The University of the State of New York

The State Education Department
State Review Officer
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No. 25-421

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:
Law Office of Anton Cohen, PC, attorneys for petitioner, by Anton G. Cohen, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Abigail Hoglund-Shen, Esq.

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from a decision of an impartial hearing officer (IHO) which denied her request that the district fund her daughter's attendance at Moonridge Academy (Moonridge), an out-of-State residential placement, for the remainder of the 2024-25 school year and the 2025-26 school year as relief for respondent's (the district's) failure to offer or provide her daughter an appropriate educational program for the 2023-24 and 2024-25 school years.[1] The district cross-appeals from the IHO's determination that it failed to offer the student an appropriate educational program for the 2023-24 and 2024-25 school years. The appeal must be sustained in part. The cross-appeal must be dismissed.

II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee

[1] The student's grandmother is her legal guardian; therefore, consistent with State regulation, the grandmother will be referred to as the "parent" throughout this decision (see 8 NYCRR 200.1[ii][1]).

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

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

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

III. Facts and Procedural History

The student has a history of social/emotional and behavioral difficulties, and school attendance issues (Parent Ex. J ¶¶ 2, 5; Dist. Exs. 9 at p. 1; 16 at p. 1). She has received diagnoses

of attention deficit hyperactivity disorder (ADHD), major depressive disorder, post-traumatic stress disorder (PTSD), unspecified trauma and stressor-related disorder, conduct disorder, and unspecified cannabis-related disorder (Parent Exs. D at p. 1; J ¶ 5; Dist. Ex. 1 at p. 6). The parent referred the student to the CSE for an initial evaluation in September 2023 due to the student's difficulty paying attention and behavioral concerns (Parent Ex. J ¶ 3; Dist. Ex. 35).

During the 2023-24 school year (seventh grade), a CSE convened on November 3, 2023, determined that the student was eligible for special education as a student with an other health impairment, and created an IEP for the student with a projected implementation date of November 13, 2023 (Dist. Ex. 29).[2] The CSE recommended that the student receive one 30-minute session per week of counseling services in a group of five (id. at p. 9).

In April 2024, the student was hospitalized in a pediatric psychiatric unit for approximately two weeks due to mental health concerns (Parent Exs. D at p. 1; J ¶ 5). Around this time, the student was referred to the CSE for a reevaluation due to worsening behavior, which included skipping school and aggression toward peers and adults (see Dist. Exs. 27 at p. 1; 28 at p. 1).[3] By letter dated June 12, 2024, a therapeutic day treatment program, operated by the New York State Office of Mental Health (OMH) and housed within a district specialized school, accepted the student and set forth amendments for the CSE to incorporate into the student's IEP (Dist. Ex. 24).

On June 14, 2024, a CSE convened, continued to find the student eligible for special education as a student with an other health impairment, and created an IEP for the 2024-25 school year (eighth grade) (Dist. Ex. 20). At the CSE meeting, the school counselor noted that, as the student's behavior had become increasingly dangerous toward others, the district had been in constant communication with the parent about getting her the supports that would help the student achieve success (id. at p. 5). Consistent with the amendments outlined in the acceptance letter from the therapeutic day treatment program, the CSE recommended the student attend a 12-month school year program in an 8:1+1 special class in a district specialized school (compare Dist. Ex. 20 at pp. 11-12, with Dist. Ex. 24). The CSE further recommended four 30-minute sessions per year of group parent counseling and training (Dist. Ex. 20 at p. 11). The parent expressed her desire that a residential program be considered because she feared the student would not attend the recommended program (id. at pp. 4, 18).

The therapeutic day treatment program conducted an admission screening of the student including a psychiatric evaluation on July 8, 2024 (Dist. Exs. 17; 18). On July 21, 2024, the student received a mental health evaluation, which provided treatment recommendations including "intensive individual psychotherapy," follow up risk and trauma assessments, and a safety case conference (Dist. Ex. 15 at p. 3). According to the parent, the student "hardly attended [the recommended program] and then stopped going altogether" (Parent Ex. J ¶ 5; see Dist. Ex. 16). The student largely stopped attending school in November 2024 (Dist. Exs. 10 at p. 1; 16). The

[2] The student's eligibility for special education as a student with an other health impairment for the period of November 2023 through December 2024 and as a student with an emotional disability thereafter is not in dispute (see 34 CFR 300.8[c][4], [9]; 8 NYCRR 200.1[zz][4], [10]).

[3] At the time of the reevaluation the student was reportedly suspended from school, attending a "suspension site" (see Dist. Exs. 26 at p. 1; 27 at p. 1; see also Dist. Ex. 17 at p. 12).

parent testified that, since then, the student had "been smoking, going on the streets, and walking in the city" (Tr. p. 213).

In a letter dated November 20, 2024, OMH provided a residential school referral for the student (Dist. Ex. 9). In response to the referral, the district contacted the parent, who also expressed her view that the student would benefit from a residential placement (Dist. Ex. 40 at p. 9). The district obtained parental consent to reevaluate the student, and the reevaluation, which included a classroom observation and an educational evaluation, was completed on December 11, 2024 (see Dist. Exs. 6-8; 10; 11; 13). According to the educational evaluation report, the parent was "unable to get [the student] to school" and the student "eloped from the home and at times [did] not return to the home" (id. at p. 1). The educational evaluation report noted that the student was "referred for case management" but had "declined these services," and further that the student's home based crisis intervention services had been "discontinued" approximately two to three weeks prior to the education evaluation report because the student "was not participating" (id.).

A CSE reconvened on December 18, 2024 for a "re-evaluation IEP review," found the student eligible for special education as a student with an emotional disability, and developed an IEP with a projected implementation date of December 19, 2024 (Dist. Ex. 1 at pp. 1-2). The CSE recommended that the student attend a 12-month school year program in a 12:1+1 special class in a State-approved nonpublic residential school, with one 30-minute session per week of individual counseling and one 30-minute session per week of group counseling (Dist. Ex. 1 at pp. 13-14, 19).[4] The CSE noted that the student had been absent 33 out of 49 days of school during the 2024-25 school year (id. at p. 2).[5] The CSE also recommended specialized transportation for the student from the closest safe curb location to school as well as four 30-minute sessions per year of school-based parent counseling and training (id. at pp. 13, 17).

On January 2, 2025, the district's central based support team (CBST) referred the student to ten State-approved nonpublic residential schools located within the State (Dist. Ex. 4 at p. 1). The student was rejected from all ten programs either due to the program not being able to meet the student's needs or the failure of the student to participate in a screening interview (Dist. Exs. 4; 5; 40 at pp. 1-3).

The parent identified Moonridge Academy (Moonridge), an out-of-State residential treatment program, which accepted the student to attend via a letter dated April 4, 2025 (Parent Ex. E).[6]

[4] The December 2024 CSE specifically recommended that the student attend a 12:1+1 special class for five periods per week in math, five periods per week in English language arts (ELA), two periods per week in social studies, and two periods per week in science (Dist. Ex. 1 at p. 13).

[5] The student's 2024-25 attendance report shows that for the first term of the 2024-25 school year the student was enrolled for 49 out of 90 days and was absent for 33 of those 49 days (Dist. Ex. 16 at p. 1). It is unclear why the student's enrollment status changed in November 2024.

[6] Moonridge has not been approved by the Commissioner of Education as a school with which districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

A. Due Process Complaint Notice

In an amended due process complaint notice dated April 4, 2025, the parent alleged that the district denied the student a free appropriate public education (FAPE) for the 2023-24 and 2024-25 school years on both substantive and procedural grounds (see Parent Ex. C).[7, 8] In particular, the parent claimed that the November 2023 CSE's recommendation of counseling services "was grossly insufficient" and resulted in "a significant academic and behavioral regression" during the 2023-24 school year (id. at p. 2). The parent further asserted that the district's placement for the student at the beginning of the 2024-25 school year after a period of hospitalization was also inappropriate (id.). Finally, the parent claimed that, after the December 2024 CSE meeting, which recommended a State-approved residential placement for the student, the district failed to locate an appropriate residential placement for the student (id. at pp. 2-3).

The parent sought an immediate residential placement for the student at Moonridge as the student's pendency placement and requested public funding for this placement for the remainder of the 2024-25 school year (Parent Ex. C at p. 3). The parent also requested compensatory education in the form of public funding of the student's attendance at Moonridge for the 12-month 2025-26 school year (id.). The parent requested reimbursement for transportation and visitation expenses associated with the student's placement at Moonridge for the 2024-25 and 2025-26 school years (id.).

B. Impartial Hearing Officer Decision

An impartial hearing convened before an IHO with the Office of Administrative Trials and Hearings (OATH) on April 9, 2025 and concluded on May 8, 2025 after four days of proceedings (see Tr. pp. 1-271). In a decision dated May 28, 2025, the IHO found that the district failed to meet its burden to prove that it offered the student a FAPE for the 2023-24 and 2024-25 school years but denied the parent's requested relief (see IHO Decision).

With respect to the 2023-24 school year, the IHO found that, although the district's witness explained the November 2023 CSE's recommendation for group counseling, there was no evidence regarding why the CSE did not consider paraprofessional or behavioral management supports for the student despite information that the student needed more support (IHO Decision at pp. 11-13). As for the 2024-25 school year, initially, the IHO found that, although the parent did not make specific allegations in the due process complaint notice pertaining to the June 2024 IEP, the complaint alluded to the day treatment program recommended in that IEP and, in any event, the district opened the door to the appropriateness of the CSE's recommendations by presenting testimony about the June 2024 IEP during the impartial hearing (id. at pp. 9-10, 13). The IHO found that the June 2024 CSE predetermined the recommendations in the IEP for a day treatment program and failed to consider the parent's request for a residential placement for the student (id.

[7] The original due process complaint notice was dated March 4, 2025 (Parent Ex. A). The district submitted a response to the original complaint (Parent Ex. B).

[8] The parent also claimed that the district unlawfully discriminated against the student on the basis of her disability, violating section 504 of the Rehabilitation Act of 1973 ("section 504"), 29 U.S.C. § 794 (Parent Ex. C at p. 1).

at pp. 13-14). Finally, the IHO found that, although the December 2024 IEP recommended a residential placement, which was agreed upon by the parent, the district failed to identify an appropriate residential school in a timely manner (id. at pp. 14-15).

With respect to relief sought, the IHO declined to award district funding of Moonridge on a prospective basis (IHO Decision at pp. 16-18). The IHO pointed to authority that prospective placements are disfavored except under certain circumstances, which the IHO found were not presented in this matter given that there was not agreement between the district and parent regarding the availability of appropriate State-approved schools, noting that several schools wanted to interview the student (id. at pp. 16-17). The IHO also indicated that, even if she did award prospective placement, she would be limited to ordering the district to place the student in a State-approved school (id. at p. 17).

Although the IHO found that the Burlington/Carter standard was not the correct legal analysis to apply, within a footnote of the decision, the IHO made alternative findings regarding the appropriateness of Moonridge and equitable considerations (IHO Decision at pp. 16 n9, 18 n11). The IHO found that, because the student did not attend Moonridge, evidence about specialized instruction was speculative and overly general, it was questionable whether the school was equipped to support the student's cannabis use, and evidence of an abuse complaint relating to an incident that occurred in the community involving students who attended Moonridge was troubling (id. at p. 18 n.11). The IHO also concluded that the parent did not demonstrate the appropriateness of the proposed transportation of the student to Moonridge, noting that the parent had not researched the proposed company and that evidence indicated the company would use physical force to transport the student if needed (id.). Finally, the IHO found that equitable considerations leaned in the parent's favor given evidence that she "tried her hardest to cooperate" in the process of identifying a residential school for the student (id.).

While denying the parent's requested relief, the IHO ordered the district to reconvene the CBST with the parent to discuss referrals to in-State and, if necessary, out-of-State approved schools, and facilitate the student's attendance at interviews (IHO Decision at pp. 17-19).

IV. Appeal for State-Level Review and Intervening Events

The parent appeals and the district cross-appeals. The parties' familiarity with the particular issues for review on appeal in the parent's request for review and the district's answer

and cross-appeal is presumed and, therefore, the allegations and arguments will not be recited here.[9, 10] The following issues are presented on appeal:

1. Whether the IHO erred in finding that the district denied the student a FAPE for the 2023-24 and 2024-25 school years;

2. Whether the IHO applied the correct legal standard to assess the parent's requested relief;

3. Whether the IHO erred in declining to award prospective placement at Moonridge;

4. To the extent the IHO considered the parent's requested relief under the Burlington/Carter framework, whether the IHO erred in finding that the parent failed to meet her burden to prove the appropriateness of Moonridge or the private transportation; and

5. To the extent the IHO considered the parent's requested relief under the Burlington/Carter framework, whether the IHO erred in finding that equitable considerations would have supported the parent's requested relief.

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[9] To the extent the parent pursues her claims under section 504 on appeal, an SRO lacks jurisdiction to consider a parent's challenge to an IHO's failure or refusal to rule on section 504 as an SRO's jurisdiction is limited by State law to matters arising under the IDEA and Article 89 of the Education Law (Educ. Law § 4404[2] [providing that SROs review IHO determinations "relating to the determination of the nature of a child's handicapping condition, selection of an appropriate special education program or service and the failure to provide such program"]). Courts have also recognized that the Education Law makes no provision for State-level administrative review of IHO decisions with regard to section 504 (see A.M. v. New York City Dep't of Educ., 840 F. Supp. 2d 660, 672 & n.17 [E.D.N.Y. 2012] [noting that "[u]nder New York State education law, the SRO's jurisdiction is limited to matters arising under the IDEA or its state counterpart"], aff'd, 513 Fed. App'x 95 [2d Cir. 2013]; see also F.C. v. New York City Dep't of Educ., 2016 WL 8716232, at *11 [S.D.N.Y. Aug. 5, 2016]). Therefore, an SRO does not have jurisdiction to review any portion of the parent's claims regarding section 504, and accordingly such claims will not be further addressed.

[10] Both parties submit additional evidence with their respective pleadings and request that it be considered on appeal. Generally, documentary evidence not presented at an impartial hearing is considered in an appeal from an IHO's decision only if such additional evidence could not have been offered at the time of the impartial hearing and the evidence is necessary in order to render a decision (see, e.g., Application of a Student with a Disability, Appeal No. 08-030; Application of a Student with a Disability, Appeal No. 08-003; see also 8 NYCRR 279.10[b]; Landsman v. Banks, 2024 WL 3605970, at *3 [S.D.N.Y. July 31, 2024] [finding a plaintiff's "inexplicable failure to submit this evidence during the IHO hearing barred her from taking another bite at the apple"]; L.K. v. Ne. Sch. Dist., 932 F. Supp. 2d 467, 488-89 [S.D.N.Y. 2013] [holding that additional evidence is necessary only if, without such evidence, the SRO is unable to render a decision]). Here, the additional evidence was largely not available at the time of the impartial hearing and is necessary in order to render a decision. This includes parent's proposed SRO Exhibit A, which consists of an Order of the United States District Court for the Southern District of New York, dated July 18, 2025, emanating from the parent's action seeking a temporary restraining order and preliminary injunction to require the district to fund the student's placement at Moonridge, pending the completion of the administrative review process or until an alternative placement is found (see SRO Ex. A). I will also accept as additional evidence the district's proposed exhibits attached to its answer and cross-appeal, which consists of the student's interim IEP resulting from the CSE reconvening on May 8, 2025, a school location letter dated May 12, 2025, and the student's June 11, 2025 IEP (see SRO Exs. 1, 2, 3).

After the IHO's decision but before the parent filed this appeal, on June 11, 2025, a CSE reconvened to conduct an annual review and develop an IEP for the student (SRO Ex. 3). The CSE recited the IHO's order that the parent and the CBST reconvene as soon as possible, and not later than five business days after the IHO's decision, to discuss resending referrals to in-State residential schools, and if needed or agreed upon, to out-of-State schools, and have the schools, to the extent possible, waive the student's interview as a prerequisite for admission (id. at p. 5). The CSE recommended the student attend an interim 12-month school program in a 12:1+1 special class in a district specialized school (id. at pp. 5, 13).[11] In addition, the CSE recommended related services consisting of one 30-minute session per week of individual counseling services, one 30-minute session per week of counseling services in a group of three, and four 30-minute sessions per year of group parent counseling and training (id. at pp. 13-14).

While this appeal has been pending, the parent brought an action in the United States District Court for the Southern District of New York seeking a temporary restraining order and preliminary injunction to require the district to fund the student's placement at Moonridge, pending the completion of the administrative review process or until an alternative placement is found (see SRO Ex. A). That matter is still pending. As of July 18, 2025, the court found that the district had not identified an appropriate placement for the student despite multiple opportunities and directives (id. at p. 4). The court ordered the district to submit a letter addressing whether a State-approved residential school would waive the screening interview requirement, whether the Court could order such a school to accept the student without an interview, and identifying a proposed interim placement that complies with the December 2024 IEP (id. at p. 5). The Court also instructed the parent to file additional information about Moonridge (id.).

In a decision dated December 4, 2025, the District Court denied the parent's motion for a temporary restraining order and preliminary injunction (M.K. v. The Bd. of Educ. of the City Sch. Dist. of the City of New York, 2025 WL 3482784, at *1 [S.D.N.Y. Dec. 4, 2025]). According to the decision, in July and August 2025, the parties submitted status reports in which the district represented that the student would not cooperate with social workers it assigned to assist in facilitating the student's participation in residential school screening interviews; that it could not "facilitate any private program to waive its interview requirement"; that it had sent the student's records to 12 State-approved residential programs, two of which had rejected the student and four of which had offered to schedule virtual interviews; and that it had sent the student's records to five approved out-of-State residential schools, four of which rejected the student but one of which, the Judge Rotenberg Educational Center (JRC), was considering the student's case (M.K., 2025 WL 3482784, at *3). The Court found that the student was not entitled to pendency at Moonridge and that the parent's request for district funding at Moonridge as a unilateral placement or as

[11] Prior to this, on May 8, 2025, a CSE had developed an interim IEP for the student with a projected implementation date of May 9, 2025 (SRO Ex. 1). Because a State-approved nonpublic school could not be secured at that time, the CSE recommended that, in the interim, the student attend a 12:1+1 special class in a district specialized school (id. at pp. 5, 13, 18). Both the parent and parent's attorney reported that they did not agree with the interim placement (id. at p. 5). On May 12, 2025, the district provided a school location letter to the parent advising her of the particular district public school location to which it assigned the student to attend (SRO Ex. 2).

prospective relief had not yet been exhausted (id. at *4-*7).[12] However, the Court directed the parties to confer and update the Court by December 18, 2025 as to, among other things, whether JRC accepted the student and whether the district submitted the student's application to other out-of-State schools (id. at *7).

V. Applicable Standards

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

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; T.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 151, 160 [2d Cir. 2014]; R.E. v. New York City Dep't of Educ., 694 F.3d 167, 189-90 [2d Cir. 2012]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 [2d Cir. 2012]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). "'[A]dequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP'" (Walczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998], quoting Rowley, 458 U.S. at 206; see T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 253 [2d Cir. 2009]). The Supreme Court has indicated that "[t]he IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement" (Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 580 U.S. 386, 399 [2017]). While the Second Circuit has emphasized that school districts must comply with the checklist of procedures for developing a student's IEP and indicated that "[m]ultiple procedural violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not" (R.E., 694 F.3d at 190-91), the Court has also explained that not all procedural errors render an IEP legally inadequate under the IDEA (M.H., 685 F.3d at 245; A.C. v. Bd. of Educ. of the Chappaqua Cent. Sch. Dist., 553 F.3d 165, 172 [2d Cir. 2009]; Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]). Under the IDEA, if procedural violations are alleged, an administrative officer may find that a student did not receive a FAPE only if the procedural inadequacies (a) impeded the student's right to a FAPE, (b) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 [2007]; R.E., 694 F.3d at 190; M.H., 685 F.3d at 245).

[12] To the extent that the student's pendency is at issue on appeal and the parent seeks Moonridge in particular as the student's stay put placement, I decline to address it in light of the District Court's decision on the issue.

The IDEA directs that, in general, an IHO's decision must be made on substantive grounds based on a determination of whether the student received a FAPE (20 U.S.C. § 1415[f][3][E][i]). A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction" (Rowley, 458 U.S. at 203). However, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP" (Walczak, 142 F.3d at 130; see Rowley, 458 U.S. at 189). "The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created" (Endrew F., 580 U.S. at 404). The statute ensures an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents" (Walczak, 142 F.3d at 132, quoting Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 [2d Cir. 1989] [citations omitted]; see Grim, 346 F.3d at 379). Additionally, school districts are not required to "maximize" the potential of students with disabilities (Rowley, 458 U.S. at 189, 199; Grim, 346 F.3d at 379; Walczak, 142 F.3d at 132). Nonetheless, a school district must provide "an IEP that is 'likely to produce progress, not regression,' and . . . affords the student with an opportunity greater than mere 'trivial advancement'" (Cerra, 427 F.3d at 195, quoting Walczak, 142 F.3d at 130 [citations omitted]; see T.P., 554 F.3d at 254; P. v. Newington Bd. of Educ., 546 F.3d 111, 118-19 [2d Cir. 2008]). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]; see Endrew F., 580 U.S. at 403 [holding that the IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances"]; Rowley, 458 U.S. at 192). The student's recommended program must also be provided in the least restrictive environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 CFR 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see Newington, 546 F.3d at 114; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132).

An appropriate educational program begins with an IEP that includes a statement of the student's present levels of academic achievement and functional performance (see 34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]), establishes annual goals designed to meet the student's needs resulting from the student's disability and enable him or her to make progress in the general education curriculum (see 34 CFR 300.320[a][2][i], [2][i][A]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (see 34 CFR 300.320[a][4]; 8 NYCRR 200.4[d][2][v]).[13]

A board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents, if the services offered by the board of education were inadequate or inappropriate, the services selected by the parents were appropriate, and equitable considerations support the parents' claim (Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 [1993]; Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369-70 [1985]; R.E., 694 F.3d at 184-85; T.P., 554 F.3d at 252). In Burlington, the Court found that Congress intended retroactive reimbursement to parents by school officials as an available remedy

[13] The Supreme Court has stated that even if it is unreasonable to expect a student to attend a regular education setting and achieve on grade level, the educational program set forth in the student's IEP "must be appropriately ambitious in light of his [or her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives" (Endrew F., 580 U.S. at 402).

in a proper case under the IDEA (471 U.S. at 370-71; see Gagliardo, 489 F.3d at 111; Cerra, 427 F.3d at 192). "Reimbursement merely requires [a district] to belatedly pay expenses that it should have paid all along and would have borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148).

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

VI. Discussion

A. Scope of Review

Before addressing the merits, a determination must be made regarding which claims are properly before me on appeal.

State regulations governing practice before the Office of State Review provide that a respondent who wishes to seek review of an IHO's decision may cross-appeal from all or a portion of the decision (8 NYCRR 279.4[f]). A cross-appeal "shall clearly specify the reasons for challenging the IHO's decision, identify the findings, conclusions, and orders to which exceptions are taken, or the failure or refusal to make a finding, and shall indicate the relief sought by the respondent" (id.). Furthermore, the practice regulations require that parties set forth in their pleadings a "clear and concise statement of the issues presented for review and the grounds for reversal or modification to be advanced, with each issue numbered and set forth separately, and identifying the precise rulings, failures to rule, or refusals to rule presented for review" (8 NYCRR 279.8[c][2]). The regulation further states that "any issue not identified in a party's request for review, answer, or answer with cross-appeal shall be deemed abandoned and will not be addressed by a State Review Officer" (8 NYCRR 279.8[c][4]).

Generally, the failure to comply with the practice requirements of Part 279 of the State regulations may result in the rejection of the submitted documents or a determination excluding issues from the scope of review on appeal (8 NYCRR 279.8[a]; 279.13; see Davis v. Carranza, 2021 WL 964820, at *12 [S.D.N.Y. Mar. 15, 2021] [upholding an SRO's conclusions that several claims had been abandoned by the petitioner]; M.C. v. Mamaroneck Union Free Sch. Dist., 2018 WL 4997516, at *23 [S.D.N.Y. Sept. 28, 2018] [upholding dismissal of allegations set forth in an appeal to an SRO for "failure to identify the precise rulings presented for review and [failure] to cite to the pertinent portions of the record on appeal, as required in order to raise an issue" for review on appeal]).

Here, for its cross-appeal, the district alleges that, as it "argued in its closing brief, the record demonstrates that [it] offered [the student] a FAPE for the 2023-24 and 2024-25 [school year]" (Answer & Cr.-App. ¶¶ 19-20). The district does not otherwise specify reasons for challenging the IHO's decision. With respect to its reference to its closing brief, incorporation by reference is specifically prohibited by the practice regulations (8 NYCRR 279.8[b]). Moreover, the general assertion on appeal that the district offered the student a FAPE is not enough to challenge the IHO's discrete rulings regarding the programming recommended in the November 2023 IEP, the district's predetermination of the June 2024 IEP, or the district's failure to identify a

residential placement for the student pursuant to the December 2024 IEP (see Bd. of Educ. of Harrison Cent. Sch. Dist. v. C.S., 2024 WL 4252499, at *13 [S.D.N.Y. Sept. 20, 2024] [finding that "[m]erely asserting that the IHO" erred in finding that the district did not offer the student a FAPE "does not raise the precise rulings presented for review"]; W.R. v. Katonah Lewisboro Union Free Sch. Dist., 2022 WL 17539699, at *9 [S.D.N.Y. Dec. 7, 2022] [same]; M.C., 2018 WL 4997516, at *23 [finding that "the phrase 'procedural inadequacies,' without more, simply does not meet the state's pleading requirement"]).

Accordingly, as the district failed to sufficiently set forth a cross-appeal of the IHO's determinations regarding its offer of a FAPE to the student, the district's cross-appeal is dismissed.

In addition, given the passage of time, the parent's request for district funding of Moonridge during the 2024-25 school year has been rendered moot, and the parent does not pursue any further relief in this regard. Accordingly, I turn now to the relief sought by the parent in the form of district funding for the student's attendance at Moonridge for the 2025-26 school year.

B. Relief

There is some remaining dispute between the parties regarding the characterization of the relief sought by the parent and, as a result, the correct legal standards to apply.

1. Prospective Funding

Courts and hearing officers have treated claims for relief in the form of an educational placement in a nonpublic school numerous ways with both analogous and sometimes disparate elements in the approaches taken. For example, a district court in New York identified three types of cases in which a school district may be required to fund a student's attendance at a private school: (1) as an award where the parents "reject[ed] a proposed IEP and unilaterally enroll[ed] their child in private school," and the district is found to have denied the student a FAPE, the unilateral placement is found appropriate, and equitable considerations warrant reimbursement (i.e., the Burlington/Carter analysis); (2) as "a 'prospective injunction directing the school officials to develop and implement at public expense an IEP placing the child in a private school,' where a private placement the parents desired was proper and an IEP calling for placement in a public school was inappropriate" (i.e., a prospective placement); or (3) as an award requiring "a school district to provide the student with compensatory education in private school" (S.A. v. New York City Dep't of Educ., 2014 WL 1311761, at *7 [E.D.N.Y. Mar. 30, 2014], quoting Burlington, 471 U.S. at 369).

The IHO characterized the relief sought by the parent as a prospective placement (i.e., the second type of case described above) and, on this ground, denied the parent's request (IHO Decision at pp. 16-17). As the IHO noted, generally, a parent's request to prospectively place students in a particular type of program and placement through IEP amendments can, under certain circumstances, have the effect of circumventing the statutory process, pursuant to which the CSE is tasked with reviewing information about the student's progress under current educational programming and periodically assessing the student's needs (see Adams v. Dist. of Columbia, 285 F. Supp. 3d 381, 393, 396-97 [D.D.C. 2018] [noting with approval the hearing officer's finding "that the directives of IDEA would be best effectuated by ordering an IEP review and revision,

rather than prospective placement in a private school"]; see also Student X v. New York City Dep't of Educ., 2008 WL 4890440, at *16 [E.D.N.Y. Oct. 30, 2008] [noting that "services found to be appropriate for a student during one school year are not necessarily appropriate for the student during a subsequent school year"]). This is particularly so when the school year at issue is over and, in accordance with its obligation to review a student's IEP at least annually, a CSE should have already produced an IEP for the following school year, which has not been the subject of a due process proceeding (see Eley v. Dist. of Columbia, 2012 WL 3656471, at *11 [D.D.C. Aug. 24, 2012] [noting that prospective placement is not an appropriate remedy until the IEP for the current school year has been completed and the parent challenges the IEP for the current year]). While prospective placement might be appropriate in rare cases (see Connors v. Mills, 34 F.Supp.2d 799, 804-06 [N.D.N.Y. Sept. 24, 1998] [noting a prospective placement would be appropriate where "both the school and the parent agree[d] that the child's unique needs require[d] placement in a private non-approved school and that there [we]re no approved schools that would be appropriate"]), the pitfalls of awarding a prospective placement have been noted in multiple State-level administrative review decisions (see, e.g., Application of a Student with a Disability, Appeal No. 19-018; see also Tobuck v. Banks, 2024 WL 1349693, at *5 [S.D.N.Y. Mar. 29, 2024]).[14]

However, here, the parent did not request that the district place the student at Moonridge. Nor did she engage in self-help by unilaterally placing the student and seeking retroactive tuition funding from the district (i.e., the Burlington/Carter scenario). Instead, the parent seeks district funding for the student's future placement at Moonridge to remedy a past violation of the district's obligation to provide the student a FAPE, which is more akin to the third type of case described by S.A., 2014 WL 1311761, at *7 (i.e., compensatory education in the private school).[15] Similarly,

[14] The IHO also indicated that a prospective placement would not be available in a non-State-approved school. Authorities differ on whether a private school placement that is "unapproved" by State educational authorities is a permissible form of relief (Connors, 34 F. Supp. 2d at 805 [noting that when a child's access to a FAPE in a substantive sense conflicts with the state's approval process, Carter instructs that the state's approval process must give way]). Here, because I do not find that the relief sought is a prospective placement, I do not find it necessary to further discuss this aspect of the IHO's reasoning.

[15] Compensatory education is an equitable remedy that is tailored to meet the unique circumstances of each case (Wenger v. Canastota, 979 F. Supp. 147 [N.D.N.Y. 1997]). The purpose of an award of compensatory education is to provide an appropriate remedy for a denial of a FAPE (see E.M. v. New York City Dep't of Educ., 758 F.3d 442, 451 [2d Cir. 2014]; P. v. Newington Bd. of Educ., 546 F.3d 111, 123 [2d Cir. 2008] [holding that compensatory education is a remedy designed to "make up for" a denial of a FAPE]; see also Doe v. E. Lyme Bd. of Educ., 790 F.3d 440, 456 [2d Cir. 2015]; Reid v. Dist. of Columbia, 401 F.3d 516, 524 [D.C. Cir. 2005] [holding that, in fashioning an appropriate compensatory education remedy, "the inquiry must be fact-specific, and to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place"]; Parents of Student W. v. Puyallup Sch. Dist., 31 F.3d 1489, 1497 [9th Cir. 1994]). Accordingly, an award of compensatory education should aim to place the student in the position he or she would have been in had the district complied with its obligations under the IDEA (see Newington, 546 F.3d at 123 [holding that compensatory education awards should be designed so as to "appropriately address[] the problems with the IEP"]; see also Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1289 [11th Cir. 2008] [holding that "[c]ompensatory awards should place children in the position they would have been in but for the violation of the Act"]; Bd. of Educ. of Fayette County v. L.M., 478 F.3d 307, 316 [6th Cir. 2007] [holding that "a flexible approach, rather than a rote hour-by-hour compensation award, is more likely to address [the student's]

one court described a situation akin to the present matter insofar as the parents "ha[d] not expended any money on tuition thus far and [we]re not, at th[at] time, requesting any tuition reimbursement for past-made payments," and characterized relief in this form as "a request for prospective placement reasonably intended as compensatory education" (Smith v. Cheyenne Mountain Sch. Dist. 12, 2018 WL 3744134, at *8 [D. Colo. Aug. 7, 2018] [concluding that the ALJ's decision not to award compensatory education services was supported by the record and that an award of prospective nonpublic school placement as compensatory relief was likewise unwarranted], citing Miller v. Bd. of Educ. of Albuquerque Pub. Sch., 565 F.3d 1232, 1252 [10th Cir. 2009], Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1290 [11th Cir. 2008], and Perry A. Zirkel, Adjudicative Remedies for Denials of FAPE Under the IDEA, 33 J. of Nat'l Ass'n of Admin. L. Judiciary 213, 225 n.49 [2013] [collecting cases ordering educational placement as compensatory education]).

There remain some concerns, however, with treating a parent's "proposed" nonpublic school placement as compensatory education relief, whereas here, the nonpublic school is not state-approved and therefore not able to be legally considered by a school district outside of the context of an administrative or court-filed lawsuit that has the authority to order such relief upon an adequate evidentiary showing (see 8 NYCRR 200.1[d], 200.7). First, New York State has, by State statute, deviated from the Supreme Court's holding in Schaffer v. Weast, (546 U.S. 49, 58-62 [2005] [placing the burden of production and persuasion on the party seeking relief]) and placed the burden of production and persuasion at an impartial hearing on the school district with the only limited exception being that a "parent or person in parental relation seeking tuition reimbursement for a unilateral parental placement shall have the burden of persuasion and burden of production on the appropriateness of such placement" (Educ. Law § 4404[1][c]). The result in recent years is an ever-increasing number of finger-pointing disputes by parties centering on whether the school district or the parent has the burden of coming forward with the necessary evidence in the first instance to satisfy the burden of production, with the result being poor record development at best. SROs have tended to place the burden of production and persuasion on the district in compensatory education relief (see, e.g., M.M. v. New York City Dep't of Educ., 2017 WL 1194685, at *4 [S.D.N.Y. Mar. 30, 2017]; Application of a Student with a Disability, Appeal No. 19-016; Application of the Dep't of Educ., Appeal No. 17-105), at least in those cases in which the parent sought remedial relief through district-provided resources on the State continuum of special education services. However, it would be unfair to place the burden of production and persuasion on the district to disprove the need or appropriateness of the proposed private school as compensatory education because it would force the district to acquire all of the relevant evidence from the parent and the parent would have little motivation to assist the district in its litigation defense and, more likely, would be incentivized to thwart the production of the evidence in any manner legally permissible. Instead, under these circumstances, the parent must carry the burden of proof to demonstrate the appropriateness of the proposed private school. In this vein, one district court employed an analysis closer but not identical to a parental unilateral placement/reimbursement case, relying on the Supreme Court's decision in Carter to determine whether the parent's proposed private school placement, the Grove School, was "proper under the

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educational problems successfully"]; Reid, 401 F.3d at 518 [holding that compensatory education is a "replacement of educational services the child should have received in the first place" and that compensatory education awards "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA"]).

Act" (S.C. v. Chariho Reg'l Sch. Dist., 298 F. Supp. 3d 370, 381 [D.R.I. 2018]; see Carter, 510 U.S. at 15; see also Dist. of Columbia v. Oliver, 2014 WL 686860, at *5 [D.D.C. Feb. 21, 2014] [discussing both Reid compensatory education relief, Carter, and Forest Grove reimbursement, and finding that when a school district has failed to develop an IEP, propose a location of services, and otherwise offer an eligible child a FAPE, parents may seek placement at a nonpublic school on a prospective basis]; J. v. Portland Pub. Sch., 2016 WL 5940890, at *23 [D. Me. Oct. 12, 2016] [suggesting that LRE considerations, although required by the Act, may be of lesser importance when an administrative hearing officer is fashioning relief in the form of a compensatory educational placement in a nonpublic school setting], adopted at, 2016 WL 7076995 [D. Me. Dec. 5, 2016]). Consistent with this authority—and with both parties' positions that the Burlington/Carter analysis of the private school should apply—I find that, although the remedy of prospective tuition funding to remedy a past harm is a form of compensatory education, an analysis of appropriateness of the proposed school and equitable considerations is warranted and the parent carries the burden to prove the appropriateness of the proposed school.

Another related concern arises for this type of relief in that, unlike a unilateral placement where the student attends the private school, here the student has not yet attended the proposed school and, as such, its appropriateness is based on evidence that is aspirational and untested. Further, unlike a prospective placement through an IEP amendment, in the case of prospective funding for the student's future placement, the district does not retain the control to convene the CSE and modify the student's programming (or even remove the student) if the private school is not meeting the student's needs as anticipated.[16] In light of these concerns, compensatory education in this form is not a favored form of relief, as the IHO pointed out, and such relief should be considered as a last resort. The circumstances in this matter, however, may present such a circumstance.

Here, the parties agree that the student needs a residential school in order to receive a FAPE, yet they find themselves in a predicament in locating such a placement given that the student will not cooperate with the intake process at schools identified by the district. The IHO found prospective placement at Moonridge to be an inappropriate form of relief given the potential for State-approved options that had not been exhausted due to the student's lack of participation in the residential school interviews and screenings (IHO Decision at p. 16). But this goes to the district's placement process and, as noted above, the parent is not asking the district to effectuate the placement of the student at Moonridge.

[16] Remedial relief in the form of compensatory education tends to be established in fixed amounts or for a fixed period of time and does not factor heavily into stay-put determinations should the parties continue to disagree after returning to the CSE planning process. However, it is not uncommon, at least in New York, for private school placements successfully obtained by parents under a Burlington/Carter theory, to be continued for years after the first disputed school year under the various iterations of the stay-put rule. If an IHO ordered a prospective nonpublic school placement as a compensatory education award for a fixed period of time, some case law may suggest that such a compensatory remedy should not form the basis for a student's pendency placement in a subsequent dispute, while other authorities suggest it would serve as the pendency placement in the event that due process or judicial review continues. I am not sure at this juncture how a stay-put placement in a subsequent proceeding would be analyzed, and I only mention it to underscore to the parties that the area of prospective nonpublic school placements as relief under IDEA can quickly become a byzantine maze of potential of legal landmines.

Moreover, in her May 2025 decision, the IHO also seemed to acknowledge the futility of the district's process as it stood when she ordered the CBST to convene with the parent to discuss school options and "facilitate and discuss with the recommended approved residential schools, to the extent possible, to have the schools consider waiving Student's interview" and to "provide any support needed, including a social worker and/or transportation, to facilitate Student's attendance to these interview" (IHO Decision at pp. 16-18). Since then, the District Court also gave the district until July 10, 2025 to identify a residential school for the student, whether in-State or out-of-State, regardless of the student's refusal to cooperate in the screening and enrollment process; however, the district reported to the Court that it could not require the State-approved nonpublic schools to waive the intake requirements (SRO Ex. A at pp. 3, 5). Most recently, reports to the District Court reflect that the district continues its efforts to identify a residential placement for the student but as of the last submission to the Court, it had not yet been successful (M.K., 2025 WL 3482784, at *3). The district was not forthcoming about the extent to which there are specific, State-mandated processes for placing a student in a residential school or, for that matter a state approved day program. There is no published guidance or regulations that outline the procedures that school districts must minimally follow for locating and placing a student a State-approved school, whether it is for residential or day treatment programming, however in 1996 there was guidance that outlined programmatic and fiscal responsibilities for children who were admitted into certain types of programming ("Education Responsibilities for School-Age Children in Residential Care," Office for Special Educ. Servs. [Feb. 1996, reprinted Jan. 2000], available at http://www.p12.nysed.gov/specialed/publications/EducResponsSchoolAgeResidence.pdf; see also, Educ Law § 112; 8 NYCRR Part 116).

In light of district's representations to the District Court and the District Court's recent order, I find it appropriate to allow the district a short amount of time to complete its efforts in this regard and, hopefully, secure a residential placement for the student. In the event it is unsuccessful, however, I will consider the parent's requested relief. It is to that analysis that I now turn.

2. Private School

As noted, the analysis for assessing the appropriateness of a unilateral placement is at least instructive in the present matter. 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 City Sch. Dist., 773 F.3d 372, 386 [2d Cir. 2014]; C.L. v. Scarsdale Union Free Sch. Dist., 744 F.3d 826, 836 [2d Cir. 2014]; Gagliardo, 489 F.3d at 114-15; Frank G., 459 F.3d at 365).

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

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

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

a. Student Needs

Although not in dispute, a brief discussion of the student's needs provides context for the issue to be resolved, namely, whether Moonridge could meet the student's unique needs.

As noted above, the student had a history of social/emotional and behavioral difficulties, and poor school attendance and had received diagnoses of ADHD, major depressive disorder, PTSD, unspecified trauma and stressor-related disorder, conduct disorder, and unspecified cannabis-related disorder (Parent Exs. D at p. 1; J ¶¶ 2, 5; Dist. Exs. 1 at p. 6; 9 at p. 1; 16 at p. 10).

Academically, the student demonstrated average intellectual functioning and basic academic skills (see Dist. Exs. 1; 15; 41). According to the October 25, 2023 psychoeducational evaluation report, on the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V), the student obtained a full scale IQ of 87 (19th percentile, low average) (Dist. Ex. 41 at pp. 2, 6). The

psychoeducational evaluation report related that on the Wechsler Individual Assessment Test-Fourth Edition (WIAT-IV), the student's overall reading standard score of 106 (66th percentile) was in the average range, with her reading comprehension falling in the high average range, and her phonemic awareness and decoding skills falling at grade level (id. at pp. 3-4, 6). The December 2024 IEP noted that, during the December 2024 educational evaluation, the student's reading abilities were assessed by means of one subtest, on which she read sight words at her grade level and "obtained a score commensurate to her peers"; however, when presented with a reading comprehension subtest, the student "announced that she was unable to complete the subtest," saying that everything was "messed up in [her] head" and she couldn't understand it (Dist. Ex. 1 at p. 3).

According to the October 2023 psychoeducational evaluation report, the student's overall mathematics abilities were in the average range (47th percentile) (Dist. Ex. 41 at pp. 4, 6). The December 2024 educational evaluation report stated that the student's overall math performance on the WIAT-IV was in the low average range, with scores "somewhat below" those of her peers (Dist. Ex. 10 at p. 2). However, the student's December 2024 IEP reflected that the student's growth in math (winter 2023-24) was in the first percentile, with math achievement in the seventh percentile (Dist. Exs. 1 at pp. 2, 4; 10 at p. 2).

The student's 2023-24 report card showed that the student had final grades of 59 in ELA, 61 in math, 70 in science, and 61 in social studies (Parent Ex. K at p. 1). A November 27, 2024 teacher report stated that the student was performing below grade level in math and missed foundational instruction due to poor attendance (Dist. Ex. 14 at p. 2). According to the teacher report, the student "rarely" submitted homework or completed independent classwork leading to "significant gaps in learning," had limited peer and teacher interaction due to lack of attendance, and her inconsistent attendance significantly impacted on her academic progress and ability to develop effective interventions (id. at p. 3). The December 2024 classroom observation additionally noted the student's "chronic lack in meeting IEP goals, chronic inability to make meaningful progress, frequent absences, and potential substance abuse" (Dist. Ex. 11 at p. 2).

In terms of the student's social/emotional and behavioral needs, the October 2023 psychoeducational evaluation report related that, on the Behavior Assessment Scale for Children-Third Edition Self Report Rating Scale (BASC-3 SRP), the student's responses showed "clinically significant or high levels of maladjustment towards teachers and school with scores in the clinically significant range of subscales measuring her attitude toward school and teachers (Parent Ex. 41 at p. 5-6). The psychoeducational evaluation report also related that the student's scores on the BASC-3 SRP indicated extremely low self-esteem and very poor relations with parents (id.). The December 2024 IEP noted that the student had a history of self harm and episodes of aggression toward peers and exhibited challenging behaviors such as defiance, oppositionality, and school refusal (Dist. Ex. 1 at p. 5). The December 2024 IEP related that the student was "significantly challenged with maintaining a consistent school attendance despite ongoing staff encouragement and outreach" (id.). Consistent with the teacher report described above, the December 2024 IEP indicated that the student "rarely submit[ted] homework or complete[d] independent class work due to frequent absences, leading to significant gaps in learning" (id.). Also as noted above, the student had been absent for 33 out of 49 days during the first term of the

2024-25 school year prior to November 2024 (Dist. Exs. 1 at p. 2; 6 at p. 1).[17] The December 2024 IEP additionally reported that the student's performance on the Rorschach Inkblot Test during a mental health examination "suggest[ed] a core depression [and] a disturbing level of internalized anger and dissociative tendencies" (Dist. Ex. 1 at p. 5). According to the December 2024 IEP, the student's responses on the Reynolds Adolescent Depression Scale-Second Edition placed her in the "clinically significant" range (98th percentile) (id. at p. 5).

b. Moonridge

As the IHO noted, a review of the appropriateness of Moonridge is speculative given that the student has not attended the program (IHO Decision at p. 18 n.11). This, as further discussed above, is a characteristic of relief in this form; namely, future tuition funding to remedy a past wrong. However, for the reasons discussed above, under the unique circumstances presented, the aspirational nature of the evidence about Moonridge does not defeat the parent's request for relief.

A review of the hearing record shows that Moonridge is a residential treatment center for girls ages 11-14 in grades six to eight (Tr. p. 111; Parent Exs. F; H ¶ 11; I ¶ 11). According to the Moonridge brochure, students at Moonridge are involved in individual therapy, family therapy, and group therapy (Parent Ex. F at p. 1). The brochure states that each student has a "primary therapist as well as their own mentor advocate to assist them day-to-day" (id.). The brochure further notes that Moonridge is licensed by the state of Utah and is a Utah-approved special education school, a member of the National Association of Treatment Schools and Programs, and its academics are accredited by Cognia (id. at p. 2; see also Parent Ex. H ¶12).

The Moonridge clinical director and the Moonridge academic director testified that the admissions process at Moonridge "typically includes a review of educational-psychological evaluations as well as progress reports and information from the prior school; interviews with the parents, and student's services providers; a visit by parents and sometimes students to tour Moonridge . . . and an intensive admission team discussion about a potential student" (Parent Exs. H ¶ 18; I ¶ 16). They further testified that they knew the student based on a "review of her records," including the November 2023 and December 2024 IEPs, October 2023 psychoeducational evaluation, an April 2024 hospital discharge report, and from conversations with the student's parent and her attorney (Parent Exs. H ¶ 22; I ¶ 19). The clinical director and academic director stated that "evaluations and testing prior to Moonridge" showed that the student's reading, writing, and math skills were mostly within the average range, but she struggled with school attendance, and exhibited depression, internalized anger, and dissociative tendencies (Parent Exs. H ¶ 23; I ¶ 20).

The Moonridge clinical director testified that Moonridge offers a "clinically sophisticated, trauma-informed environment tailored to meet the unique needs of early adolescent girls" (Parent

[17] The attendance record for the 2024-25 school year does not reflect the student's attendance for the summer portion of the 2024-25 extended school year, and there is no evidence that the student attended school during this time (Dist. Ex. 16 at p. 1). In addition, as noted above, the student's 2024-25 attendance report shows that for the first term of the 2024-25 school year the student was enrolled for 49 out of 90 days and was absent for 33 of those 49 days (id.).

Ex. H ¶ 11).[18] The clinical director testified that many of the students at Moonridge experience anxiety, depression, trauma, and suicidal ideation (id.). According to the clinical director, Moonridge's trauma-informed approach includes adventure therapy, trauma-focused equine therapy, "brain spotting," and trauma-sensitive yoga, and noted that every staff member at Moonridge is trained in trauma-focused care (id. ¶ 14). The clinical director testified that all Moonridge clinicians and therapists are certified in the state of Utah, and "all [either] have a master's degree in a related field or are currently working towards a master's degree" (id. ¶ 19). He also testified that individuals hired by Moonridge must go through a criminal background check and that Moonridge has a policy against seclusion of students and mechanical restraints (Tr. pp. 143-44). He testified that group therapy sessions, led by "licensed therapists," occur from 2:00 P.M.-3:00 P.M. on Monday, Tuesday, Thursday and Friday, and groups "average around eight or nine" students but could, at times, have "as many as 12" students (Tr. pp. 129, 133). According to the clinical director, there are therapy groups that focus on social skills and communication, attachment and adoption, dialectical behavior therapy (DBT), equine therapy, "DBT adventure," and mindfulness and yoga practices (Tr. p. 134). The clinical director testified that therapy focused on loss and trauma would be done in individual therapy and family therapy (id.). The clinical director additionally testified that outside of school and therapy, the students have barn chores, free time, homework, and "stage work," which he described as assignments that students receive from their therapist and treatment team (Tr. p. 129). According to the clinical director, Moonridge has a comprehensive system in place to monitor students' behavior, record data about the behavior, and produce charts and reports to track and analyze students' progress and behavior data is updated daily (Parent Ex. H ¶ 20).

The clinical director further testified that Moonridge could implement the "therapeutic services" recommended for the student in the December 2024 IEP as well as the recommendations made in the July 2024 mental health evaluation report (Parent Ex. H ¶ 26). The clinical director testified that the student would receive individual, group, and family therapy, with the goal being for the student to "transition back home" and complete her high school education in the district (id.). He testified that, if the student was placed at Moonridge, the student would receive "a well-rounded therapeutic experience designed to support her emotional growth, healing, and improve/rebuild her relationships with [the parent]" (id. ¶ 27). According to the clinical director, if placed at Moonridge, the student would:

> participate in one individual therapy session per week, providing a dedicated space to explore her personal challenges and goals . . . one family therapy session per week to strengthen family communication, connection, and support . . . and four group therapy sessions, where she [would] work on building positive peer relationships, practice emotional regulation skills, and work on shared goals within a supportive and structured environment

(id.).

[18] The clinical director testified that he is a licensed marriage and family therapist and is responsible for providing mental health counseling services to students, including individual, group, and family therapy, assessment of prospective students, treatment planning, transition planning, and crisis management (Parent Ex. H ¶¶ 7-8).

In addition, according to the academic director, Moonridge therapists would work with the student on the social/emotional and counseling goals identified in the student's December 2024 IEP, including attendance and active participation in academic assignments and the ability to use positive coping strategies and self-regulation techniques (Parent Ex. I ¶ 24).

Regarding the academic program at Moonridge, the academic director testified that Moonridge students receive "daily academic instruction, complete homework and group projects, and develop the executive functioning skills necessary for long-term educational success" (Parent Ex. I ¶ 13).[19] According to the academic director, teachers provide direct instruction in study strategies, self-advocacy, and accountability, while collaborating closely with therapists and the program team to support emotional growth in the classroom (id. ¶13). The academic director also testified that Moonridge's academic program offers small class sizes, with classes ranging from three to six students, individualized academic plans, "accommodations for any learning style," and extra-curricular activities (Tr. pp. 107-08; Parent Ex. I ¶ 14). Classes include the core subjects of English, math, science, and social studies, as well as art and physical education (Parent Ex. I ¶ 14). According to the academic director, students attend school from 8:00 AM-2:00 PM, with two study halls a day where they can get extra help with schoolwork (id. ¶ 15). The academic director testified that "many" students meet with him once a week to work on supplemental learning strategies and organizational skills (id.).

According to the academic director, at Moonridge, the student would take seventh grade classes, including English language arts (ELA), math, social studies, science, art, and physical education, and would be "appropriately grouped with other Moonridge students by age range," with ages and academic functioning levels falling within a span of 18-24 months (Tr. p. 111; Parent Ex. I ¶ 23). He testified that the student's academic, social, and emotional needs are similar to the needs of the other Moonridge students who would be taking seventh grade courses (Parent Ex. I ¶ 23). The academic director further testified that the student's class at Moonridge would have one teacher who is certified in general education, with the academic director "coming in and out of the class" working with students, "sometimes in the classroom, sometimes out of the classroom" (Tr. pp. 109-10). According to the academic director, he meets with each student for "close to an hour" per week (Tr. p. 110). Nonetheless, the academic director testified that he and the student's general education teachers would work with the student on reading appropriate seventh-grade-level non-fiction texts, identifying the main idea and two relevant supporting details by underlining key words and phrases; using pre-writing strategies, such as mnemonics, outlines, thinking maps, and graphic organizers to plan and organize written assignments; and identifying key words in math problems, distinguishing between relevant and extraneous information, choosing the appropriate operations, and generating possible strategies and solutions, skills which align with the annual goals identified in the December 2024 IEP (Parent Ex. I ¶ 24). He also testified that the student's progress would be measured once a month "as required in the [December 2024] IEP" (id.).

[19] The academic director testified that he is also the "special education specialist" and is responsible for every aspect of Moonridge's academic program, including "training and supervising our teachers, reviewing current and prospective students' records, conducting preference assessments of newly admitted students, supervising and training teachers on the implementation of the student's curriculum, and monitoring and reviewing progress for our middle school students" (Parent Ex. I ¶¶ 7-8).

The IHO raised concerns about Moonridge's ability to address the student's needs related to the diagnosis of cannabis use disorder (IHO Decision at p. 18 n.11). The Moonridge clinical director testified that Moonridge treats students with substance abuse disorders "clinically like any other psychiatric disorder" with "individualized therapy" around the substance abuse (Tr. p. 141). There is no indication in the hearing record that the student's needs warranted different or additional interventions related to her cannabis use other than the therapeutic supports offered by Moonridge. As to the IHO's other concern, the evidence in the hearing about a 2019 abuse complaint from students at Moonridge related to an occurrence in the community, while unfortunate, does not support the IHO's finding that the students "were left unsupervised which allowed for such an incident to occur" (IHO Decision at p. 18 n.11; see IHO Ex. V). To the contrary, the evidence indicates that Moonridge staff were observing the students at the time but "did not observe anything that was suspicious or inappropriate" and that Moonridge responded to the incident with plans to train and educate staff and adjust community outings (IHO Ex. V at p. 3).

While the district argues that Moonridge did not offer a 12:1+1 special class for the student as recommended in the June and December 2024 IEPs (see Dist. Exs. 1 at p. 13; 20 at p. 11),[20] the evidence in the hearing record does not reflect that the student necessarily required instruction from a special education teacher throughout the day or a particular student-to-adult ratio in order to receive educational benefit. The hearing record indicates that the student was having academic difficulties but also reflects that she had a full scale IQ in the low average range and demonstrated average intellectual functioning and basic academic skills (see Parent Ex. K; Dist. Exs. 1; 10; 14; 41). Rather, the education administrator for the district's CBST indicated in her written testimony that State-approved nonpublic schools "often create their own class ratios that are different from those use in [district] public schools" and that "a change in a class ratio" often occurs after a nonpublic school accepts a student and "does not significantly alter an IEP recommendation" (Dist. Ex. 45 ¶ 6).

Based on the foregoing, I find that the parent has established through a sufficient evidentiary showing that Moonridge is an appropriate residential school placement for the student. But as noted above, this placement has not yet occurred and the district has been continuing to make efforts to secure a State-approved residential placement. Therefore, if the district is unable to identify a State-approved residential school to accept the student within 30 calendar days of the date of this decision, the parent may place the student at Moonridge for the remainder of the 2025-26 school year at the district's expense.

c. Transportation

State regulations authorize expenditures related to suitable transportation of the student "from the student's home to the school at the commencement of the school year, from the school to the student's home at the conclusion of the school year, and no more than three additional trips to and from school for students enrolled in a 10-month program, or four additional trips to and

[20] To be clear, the district argues this in the context of asserting that Moonridge could not implement the December 2024 IEP for purposes of pendency (Answer & Cr.-Appeal ¶ 18); however, to be thorough, I have addressed the district's concern in the context of the private school's appropriateness as well.

from school for students enrolled in receiving a 12-month special service and/or program, except as additional trips may need to be provided for the periods during which residential care is not provided to the students attending such school" (8 NYCRR 200.12[a]).

According to the parent, Moonridge could accept the student if she were transported to Moonridge by the crisis intervention transportation company, Right Direction Crisis Intervention (Right Direction) (Parent Ex. J ¶ 7). The Crisis Advisor Supervisor (supervisor) from Right Direction testified that Right Direction arranges and manages all travel logistics including airfare, lodging, and ground transportation (Parent Ex. N ¶¶ 1, 8). The supervisor testified that Right Direction specializes in interventions, transport, and runaway location investigations (id. ¶ 12). According to the supervisor, Right Direction provides "supportive transition, trusted travel support, and assisted admissions services for children, adolescents, and adults with significant developmental, social/emotional or behavioral disorders, and who are in need of residential treatment programs such as wilderness, therapeutic boarding schools and rehabilitation centers" (id. ¶ 13). The supervisor testified that "supportive transition service" is designed for students with "moderate to high risk factors, including flight risk and oppositional, non-compliant, self-harming and aggressive behaviors," and based on her profile, the student would require this level of service (id. ¶¶ 13, 24).

According to the supervisor, it is "mandatory" that the parent inform the student where she is going and why she is going with the "transition team" prior to transporting the student (Parent Ex. N ¶ 13). When asked what measures Right Direction staff would take if the student refused to go to Moonridge, the supervisor testified that if the student exhibited verbal refusal and acting out, staff would "work with her verbally" to help her understand what was happening (Tr. p. 156). According to the supervisor, if the student refused to walk out of the house or becomes violent, staff members "are trained beyond verbal de-escalation" and "learn how to therapeutically restrain" (id.). The supervisor testified that Right Direction does not use mechanical restraints but does implement safety protocols, with the goal being "maximally 'hands off' while being constantly vigilant" (Tr. p. 156; Parent Ex. N ¶ 13). According to the supervisor, if the student was "initiating physical behavior or . . . trying to do a harmful act of behavior toward themself or someone else" staff would use a "therapeutic hold," by wrapping their arms around the student's torso to keep her safe while using verbal de-escalation to help her process (Tr. pp. 156-57). The supervisor testified that if the student refused to leave the house, staff may reach a point where they would "potentially lift and carry [the student] to the car" by locking their arms through hers and lifting (Tr. pp. 158-59). The supervisor additionally testified that Right Direction does not use any form of sedation, however, they can administer any medication that is already prescribed to a student and in a prescription bottle (Tr. p. 160).

The Right Direction supervisor further testified that, based on a review of the student's records and information received from the parent, the student's social/emotional and behavioral needs are similar to the needs of other students who have been successfully transported by Right Direction (Parent Ex. N ¶ 19). According to the Right Direction supervisor, the cost of the supportive transition services to transport the student to Moonridge was estimated to be between $6,145 and $20,000 (id. ¶ 25). The supervisor stated that if the student traveled by plane, the cost would be "in a range of around $6,100, give or take" (Tr. p. 160). If Right Direction were to drive the student to Moonridge, the cost would be $15,000-$20,000 and was more expensive because it

would require more staff members (id.).[21] The supervisor testified that the student would require a team of no less than two experienced interventionists to support her transition for flying and no less than three interventionists if driving to a residential placement (Tr. p. 163; Parent Ex. N ¶ 24). According to the supervisor, many of Right Direction's crisis interventionists have degrees in social work, sociology, criminal justice, and other related fields, and have personal experience with at-risk youth and adults (Parent Ex. N ¶ 17). The supervisor testified that all staff members complete a safe medication and restraint training, have Federal Bureau of Investigation criminal and background checks, and have completed Crisis Prevention Institute (CPI) training and have CPI certification (Tr. p. 165).

According to the Right Direction supervisor, on the day of pick up, the parent would introduce the student to the team and explain what was going to happen (Tr. p. 167). The student would then be walked to the car, which would already have the child safety and window locks set, and would either be transported to the airport, or begin the drive to Utah (Tr. pp. 167-68). The supervisor testified that, if the student was being driven the entire way, she would be accompanied by three staff members, at least one of which would be female (Tr. pp. 176-77; Parent Ex. N ¶ 24). She noted that the drive would be "straight through," with stops for food and restroom breaks, and would take "about 39 hours" (Tr. pp. 168-69). During bathroom stops, the student would be accompanied by a female staff member (Tr. p. 170). If flying, the student would be accompanied by two staff members and would have a female staff member with her at all times (Tr. pp. 171-72; Parent Ex. N ¶ 24). According to the supervisor, if the student became too unsafe during car travel, "going to the hospital or police would have to be involved"(Tr. pp. 174, 177-78).

While it is not an ideal or desirable circumstance for the student to be transported to Moonridge or any other identified residential placement against her wishes, the evidence in the hearing record sufficiently establishes that the transportation company identified by the parent was prepared to accomplish the task with the least amount of conflict or discomfort to the student possible in order to ensure the student's safety and the safety of others.[22] I understand the IHO's concern that the student could suffer "emotional, psychological, and perhaps physical harm" as a result of the transport (IHO Decision at p. 18 n.11), yet neither the district nor the IHO has identified any alternative for securing the student's attendance at a residential placement, and

[21] The supervisor additionally noted that if the student refused to fly or her behavior was deemed unsafe for flying, the transportation team would void the flying option and begin driving her to the placement, which would affect and increase the overall cost of transportation (Parent Ex. N ¶ 25).

[22] Relevant to use of physical restraints in schools to address student behaviors, State regulation defines "[p]hysical escort" as "a temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is acting out to walk to a safe location" and "[p]hysical restraint" as "a personal restriction that immobilizes or reduces the ability of a student to move their arms, legs, body, or head freely" (8 NYCRR 19.5[b][6]-[7]). Similar to the Right Direction supervisor's description of attempting verbal de-escalation and non-physical interventions before resorting to use of a "therapeutic hold" in instances where the student would be at risk of harming herself or others (Tr. pp. 156-57), State regulation authorizes the use of physical restraint in schools when "other less restrictive and intrusive interventions and de-escalation techniques would not prevent imminent danger of serious physical harm to the student or others; there is no known medical contraindication to its use on the student; and school staff using such interventions have been trained in its safe and appropriate application" (8 NYCRR 19.5[d]; [d][2]).

continuing the status quo—namely, the student engaging in risky behaviors such as eloping and walking the streets —is also similarly leaving her at risk of the same kind of harm.

Should the district identify a residential school placement for the student within 30 days of the date of this decision, it should also identify a means for transporting the student there. If it does not do so, then I find that the parent may utilize Right Direction at the district's expense to transport the student to a residential placement identified by the district or, if no such placement is identified by the district, to Moonridge.

3. Equitable Considerations

The final criterion for a reimbursement award 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 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"]).

The IHO concluded that, had she found Moonridge and transportation by Right Direction to have been appropriate, she would have found that the "equities would lean" in the parent's favor give the fact that the district had not provided a "brick and mortar" residential school placement and the parent had "tried her hardest to cooperate with the process as much as she could" (IHO Decision at p. 18 n. 11). The district argues that the parent did not cooperate, but review of the hearing record does not support the district's assertion. It is undisputed that the student is not cooperative with the intake processes at residential schools, but it is also clear that the parent has tried to secure the student's availability and participation. The district points to the interview process with Moonridge to show that participation was possible but that the parent was not engaging with the district; however, review of the acceptance letter from Moonridge reveals that the parent, not the student, who participated in the interview with Moonridge and that Moonridge reviewed the student's educational and mental health records (Parent Ex. E). The district does not point to any example of the parent refusing to participate in an interview with a State-approved residential school, nor does it explain either through evidence of its own procedures or published guidance when a student must be interviewed by a State approved nonpublic school or what the protocol is when a student refuses to engage in the interview process due to disability.

Accordingly, I find there is insufficient basis in the hearing record to disturb the IHO's finding that equitable considerations would lean in the parent's favor.

VII. Conclusion

I fully appreciate the IHO's concerns about whether prospective placement at Moonridge is appropriate relief, and whether the strategy for sending her there will do more harm than good. However, despite the district's efforts with two social workers and the switch to virtual interviews, thus far there is no evidence that the public agencies involved have had any success in obtaining any State-approved residential school willing to accept the student, albeit efforts have continued that front as months have gone by. The IHO's concerns about Moonridge are not entirely unfounded either. For a long period of time there has been what has been termed a growing "troubled teen industry" of residential treatment centers, wilderness camps, and behavioral boot camps. The concern is that children entered the facilities with inadequate legal protections, lack of due process, and unchecked authority that in some cases functioned as punitive or even dangerous environments rather than therapeutic environments, even after the facilities had convincingly professed to parents through advertisements and tours that they served as the long sought after solution—only to find that the dim reality of what occurred behind closed doors was starkly different than what was advertised (Elizabeth Morgan, "Retribution Without Rehabilitation: How the 'Troubled Teen Industry' Infringes on the Rights of Privately Placed Youth," 58 UIC L. Rev. 181 [2024]). The problem was sufficient to result in the recent passage of new federal legislation by policy makers to take steps to further address the issue through coordination and further study, as enacted in the Stop Institutional Child Abuse Act, Public Law No. 118-194 (available at https://www.congress.gov/118/plaws/publ194/PLAW-118publ194.pdf).[23] The problem here is that the CSE has, for a long period of time, been required to secure the student's placement, yet continues to fail to do so, and student cannot wait and continue to wander the streets while this work is ongoing and the promised residential placement from the public agency continues to elude her.

Therefore, conditional, prospective compensatory relief is in order. Based on the foregoing, I find that appropriate relief consists of the following:

1. Continued Search and Outreach (Within 30 Days)

- The school district must actively seek and secure a state-approved residential setting within 30 calendar days date of this decision (the 30-day period). This includes sending placement requests to all State-approved residential schools, both in-state and out-of-state, except those that have already provided an unequivocal written rejection after determining the student's needs cannot be met in a specific school.

[23] The lack of oversight problems have also received further recent public attention in Utah specifically, and state legislation there was enacted in March 2025 as a result (2025 Utah Laws Ch. 63 Congregate Care Amendments, 2025 Utah Laws Ch. 63 (S.B. 297; see generally, Jessica Schreifels, "Troubled Teen Industry: Utah Legislators Weigh More Oversight After Teen Deaths," Salt Lake Tribune [Feb. 21, 2025], https://www.sltrib.com/news/health/2025/02/21/troubled-teen-industry-utah/).

2. Interview Inquiry (Within 15 Days)

- Within 15 calendar days of the date of this decision, the district must contact each prospective State-approved residential school individually and in writing to inquire whether a virtual parental interview would be acceptable. The inquiry must also seek clarification of whether the school requires an in-person or virtual interview with the student or will refuse admission without one.

3. Reporting Failure to Place

- If the district does not secure a State-approved placement within the 30-day period, it must report this failure to the New York State Education Department Office of Special Education in writing, copying the parent, within 10 business days thereafter. The report shall describe all efforts made by the district to secure a residential placement since the CSE recommended such placement in the December 2024 IEP.

4. Funding Alternative Placement After 30 Days

- After the 30-day period, the district shall inform the parent and Moonridge that it will fund the student's placement at Moonridge for the 2025-26 school year in the amount of $22,533 per month, contingent upon Moonridge providing the following documentation to the district:
    - A signed letter from Executive Director of Moonridge confirming all staff there have undergone criminal background checks.
    - A copy of a written policy from Moonridge banning seclusion and mechanical restraint practices.
    - A copy of documentation from the Utah State Board of Education approving Moonridge as a special education school.
    - A copy of the license from Utah Department of Human Services confirming Moonridge's status as a residential treatment center.

5. Progress Reporting

- In order to maintain funding by the district, Moonridge shall provide proof of attendance by the student as well as copies of the monthly progress reports in her areas of need to both the CSE and parent as testified to by its employee during the impartial hearing (Parent Ex. I at ¶ 24).

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

THE CROSS-APPEAL IS DISMISSED.

IT IS ORDERED that the IHO's decision dated May 28, 2025, is modified by reversing that portion which unconditionally denied in full the parent's request for district funding for the proposed placement of the student at Moonridge for the 2025-26 school year with transportation by Right Direction;

IT IS FURTHER ORDERED that the district shall identify a State-approved residential nonpublic school that will accept the student within 30 days of the date of this decision as well as transportation for the student to the residential placement in accordance with the body of this decision;

IT IS FURTHER ORDERED that, if the district does not, within 30 days of the date of this decision, identify a State-approved residential nonpublic school that has accepted the student, the district shall fund the student's attendance at Moonridge for the remainder of the 2025-26 school year in accordance with the body of this decision; and

IT IS FURTHER ORDERED that, if the district does not, within 30 days of the date of this decision, identify transportation that will enable the student to attend either a State-approved residential school identified by the district or Moonridge, the district shall fund the costs of transportation of the student from her home to either such identified State-approved residential school or to Moonridge by Right Direction.

Dated: **Albany, New York**
December 15, 2025

JUSTYN P. BATES
STATE REVIEW OFFICER