year (id.).[7]

IV. Appeal for State-Level Review

The parent appeals, alleging, through his attorney, that the IHO erred in failing to address his request for funding for the student's speech-language therapy services, and erred by finding that she lacked subject matter jurisdiction to determine the rate of the services awarded. The parent requests, among other things, an order directing the district to fund the student's SETSS at a rate of $210 per hour and the student's speech-language therapy at a rate of $300 per hour.[8]

In an answer and cross-appeal, the district contends, among other things, that the parent failed to prove that the unilaterally obtained services were appropriate and that equitable considerations warrant a denial of relief to the parent. The district further contends that the evidence in the hearing record regarding the providers' rates of services was not adequate to support the requested relief. Additionally, the district contends that the IHO should have dismissed the due process complaint notice in its entirety because the IHO (and this SRO) lack subject matter jurisdiction to hear the parent's claims.

In an answer to the cross-appeal, the parent contends, among other things, that there was sufficient evidence and testimony in the hearing record to support a finding that all of the

services (SETSS). Testimony during the hearing from an individual employed by Learning Learners, indicated that the student was receiving SETSS (Tr. pp. 62-63). However, as noted above, a static and reliable definition of "SETSS" does not exist within the district.

[7] The IHO did not address the parent's request for funding of speech-language therapy provided by Well Said (see IHO Decision).

[8] Both of the parent's "statement[s] of fact," which appear to be a request for review, and the parent's answer to the district's cross-appeal do not have captions identifying the pleadings or to what matter the pleadings pertain to (i.e., they do not identify the underlying IHO case number or the parties' names). For future matters, the parent's attorney should place a caption on each pleading submitted to the Office of State Review to ensure efficient and accurate processing of appeals before the Office of State Review. I further note that, while the parent's memorandum of law in support of the request for review does have a caption, it appears to be a caption for the underlying proceeding rather than for the appeal.

unilaterally obtained services for the student were appropriate, and that there is nothing in the record to support that the providers' rates were excessive.[9]

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]).[10] "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.).[11] Thus, under State law an

[9] The district, in a reply to the parent's answer to the cross-appeal, alleges that the parent's answer to the cross-appeal does not comport with practice regulations. According to the district, the document was not properly verified because the notary on the document was not currently registered in the State of New York to notarize documents, based upon a search of public records. As the parent has since submitted a new verification for the pleading, I need not further discuss this issue.

[10] 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]).

[11] 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

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

A. Preliminary Matters

1. Subject Matter Jurisdiction

The district argues that there is no federal right to file a due process complaint notice regarding services recommended in an IESP and State law confers no right to file a due process complaint notice regarding IESP implementation. Thus, according to the district, IHOs and SROs lack subject matter jurisdiction with respect to pure IESP implementation claims.

Recently in several decisions, the undersigned and other SROs have rejected the district's position that IHOs and SROs lack subject matter jurisdiction to address claims related to implementation of equitable services under State law (see, e.g., Application of a Student with a Disability, Appeal No. 25-067; Application of a Student with a Disability, Appeal No. 25-028; Application of a Student with a Disability, Appeal No. 24-620; Application of a Student with a Disability, Appeal No. 24-615; Application of a Student with a Disability, Appeal No. 24-614; Application of a Student with a Disability, Appeal No. 24-612; Application of a Student with a Disability, Appeal No. 24-602; Application of a Student with a Disability, Appeal No. 24-595; Application of a Student with a Disability, Appeal No. 24-594; Application of a Student with a Disability, Appeal No. 24-589; Application of a Student with a Disability, Appeal No. 24-584; Application of a Student with a Disability, Appeal No. 24-572; Application of a Student with a Disability, Appeal No. 24-564; Application of a Student with a Disability, Appeal No. 24-558; Application of a Student with a Disability, Appeal No. 24-547; Application of a Student with a Disability, Appeal No. 24-528; Application of a Student with a Disability, Appeal No. 24-525; Application of a Student with a Disability, Appeal No. 24-512 Application of a Student with a Disability, Appeal No. 24-507; Application of a Student with a Disability, Appeal No. 24-501; Application of a Student with a Disability, Appeal No. 24-498; Application of a Student with a Disability, Appeal No. 24-464; Application of a Student with a Disability, Appeal No. 24-461; Application of a Student with a Disability, Appeal No. 24-460; Application of a Student with a Disability, Appeal No. 24-441; Application of a Student with a Disability, Appeal No. 24-436; Application of the Dep't of Educ., Appeal No. 24-435; Application of a Student with a Disability,

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.

Appeal No. 24-392; Application of a Student with a Disability, Appeal No. 24-391; Application of a Student with a Disability, Appeal No. 24-390; Application of a Student with a Disability, Appeal No. 24-388; Application of a Student with a Disability, Appeal No. 24-386).

Under federal law, all districts are required by the IDEA to participate in a consultation process with nonpublic schools located within the district and develop a services plan for the provision of special education and related services to students who are enrolled privately by their parents in nonpublic schools within the district equal to a proportionate amount of the district's federal funds made available under part B of the IDEA (20 U.S.C. § 1412[a][10][A]; 34 CFR 300.132[b], 300.134, 300.138[b]). However, the services plan provisions under federal law clarify that "[n]o parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school" (34 CFR 300.137 [a]). Additionally, the due process procedures, other than child find, are not applicable for complaints related to a services plan developed pursuant to federal law.

Accordingly, the parent would not have a right to due process under federal law; however, the student did not merely have a services plan developed pursuant to federal law, and the parent did not argue that the district failed in the federal consultation process or in the development of a services plan pursuant to federal regulations.

Separate from the services plan envisioned under the IDEA, the Education Law in New York has afforded parents of resident students with disabilities with a State law option that requires a district of location to review a parental request for dual enrollment 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]).[12]

Education Law § 3602-c, concerning students who attend nonpublic schools, 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 section forty-four hundred four of this chapter" (Educ. Law § 3602-c[2][b][1]). It further provides that "[d]ue process complaints relating to compliance of the school district of location with child find requirements, including evaluation requirements, may be brought by the parent or person in parental relation of the student pursuant to section forty-four hundred four of this chapter" (Educ. Law § 3602-c[2][c]).

However, the district asserts that neither Education Law § 3602-c nor Education Law § 4404 confer IHOs with jurisdiction to consider enhanced rates claims from parents seeking implementation of equitable services.

Consistent with the IDEA, Education Law § 4404, which concerns appeal procedures for students with disabilities, provides that a due process complaint may be presented with respect to "any matter relating to the identification, evaluation or educational placement of the student or the provision of a free appropriate public education to the student" (Educ. Law §4404[1][a]; see 20

[12] This provision is separate and distinct from the State's adoption of statutory language effectuating the federal requirement that the district of location "expend a proportionate amount of its federal funds made available under part B of the individuals with disabilities education act for the provision of services to students with disabilities attending such nonpublic schools" (Educ. Law § 3602-c[2-a]).

U.S.C. § 1415[b][6]). State Review Officers have in the past, taking into account the legislative history of Education Law § 3602-c, concluded that the legislature did not intend to eliminate a parent's ability to challenge the district's implementation of equitable services under Education Law § 3602-c through the due process procedures set forth in Education Law § 4404 (see Application of a Student with a Disability, Appeal No. 23-121; Application of the Dep't of Educ., Appeal No. 23-069; Application of a Student with a Disability, Appeal No. 23-068).[13] In addition, the New York Court of Appeals has explained that students authorized to received services pursuant to Education Law § 3602-c are considered part-time public school students under State Law (Bd. of Educ. of Monroe-Woodbury Cent. Sch. Dist. v. Wieder, 72 N.Y.2d 174, 184 [1988]), which further supports the conclusion that part-time public school students are entitled to the same legal protections found in the due process procedures set forth in Education Law § 4404.

However, the number of due process cases involving the dual enrollment statute statewide, which were minuscule in number until only a handful of years ago, have now increased to tens of thousands of due process proceedings per year within certain regions of this school district in the last several years. Public agencies are attempting to grapple with how to address this colossal change in circumstances, which is a matter of great significance in terms of State policy. Policy makers have recently attempted to address the issue.

In May 2024, the State Education Department proposed amendments to 8 NYCRR 200.5 "to clarify that parents of students who are parentally placed in nonpublic schools do not have the right under Education Law § 3602-c to file a due process complaint regarding the implementation of services recommended on an IESP" (see "Proposed Amendment of Section 200.5 of the Regulations of the Commissioner of Education Relating to Special Education Due Process Hearings," SED Mem. [May 2024], available at https://www.regents.nysed.gov/sites/regents/files/524p12d2revised.pdf).[14] Ultimately, however, the proposed regulation was not adopted. Instead, in July 2024, the Board of Regents adopted, by emergency rulemaking, an amendment of 8 NYCRR 200.5, which provides that a parent may not file a due process complaint notice in a dispute "over whether a rate charged by a licensed provider is consistent with the program in a student's IESP or aligned with the current market rate for such services" (8 NYCRR 200.5[i][1]). The amendment to the regulation does not apply to the present circumstance for two reasons. First, the amendment to the regulation applies only to due process complaint notices filed on or after July 16, 2024 (id.).[15] Second, since its adoption, the amendment has been enjoined and suspended in an Order to Show Cause signed October 4, 2024 (Agudath Israel of America v. New York State

[13] The district did not seek judicial review of these decisions.

[14] In this case, the district continues to press the point that the parent has no right to file any kind of implementation claim regarding dual enrollment services, regardless of whether there are allegations about rates, which is more in alignment with the text of the proposed rule in May 2024, which was not the rule adopted by the Board of Regents.

[15] A statutory or regulatory amendment is generally presumed to have prospective application unless there is clear language indicating retroactive intent (see Ratha v. Rubicon Res., LLC, 111 F.4th 946, 963 [9th Cir. 2024]). The presence of a future effective date typically suggests that the amendment is intended to apply prospectively, not retroactively (People v. Galindo, 38 N.Y.3d 199, 203 [2022]). The due process complaint notice in this matter was filed with the district on February 12, 2024, prior to the July 16, 2024 date set forth in the emergency regulation (Parent Ex. A at p. 1). Since then, the emergency regulation has lapsed.

Bd. of Regents, No. 909589-24 [Sup. Ct., Albany County, Oct. 4, 2024]). Specifically, the Order provides that

> pending the hearing and determination of Petitioners' application for a preliminary injunction, the Revised Regulation is hereby stayed and suspended, and Respondents, their agents, servants, employees, officers, attorneys, and all other persons in active concert or participation with them, are temporarily enjoined and restrained from taking any steps to (a) implement the Revised Regulation, or (b) enforce it as against any person or entity

(Order to Show Cause, O'Connor, J.S.C., Agudath Israel of America, No. 909589-24).[16]

Consistent with the district's position that there is not and has never been a right to bring a due process complaint for implementation of IESP claims or enhanced rate for services, State guidance issued in August 2024 noted that the State Education Department had previously "conveyed" to the district that:

> parents have never had the right to file a due process complaint to request an enhanced rate for equitable services or dispute whether a rate charged by a licensed provider is consistent with the program in a student's IESP or aligned with the current market rate for such services. Therefore, such claims should be dismissed on jurisdictional grounds, whether they were filed before or after the date of the regulatory amendment.

("Special Education Due Process Hearings—Rate Disputes," Office of Special Educ. [Aug. 2024]).[17]

However, acknowledging that the question has publicly received new attention from State policymakers, as well as at least one court at this juncture and appears to be an evolving situation, given the implementation date set forth in the text of the amendment to the regulation and the issuance of the temporary restraining order suspending application of the regulatory amendment,

[16] On November 1, 2024, the Supreme Court issued a second order clarifying that the temporary restraining order applied to both emergency actions and activities involving permanent adoption of the rule until the petition was decided (Order, O'Connor, J.S.C., Agudath Israel of America, No. 909589-24 [Sup. Ct., Albany County, Nov. 1, 2024]).

[17] Neither the guidance nor the district indicated if this jurisdictional viewpoint was conveyed publicly or only privately to the district, when it was communicated, or to whom. There was no public expression of these points that the undersigned was aware of until policymakers began rulemaking activities in May 2024; however, as the number of allegations began to mount that the district's CSEs had not been convening and services were not being delivered, at that point the district began to respond by making unsuccessful jurisdictional arguments to SROs in the past, which decisions were subject to judicial review but went unchallenged (see e.g., Application of a Student with a Disability, Appeal No. 23-069; Application of a Student with a Disability, Appeal No. 23-068; Application of a Student with a Disability, Appeal No. 23-121). The guidance document is no longer available on the State's website; however, a copy of the August 2024 guidance document is included in the administrative hearing record as an attachment to the district's motion to dismiss.

the amendments to the regulation may not be deemed to apply to the present matter. Further, the position set forth in the guidance document issued in the wake of the emergency regulation, which is now enjoined and suspended, does not convince me that the Education Law may be read to divest IHOs and SROs of jurisdiction over these types of disputes.

Finally, the IHO found that her decision regarding subject matter jurisdiction "hing[ed] on" the creation of the ERES unit. While a local educational agency may set up additional options for a parent to pursue relief, it may not require procedural hurdles not contemplated by the IDEA or the Education Law (see Antkowiak v. Ambach, 838 F.2d 635, 641 [2d Cir. 1988] ["While state procedures which more stringently protect the rights of the handicapped and their parents are consistent with the [IDEA] and thus enforceable, those that merely add additional steps not contemplated in the scheme of the Act are not enforceable."]; see also Montalvan v. Banks, 707 F. Supp. 3d 417, 437 [S.D.N.Y. 2023]).

Based on the foregoing, the IHO's dismissal of enhanced rate claims with prejudice on the basis of subject matter jurisdiction must be reversed.

2. Scope of Review

Neither party has appealed from the IHO's determinations that the district denied the student equitable services for the 2023-24 school year, that the district failed to adequately justify the March 2022 IESP recommendation for five hours per week of SETSS, or that the district must immediately implement or provide the parent with an RSA for 36 hours of OT and 18 hours of counseling services. Accordingly, these findings have become final and binding on the parties and will not be further discussed (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]).

B. Unilateral Placement

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 parental placement. 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 2023-24 school year and, as a self-help remedy, he unilaterally obtained private services from Learning Learners and Well Said for the student without the consent of the school district officials, and then commenced due process to obtain remuneration for the costs thereof. Generally, districts that 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."]).

The parent's request for district funding of privately-obtained services must be assessed under this framework. Thus, a board of education may be required to reimburse parents for their expenditures for private educational services they obtained for a student 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]).[18] 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 for adjudicating these types of disputes 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 Rowley, 458 U.S. at 203-04; Frank G. v. Bd. of Educ. of Hyde Park, 459 F.3d 356, 364 [2d Cir. 2006]; see also 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 parent's failure to select a program approved by the State in favor of an unapproved option is not itself a bar to reimbursement (Carter, 510 U.S. at 14). The private school need not employ certified special education teachers or have its own IEP for the student (id. at 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., 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). 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

[18] 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 Learning Learners and Well Said Speech Service PLLC (Educ. Law § 4404[1][c]).

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).

1. Student's Needs

To address the appropriateness of the unilaterally-obtained SETSS and speech-language therapy, it is necessary to describe the student's needs, and thereafter, to review the instruction delivered to the student to determine if the methods and strategies used constituted specially designed instruction.

Initially, I note that the hearing record includes limited evaluative information regarding the student's needs leading up to the 2023-24 school year.

The student's 2021 preschool progress reports and May 2021 IEP indicated that the student had difficulty engaging in pretend play, found it challenging to follow classroom rules, had difficulty transitioning between activities, had poor impulse control, required maximum prompting to self-regulate, had a high level of distractibility and struggled with attending to tasks, had difficulty engaging in non-preferred activities, and required significant redirection to engage in classroom activities (Parent Ex. B at pp. 3-6; Dist. Exs. 3 at p. 2; 4 at pp. 1-3). Additionally, and in regard to interacting with others, it was reported that the student had difficulty in turn-taking, was unable to sustain interactions with others, often became disruptive by making noises/fidgeting/talking to the teacher, had an inability to express needs which resulted in verbal frustration (screaming, crying) and aggressive behaviors (pushing others), would occasionally become defiant when asked to do something that she did not want to do, and had tantrums that occasionally lasted up to one half of an hour (Parent Ex. B at pp. 3-5; Dist. Exs. 3 at p. 2; 4 at pp. 1-3). With regard to academics, the reports indicated the student demonstrated some readiness skills in that she could match objects by color shape and size, state her first and last name and age,

count to ten using one-to-one correspondence, and identify two letters (Parent Ex. B at p. 3; Dist. Ex. 4 at pp. 1-2).

The reporting indicated the student demonstrated delayed language skills, in that her articulation was often unclear, and that she had difficulty initiating conversations with peers and adults, used one word sentences such as "look" to attract teacher attention, required significant prompting and cues to read books by looking at the pictures and saying what was happening on each page, had difficulty answering simple "wh" questions, had a limited ability to respond to questions appropriately, and had difficulty with auditory comprehension tasks such as following directions and required redirection and repetition (Parent Ex. B at pp. 3-4; Dist. Ex. 4 at p. 2).

Specific to OT and motor needs the reports indicated the student exhibited a weak lateral static quadruped grasp while holding a writing utensil, demonstrated poor precision and fine motor control in coloring and tracing, often stopped and refused to continue due to fatigue after a minute of using a writing utensil, demonstrated difficulty making the initial snip and navigating scissors, had difficulty manipulating small objects, was unable to button clothes, presented with decreased coordination and muscle strength in intrinsic hand musculature, had difficulty reproducing 3D designs from a model, had difficulty working with material that made her fingers dirty, had difficulty jumping forward using a 2-footed takeoff, was unable to hop on one foot, was unable to utilize both sides of her body while performing jumping jacks or crab walk activities, and presented with concerns with balancing as she often fell off her chair or fell when running (Parent Ex. B at pp. 5-6; Dist. Exs. 3 at pp. 1-2; 4 at pp. 3-4).

The March 2022 IESP reflected a discussion about progress and recommendations for the student's kindergarten program; the parent reported that the student lost focus and required prompting and that, with the assistance of the SEIT, he had seen improvement and felt it was because of the SEIT, and when the SEIT was not present the student did not participate and had difficulty following through (Parent Ex. D at p. 1). The student's present levels of performance in the March 2022 IESP were largely copied from the student's May 2021 CPSE IEP, with some areas of progress noted (compare Parent Ex. D at pp. 1-5, with Parent Ex. B at pp. 3-7). Emphasized throughout the IESP was the student's difficulty following directions and transitioning, as well as attending to presented tasks (Parent Ex. D at pp. 1-4). In the area of speech, the IESP indicated that the student liked to engage in pretend play and interact with peers, was working on sharing and turn-taking, and was able to answer simple "wh" questions about stories with minimal to moderate support (id. at p. 2). Additional needs were noted in the areas of pronoun use and the use of "ing" verbs (id.).

A review of the student's winter 2024 progress reports reveals that the providers identified the student's needs and developed annual goals for the student to work toward in addressing those needs (Parent Exs. H; I).

A January 2024 Well Said speech-language progress report indicated that services targeted "various" expressive and receptive language goals as well as pragmatics and social-emotional communication (Parent Ex. I at pp. 1-2).

Expressively, the student was found to have difficulty in word finding and vocabulary and in expressing her needs and wants, which often led to frustration (Parent Ex. I at p. 1). Receptively, the student had difficulty remembering parts from a story and in answering "very basic wh

questions," had difficulty in identifying categories and items within categories, and had difficulty in following basic structured and unstructured directions (id.). Reporting also stated that the student had difficulty engaging in and maintaining topics during conversation, had difficulty maintaining eye contact during therapy sessions and in the classroom, and often got distracted during activities and required redirecting (id.). According to the speech-language progress report, the student enjoyed interacting with peers but engaged in minimal conversation with them (id.).

The January 2024 speech-language progress report included goals that targeted the student's expressive language skills (answering basic "wh" questions, labeling and naming objects, expressing wants and needs, categorizing items, using descriptive concept words), receptive language skills (following basic one- and two-step directions, sequencing events, identifying "the right answer" after listening to a story), and pragmatic skills (maintaining topic during conversations, maintaining appropriate eye contact, maintaining appropriate turn-taking) (Parent Ex. I at p. 1; see Tr. p. 49).

A February 2024 special education progress report, completed by one of the student's SETSS providers employed by Learning Learners, stated that the student presented with significant delays in reading, math, language, writing, and social-emotional skills and required specialized instruction (Parent Ex. H at p. 1; see Parent Ex. L ¶13). With respect to executive functioning, the progress report indicated that the student was distractable, had difficulty focusing and staying on task, and, at times, was disruptive and disturbed teachers and peers (id.). In reading, the student presented with significant delays in phonological awareness; had trouble identifying initial sounds in words and matching words that rhyme; was unable to effectively summarize a story and correctly order events, make predictions, or discuss characters; had a hard time identifying the main idea or differentiating between reality and fantasy; and struggled to answer "wh" questions (id.). Regarding math, the progress report stated that the student had poor number skills and had difficulty reading numbers above 20, counting by rote to 100, skip counting by two, counting with 1:1 correspondence, adding and subtracting "single digits," telling time on a digital clock, identifying bills and coins, and solving word problems (id. at p. 2). In the area of writing, the progress report characterized the student's handwriting as "poor" and noted she wrote "messily" with "very large" letters and reversals; struggled with spelling, punctuation, and capitalization; and was unable to express herself in writing (id. at p. 3). The progress report identified the student's language needs including her inability to express her feelings and needs clearly and her difficulty with word retrieval as well as her difficulty understanding task directions, and following and repeating multi-step directions (id.). While the progress report stated that the student presented with age-appropriate social skills, it also noted that her behavior was often immature and that she sought negative attention (id. at pp. 3-4).

2. SETSS Provided by Learning Learners

The district contends that the IHO's finding that the parent met his burden of showing the appropriateness of the unilaterally obtained SETSS was unsupported by the hearing record and that all relief should be denied. Further, the district contends that the parent presented no credible evidence or testimony demonstrating how Learning Learner's implemented SETSS for the student, what deficits the service addressed, when and where SETSS were provided, or how the SETSS were specially designed to address the student's unique needs.

Initially, the district is correct in its assertion that the IHO offered only a blanket statement that SETSS were appropriate; in particular the IHO found that the SETSS were "appropriate and [were] being provided by a credentialed provider" (see IHO Decision at p. 10). The IHO also rejected the district's arguments as to the appropriateness of the unilaterally obtained services by finding that "all of the arguments that [the district] ma[de] could have been avoided had [the district] implemented the agreed upon services" (id.). Accordingly, the IHO's findings do not appear to have been based on the information available in the hearing record and do not appear to have been directed at determining whether the services addressed the student's special education needs. Nevertheless, as discussed below, a review of the hearing record supports the parent's position that the unilaterally obtained services were specially designed for the student to receive an educational benefit.

The hearing record reveals that, during the 2023-24 school year, the student was in the first grade, she received seven hours of SETSS per week, and the student's service providers reported that she had shown progress in several areas during the course of the school year (Tr. pp. 62-63; Parent Exs. H at p. 1; L at p. 4).

Testimony from the director of special education at Learning Learners (the director) indicates that her agency provided the student with direct 1:1 special education services in the student's "mainstream school" during the 2023-24 school year and that the sessions were typically provided "outside of the classroom" as a pull-out service, and included "a great deal of specialized instruction" (Tr. pp. 67-68; Parent Ex. L ¶¶ 12, 15, 18). The director testified that the services were provided both in school and after school, and that the student was receiving two sessions after school (Tr. pp. 67, 70).

The director explained that the decision to provide the student with seven hours of SETSS was based on conversations with the provider, the parent, the school, assessments done by the provider, and the student's IESP (Tr. pp. 81-83). Regarding the benefit of the student receiving seven hours of SETSS as opposed to five, the director testified that the seven hours "really help[ed] [the student] stay up to par with her friends and really g[ave] her an extra boost," noting that, because of the way the student acted in class, there was a deficit between the student and her friends where she was not retaining the information or grasping what was going on in class (Tr. p. 79).

According to the director, the student received SETSS from two providers during the 2023-24 school year (Parent Ex. L ¶ 13). The director testified that both providers were New York State licensed special education teachers for "birth through 2nd grade," which is supported by the documentary evidence submitted into the hearing record (Tr. p. 63, 83-84; J at pp. 1, 3-4; see Parent Ex. L ¶ 13). The director added that both providers were trained and experienced to teach literacy and comprehension to school aged children (Parent Ex. L ¶ 13).

The director testified that the Learning Learners progress report, which was signed by one of the student's providers, was an accurate representation of the program provided to the student, including goals that the providers worked \ on during the 2023-24 school year (Parent Ex. L ¶ 17; see Parent Ex. H). According to the progress report, to address the student's executive functioning deficits, the SETSS provider set up a behavior modification program to motivate the student to attend, stay on task, and avoid negative and disruptive behaviors, thereby providing the student

with the opportunity to progress (Parent Ex. H at p. 1). In addition, the progress report stated that positive reinforcement, scaffolding, repetition, modeling, cues, prompts, and visuals were implemented during sessions in order to provide the student with the ability to advance academically (id.).

According to the Learning Learners progress report, the student's SETSS providers employed read-alouds, repeated readings, drills, and flash cards, as well as modeling and demonstrating proper pronunciation, rhythm, and decoding strategies to address the student needs in reading (Parent Ex. H at p. 1). In addition, the student was guided through texts with the support of graphic organizers, picture books, story cards, chunked reading, and repeated readings to help the student organize the ideas presented and improve her reading comprehension skills (id. at pp. 1-2). The progress report also indicated that distraction was limited "so that [the student] c[ould] focus" (id. at pp. 1-2). The progress report contained annual goals targeting the student's ability to identify sounds/letters/rhyming words, break words into syllables, read CVC words, retell a story in sequence, distinguish between reality and fantasy, identify main ideas, make predictions, and discuss character feelings and actions (id. at p. 2).

The Learning Learners progress report reflects that the student used flashcards, worksheets, place value charts, visual supports, step-by-step checklists, and manipulatives to improve her overall number skills, computational skills, and ability to solve word problems (Parent Ex. H at p. 2). The annual goals included in the progress report targeted the student's ability to rote count and read numbers to 100, add single digits, count with 1:1 correspondence, match groups of equal objects, sequence numbers, understand time concepts and tell time on a digital clock, identify the value of money, and solve word problems involving addition and subtraction (id.).

Next, the Learning Learner's progress report indicated that, to address the student's writing needs, the providers encouraged proper positioning of writing instruments while modeling, copying, and tracing, and employed flashcards, worksheets, drills, and word games to improve the student's spelling and grammar (Parent Ex. H at p. 3). The Learning Learners progress report identified annual goals that targeted the student's use of capitalization and punctuation, spelling, ability to write letters and numbers, and ability to produce complete sentences (id.).

The Learning Learners progress report stated that, in addressing the student's expressive language deficiencies, the provider incorporated a language program, engaged the student in role-playing and dialogue, and employed activities and books requiring reciprocal communication (Parent Ex. H at p. 3). In addressing the student's receptive language and auditory processing needs, the provider used games and pictures, rewarded "good listening," and also provided charts and graphic organizers to simplify, clarify, and organize instruction (id.). The progress report included annual goals targeting the student's ability to express her feelings and needs, improve her listening skills, and follow multi-step unrelated directions (id.).

With respect to progress, I note that it is well settled that a finding of progress is not required for a determination that a student's unilateral placement is adequate (Scarsdale Union Free Sch. Dist. v. R.C., 2013 WL 563377, at *9-*10 [S.D.N.Y. Feb. 4, 2013] [noting that evidence of academic progress is not dispositive in determining whether a unilateral placement is appropriate]; see M.B. v. Minisink Valley Cent. Sch. Dist., 523 Fed. App'x 76, 78 [2d Cir. Mar. 29, 2013]; D.D-S. v. Southold Union Free Sch. Dist., 506 Fed. App'x 80, 81 [2d Cir. Dec. 26, 2012]; L.K. v. Ne.

Sch. Dist., 932 F. Supp. 2d 467, 486-87 [S.D.N.Y. 2013]; C.L. v. Scarsdale Union Free Sch. Dist., 913 F. Supp. 2d 26, 34, 39 [S.D.N.Y. 2012]; G.R. v. New York City Dep't of Educ., 2009 WL 2432369, at *3 [S.D.N.Y. Aug. 7, 2009]; Omidian v. Bd. of Educ. of New Hartford Cent. Sch. Dist., 2009 WL 904077, at *22-*23 [N.D.N.Y. Mar. 31, 2009]; see also Frank G., 459 F.3d at 364). However, while not dispositive, a finding of progress is, nevertheless, a relevant factor to be considered in determining whether a unilateral placement is appropriate (Gagliardo, 489 F.3d at 115, citing Berger, 348 F.3d at 522 and Rafferty v. Cranston Public Sch. Comm., 315 F.3d 21, 26-27 [1st Cir. 2002]).

Thus, in examining progress under that lens, I note that the director testified that progress was measured through quarterly assessments, meetings with the provider and support staff, observations in the classroom, and daily session notes (Parent Ex. L at p. 4).[19] The Learning Learners progress report included a global statement that the student had shown progress in several areas as she continued to develop skills to help her with her academics; however, the report did not identify any specific skills toward which the student had made progress (Parent Ex. H at p. 1). The Learning Learners director testified that the student had "already shown signs of progress" with her SETSS provider (Parent Ex. L ¶ 20). More specifically, the director noted that the student was able to tell time by the hour, and that the student was "fine" with single-digit addition and subtraction and double-digit addition (Tr. p. 77). Also, the director stated that the student was able to identify and write out the "ABCs" (Tr. p. 78). Additionally, the director testified that the SETSS provided by Learning Learners was meeting the student's social-emotional needs, as the student was distracted and made "silly comments" at the beginning of the school year, but she had made "major progress" by the time of the impartial hearing (Tr. pp. 74-75, 78). The director testified that the student had since matured, in that, she was less distracted and did not make those same "silly comments," and that it was something the provider was actively working on with the student in school (Tr. p. 75).

In light of the above, I find that the evidence in the hearing record, although marginally, supports a finding that the parent sustained his burden to demonstrate that the unilaterally obtained SETSS delivered by Learning Learners provided the student with specially designed instruction targeting her needs during the 2023-24 school year. Accordingly, I see no basis to disturb the IHO's finding in this regard.

3. Speech-Language Therapy Provided by Well Said

The parent correctly asserts on appeal that the IHO failed to address his request for funding of speech-language therapy services in her decision.

Here, the hearing record shows that, during the 2023-24 school year, Well Said provided the student with "pull out" services in school and that the student was seen on a one-to-one basis (Tr. pp. 44, 47; Parent Ex. M). More specifically, the January 2024 speech-language progress report indicated the student was receiving two 30-minute sessions per week of 1:1 speech-language

[19] When asked on cross examination whether the providers kept session notes the Learning Learners director responded that the agency "require[d] progress reports twice a year" (Tr. p. 68). The only documentary evidence in the hearing record regarding the services provided to the student by Learning Learners during the 2023-24 school year is the February 8, 2024 progress report (Parent Ex. H).

therapy targeting "various" expressive and receptive language goals as well as pragmatics and social-emotional communication (Parent Ex. I at pp. 1-2).[20]

The speech-language pathologist testified that the student worked on expressive and receptive language goals, as well as pragmatic language goals, which she indicated were "social" (Tr. pp. 48-49; see Parent Ex. I at pp. 1-2). As examples, she explained that the student was working on increasing her vocabulary and describing objects, answering "wh" questions, sequencing pictures in a story and retelling the story, making eye contact, and turn taking (Tr. p. 49; see Parent Ex. I at pp. 1-2). In addition to what was described by the speech-language pathologist, the January 2024 Well Said progress report also included goals that indicated the speech-language pathologist was working with the student on her ability to express her wants and needs, follow directions, and maintain a topic during conversations (Parent Ex. Ex. I at pp. 1-2). The speech-language pathologist testified that the provider was "in touch" with the student's teachers, and that they were constantly interacting "as far as how the progress is and how she's doing in the classroom" (Tr. pp. 49-50).

The speech-language pathologist testified that the provider, who worked with the student, had "a bachelor's and a master's" in speech-language pathology, and was completing her clinical fellowship year under the supervision of a licensed speech-language pathologist (Tr. p. 45; Parent Exs. J at pp. 2-3; M).

Regarding the student's performance, the speech-language pathologist testified that the student had made progress with her vocabulary and in her social skills (Tr. p. 59). She added that it was not "significant progress" as "there's still a lot to work on" but stated it was "a little bit of progress" (Tr. p. 59). While the parent's evidence provides minimal detail regarding the student's progress during the 2023-24 school year, as noted earlier, a finding of progress is not required for a determination that a student's unilateral placement is adequate, and in considering the totality of the circumstances in this case, the parent met his burden of proving the appropriateness of the services provided by Well Said, as there is sufficient evidence and testimony that the unilaterally obtained services constituted specially designed instruction and were directed at meeting the student's identified needs. Therefore, I find that it was error for the IHO to fail to address the parent's request for the unilaterally obtained speech-language therapy and that in considering the totality of the circumstances, with the evidence provided of the speech-language therapy delivered by Well Said, along with the SETSS delivered by Learning Learners the hearing record supports finding that the unilaterally obtained services were appropriate.

C. Equitable Considerations

Having found that the unilaterally obtained services were appropriate, the inquiry now turns to consider the final criterion for a reimbursement award, which is that the parents' claim must be supported by equitable considerations. Equitable considerations are relevant to fashioning relief under the IDEA (Burlington, 471 U.S. at 374; R.E., 694 F.3d at 185, 194; M.C. v. Voluntown

[20] While, within her written testimony, the speech-language pathologist stated that the student was receiving "group periods of speech," the January 2024 progress report as well as her own testimony under cross examination indicated that the speech-language services were provided individually (compare Parent Ex. M, with Tr. p. 47; Parent Ex. I at pp. 1-2).

Bd. of Educ., 226 F.3d 60, 68 [2d Cir. 2000]; see Carter, 510 U.S. at 16 ["Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable"]; L.K. v. New York City Dep't of Educ., 674 Fed. App'x 100, 101 [2d Cir. Jan. 19, 2017]). With respect to equitable considerations, the IDEA also provides that reimbursement may be reduced or denied when parents fail to raise the appropriateness of an IEP in a timely manner, fail to make their child available for evaluation by the district, or upon a finding of unreasonableness with respect to the actions taken by the parents (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"]).

Among the factors that may warrant a reduction in tuition under equitable considerations is whether the frequency of the services or the rate for the services were excessive (see E.M., 758 F.3d at 461 [noting that whether the amount of the private school tuition was reasonable is one factor relevant to equitable considerations]). An IHO may consider evidence regarding whether the rate charged by the private agency was unreasonable or regarding any segregable costs charged by the private agency that exceed the level that the student required to receive a FAPE (see L.K. v. New York City Dep't of Educ., 2016 WL 899321, at *7 [S.D.N.Y. Mar. 1, 2016], aff'd in part, 674 Fed. App'x 100). More specifically, while parents are entitled to reimbursement for the cost of an appropriate private placement when a district has failed to offer their child a FAPE, it does not follow that they may take advantage of deficiencies in the district's offered placement to obtain all those services they might wish to provide for their child at the expense of the public fisc, as such results do not achieve the purpose of the IDEA. To the contrary, "[r]eimbursement 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 [emphasis added]; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148). Accordingly, while a parent should not be denied reimbursement for an appropriate program due to the fact that the program provides benefits in addition to those required for the student to receive educational benefits, a reduction from full reimbursement may be considered where a unilateral placement provides services beyond those required to address a student's educational needs (L.K., 674 Fed. App'x at 101; see C.B. v. Garden Grove Unified Sch. Dist., 635 F. 3d 1155, 1160 [9th Cir. 2011] [indicating that "[e]quity surely would permit a reduction from full reimbursement if [a unilateral private placement] provides too much (services beyond required educational needs), or if it provides some things that do not meet educational needs at all (such as purely recreational options), or if it is overpriced"]; Alamo Heights Indep. Sch. Dist. v. State Bd. of Educ., 790 F.2d 1153, 1161 [5th Cir. 1986] ["The Burlington rule is not so narrow as to permit reimbursement only when the [unilateral] placement chosen by the parent is found to be the exact proper placement required under the Act. Conversely, when [the student] was at the [unilateral placement], he may have received more 'benefit' than the EAHCA [the predecessor statute to the IDEA] requires"]).

Here, the IHO found that the district "failed to meet its burden that equitable considerations were not in the parent's favor," as the district failed to provide any evidence that the parent was "not cooperative[,] or that there was unreasonableness or wrongdoing on the part of the" parent, and, thus, the IHO found that equitable considerations favored the parent (IHO Decision at p. 10). On appeal, the district objects to the rates charged by Learning Learners and Well Said asserting that they are excessive. The district contends that there is inadequate evidence to support how Learning Learners and Well Said determined their rates and that there is insufficient explanation as to the excess between the rate charged and what was paid to providers used by the agencies. The parent contends that the AIR report, submitted by the district into the hearing record, does not rebut the presumption of full reimbursement to the parent, as it is inherently unreliable, irrelevant, and biased. The parent further alleges that the AIR report, despite the title indicating otherwise, does not include any data on related services, and therefore, it does not support a reduction of Well Said's contracted rate.

Review of the record shows that Learning Learners charged $210 per hour for SETSS and Well Said charged $300 per hour for speech-language therapy (Parent Exs. F at p. 2; G at p. 2). The district argued at the impartial hearing that if funding for the unilaterally obtained SETSS was awarded, it should have been set at a maximum rate of $125 per hour (Tr. p. 34).

Generally, an excessive cost argument for hourly services focuses on whether the hourly rate charged for service was reasonable and requires, at a minimum, evidence of not only of the rate charged by the unilateral placement, but evidence of reasonable market rates for the same or similar services.

With regard to the hourly rate of the unilaterally obtained SETSS provider, the Learning Learners director testified that the student had two SETSS providers, one who was paid $80 per hour, and another who was paid $90 per hour, and that the remaining amount of the $210 hourly rate went to the agency's overhead (Tr. pp. 66-67; see Parent Ex. L at ¶¶ 7-8). The director opined that it was likely the second provider received a higher rate because that provider engaged in after-school services with the student, and that it was usually more difficult to find after-school providers, thereby leading to a higher rate of pay (Tr. p. 67). Additionally, the director testified by affidavit that the rate Learning Learners charged was "necessary to cover all of the Agency's costs related to providing services for the 2023-2024 school year" and that the rate included "one-on-one supervision, educational resources and support, professional development and materials, employment taxes, administrative costs[,] overhead costs . . . [as well as] the costs necessary to run the agency" (Parent Ex. L ¶ 8). The director further testified by affidavit that the rate "applied towards paying for materials and supplies for [Learning Learners'] teachers, paying [the agency's] rent, and paying support staff" (id.). However, the director did not provide a breakdown for any of these costs to the agency (id.).

With respect to fashioning appropriate equitable relief and its relevancy, I find that the AIR report entered into evidence (Dist. Ex. 5) offers some basis to conclude that the SETSS rates charged by Learning Learners were excessive, but not all of the AIR report and its methodologies are strictly applicable to a parent's decision to unilaterally obtain private special education services from a private company like Learning Learners.[21] First, the AIR report draws data published by

[21] This exhibit was mislabeled as District Exhibit 4 but entered as Exhibit 5 (Tr. pp. 29-32).

the United States Bureau of Labor Statistics (USBLS), a U.S. government agency, and it is well settled that judicial notice may be taken of such tabulations of data published by government agencies (Canadian St. Regis Band of Mohawk Indians v. New York, 2013 WL 3992830 (N.D.N.Y. Jul. 23, 2013]; Mathews v. ADM Milling Co., 2019 WL 2428732, at *4 [W.D.N.Y. June 11, 2019]; Christa McAuliffe Intermediate School PTO, Inc. v. de Blasio, 364 F.Supp.3d 253 [2019]). I find that the wage information contained in the AIR Report from the USBLS is relevant to the question of how much special education teachers are paid in the New York City metropolitan region in a given year in which the data was published.[22] It was not inappropriate for the AIR to use such government-published data in its report. The data set in the New York, New Jersey, and Pennsylvania region can be further limited and refined to the New York City, Newark, and Jersey City metropolitan region. It is reasonable to find that most teachers (public and private) working with special education students in New York City fall within this subset of data that is the greater metropolitan region specified in USBLS data ("May 2023 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates New York-Newark-Jersey City, NY-NJ-PA," available at https://www.bls.gov/oes/current/oes_35620.htm). Furthermore, the geographic data in this metropolitan subset does not have to be perfect in order to be sufficiently reliable for use when weighing equitable considerations.

The AIR report appears to address a question of what kind of approach "NYC DOE can use to determine a fair market rate for its Special Education Teacher Support Services (SETSS)" (Dist. Ex. 5 at p. 4). If the district were to offer hourly rates that were formulated on a negotiated basis (i.e. to employees paid on an hourly basis), it would understandably try to do so in a similar manner to the way it used its bargaining power in negotiations with both the United Federation of Teachers and other entities for fringe benefits and incidental costs that result in the pay scales for public school employees.

However, a parent facing the failure of the district to deliver his or her child's IESP services and who is left searching for a unilaterally selected self-help remedy would be unable to hire teachers already employed by the district (unless a teacher is "moonlighting" and thus dually employed), and the parent facing that situation would therefore not be able to negotiate for private teaching services with the same bargaining power that the district holds. Thus, while the AIR report's reliance on the salary schedules negotiated with the United Federation of Teachers that include provisions for steps, longevity, and criteria for additional experience and education, these provisions serve a different purpose—they are designed to ensure fair treatment among union members who are operating in public employment. But the fair treatment among district employees is of little or no interest to a parent who is trying to contract for services with private schools or companies after the district has failed in its obligations to deliver the services using its

[22] The Occupational Employment and Wage Statistics data is published by the USBLS starting in May of each calendar year, and the AIR report in evidence used May 2022 data, which preceded the 2023-24 school year at issue in this proceeding and would be relevant thereto (see https://www.bls.gov/oes/tables.htm); however, I note that May 2023 data is the most recent annual data published by the USBLS, relevant to the school year at issue in this decision. While the AIR report presented a snapshot in time, I do not share any concern that the data itself is "fixed in perpetuity" because it is updated annually, which is particularly relevant when considering due process claims under IDEA and Article 89 are almost always related to a specific annual time period.

employees, and thus the district negotiated provisions are not particularly relevant to equitable considerations in a due process proceeding involving the funding of unilaterally obtained services.

Fortunately, the USBLS data does not indicate that it is limited to district-employed teachers. It covers wages in the entire metropolitan region, which would include teachers from across the spectrum including private schools, charter schools, and district special education teachers. The USBLS indicated that in May 2023 data annual salaries for "Special Education Teachers, All Other" ranged from $49,000 in the 10th percentile, $63,740 in the 25th percentile, $97,910 in the median, $146,200 in the 75th percentile, to $163,670 in the 90th percentile.[23]

In my view this is consistent with the fact that some local and private employers within the metropolitan region pay less than those in the district, and it leaves room for the fact that a few employers may have paid more. As for fringe benefits and incidental costs, private employers who offer benefits and have overhead costs are not necessarily the same as those costs cited in the AIR report, which is premised upon the district's costs, not the parent's costs. Reliance on such costs may be permissible when the district is managing its own operations and negotiating with a labor organization, but it is not relevant to the private situation in a Burlington/Carter unilateral private placement. Again, the USBLS provides data for indirect and fringe benefit costs for civilian, government employees, and private industry, expressed as a percentage of salary, and for private industry such educational services costs were 27.7 percent, which tends to show that government benefits are often slightly better (and more expensive) than those offered in private industry (see Employer Costs For Employee Compensation (ECEC) – June 2023, available at https://www.bls.gov/news.release/archives/ecec_09122023.pdf).[24]

The undersigned had little difficulty with the explanation in the AIR report that children must be educated for 180 days per year in this state and that school days are typically between six and seven hours long.[25] I will take this into account when ordering equitable relief.

The director testified that Learning Learners was paying the SETSS providers $80 and $90 per hour (Tr. pp. 66-67). A rate of $80 or $90 per hour annualized is $93,600 or $105,300, respectively, and those figures are only slightly below and slightly above (respectively) the 50th percentile, thus the $80 and $90 per hour portion of the rate is not excessive. However, the amount of indirect costs above the teacher's hourly wage is $130 or $120 per hour or approximately 62 or

[23] The 2023 data for the metropolitan area is available in a downloadable Excel format, or the most recent statics offered can be searched using the USBLS Query System for "Multiple occupations for one geographical area" (see https://data.bls.gov/oes/#/home). A larger file with all regions for May 2023, including the New York-Newark-Jersey City metropolitan region is also available (https://www.bls.gov/oes/special-requests/oesm23ma.zip).

[24] The ECEC covers the civilian economy, which includes data from both private industry and state and local government. One could make an argument that a company like Learning Learners should fall in one of the different rows of private employers, but it would result in only nominal differences in calculation, and the parent did not avail himself of the opportunity to develop the record further regarding the indirect costs beyond that of the teacher's hourly wage.

[25] Using 6.5 hours per day results in approximately 1170 hours of instruction time for students during a school year, and similar to teachers, related services are typically provided to students on a similar schedule during the school day.

57 percent of the $210 hourly rate charged by Learning Learners. This falls far above the 27.7 percent in the USBLS data.

When considering the testimony described above, in which Learning Learners' director identified only general categories of indirect costs that factored into the hourly rate charged and did not did not present evidence of the actual costs or why such expenses would justify the amount of indirect costs included in the hourly rate charged, the evidence leads me to the conclusion that the parents arranged for services from Learning Learners at excessive costs, as the district argues, and that it is more than what the district should be required to pay. On the other hand, some indirect or overhead cost is reasonable. Using 27.7 percent for overhead costs, and the salary of the provider as a known factor, the computation for a total salary results in a rate of $110.65 per hour (for the provider paid $80 per hour) or $124.48 per hour (for the provider paid $90 per hour). As the district did not assert that the rate should be reduced to less than $125 per hour (Tr. p. 34), I will order the district to fund the costs of SETSS at the rate of $125 per hour as an equitable remedy, subject to the parent presenting to the district proof of the student's attendance, and invoices from Learning Learners.

Turning to the district's contentions with respect to the unilaterally obtained speech-language therapy services provided by Well Said to the student, the district failed to put forth any evidence or testimony to support their contentions that the rate charged by Well Said was excessive. As discussed above, although the title of the AIR report is "Hourly Rates for Independently Contracted Special Education Teachers and Related Service Providers," the report only includes a methodology and charts for determining rates for special education teachers (see Dist. Ex. 5). The district has not provided an explanation as to how to apply this report to a rate for speech-language therapy services, and it is does not appear to be relevant to determining a rate for speech-language therapy services. Reliance on relevant federally published statistics for a speech-language therapist in the same way the AIR study report relies on data from the USBLS might be a permissible approach, but the district did not attempt to put forward such evidence or arguments in this case, despite the district presenting similar arguments in other cases. As such, I find no basis in the record on appeal to find that equitable considerations warrant a reduction of the contracted rate charged by Well Said for speech-language therapy to the student for the 2023-24 school year, as the district has not adequately supported its contentions that the rates charged were excessive. As such, the district will be ordered to fund the student's speech-language therapy provided by Well Said for the 10-month 2023-24 school year, at the contracted rate of $300 per hour, subject to the parent providing the district with proof of the student's attendance and invoices from Well Said.

VII. Conclusion

As discussed above, I find that the IHO erred in dismissing the parent's enhanced rate claims for an alleged lack of subject matter jurisdiction, and find that both IHOs and SROs have subject matter jurisdiction to preside over all of the parent's claims in this matter, despite the district's contentions otherwise. The district is correct that the IHO's findings with respect to the awards of OT and counseling services to the student are final and binding upon the parties, and I additionally find that the IHO's findings that the district failed to meet its burden in establishing that the student was offered equitable services for the 2023-24 school year is also final and binding, as no party has appealed those findings.

Further, as discussed above, I find that the parent met their burden in establishing the appropriateness of the unilaterally obtained SETSS and speech-language therapy for the student for the 2023-24 school year, and, as such, find no reason to disturb the IHO's findings with respect to the appropriateness of the SETSS, and find that it was error for the IHO to not rule on the parent's request for funding of the costs of the student's speech-language therapy. Additionally, I find that the evidence in the hearing record supports a reduction of the contracted rate of the parent's unilaterally obtained SETSS provided by Learning Learners.

I have considered the parties remaining contentions and find the necessary inquiry at an end.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

THE CROSS-APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

IT IS ORDERED that the IHO's decision dated November 8, 2024 is modified by reversing those portions which dismissed the parent's "enhanced rate" claims for lack of subject matter jurisdiction; and

IT IS FURTHER ORDERED that the district shall fund the costs of no more than seven hours per week of SETSS delivered to the student by Learning Learners LLC during the 2023-24 10-month school year, at a rate of $125 per hour, upon the parent's submission of proof of delivery; and

IT IS FURTHER ORDERED that the district shall fund the costs of no more than one hour per week of speech-language therapy delivered to the student by Well Said Speech Service PLLC for the 10-month 2023-24 school year at the contracted rate of $300 per hour, upon the parent's submission of proof of delivery.

Dated: **Albany, New York**
June 6, 2025

JUSTYN P. BATES
STATE REVIEW OFFICER