The University of the State of New York

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

No. 24-180

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

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

Liz Vladeck, General Counsel, attorneys for respondent, by Hanna Giuntini, 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 the decision of an impartial hearing officer (IHO) which denied her request that respondent (the district) fund the costs of the occupational therapy (OT) services delivered to her son by Always a Step Ahead, Inc. (Step Ahead or agency) at a specified rate for the 2023-24 school year. The appeal must be dismissed.

II. Overview—Administrative Procedures

When a student who resides in New York is eligible for special education services and attends a nonpublic school, Article 73 of the New York State Education Law allows for the creation of an individualized education services program (IESP) under the State's so-called "dual enrollment" statute (see Educ. Law § 3602-c). The task of creating an IESP is assigned to the same committee that designs educational programing for students with disabilities under the IDEA (20 U.S.C. §§ 1400-1482), namely a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law § 4402; see 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, State law provides that "[r]eview of the recommendation of the committee on special education may be obtained by the

parent or person in parental relation of the pupil pursuant to the provisions of [Education Law § 4404]," which effectuates the due process provisions called for by the IDEA (Educ. Law § 3602-c[2][b][1]). Incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[*l*]).

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

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

III. Facts and Procedural History

The evidence in the hearing record concerning the student's educational history is sparse. The evidence reflects that on September 28, 2022, a CSE convened and, having found that the student remained eligible for special education as a student with a speech or language impairment,

developed an IESP with an implementation date of October 12, 2022 (Parent Ex. B at pp. 1, 12).[1] The September 2022 CSE recommended that the student receive three periods per week of direct group special education teacher support services (SETSS), two 30-minute sessions per week of individual OT, and two 30-minute sessions per week of individual speech-language therapy (id. at p. 9).[2]

A. Due Process Complaint Notice

In a due process complaint notice dated January 5, 2024, the parent alleged that the district failed to provide adequate special education and related services to the student for the 2023-24 school year (Parent Ex. A at p. 1). According to the parent, the parties' last-agreed program was the student's September 2022 IESP that mandated three weekly sessions of SETSS and "certain related services" (id.). The parent further asserted that the district failed to provide the student a free appropriate public education (FAPE) and/or equitable services by failing to provide special education and related services providers (id.). Next, the parent claimed that she was unable to find providers willing to accept the district's standard rates, but found providers willing to provide the student with all required services for the 2023-24 school year at rates higher than the standard district rates (id.).

As relief, the parent sought an order directing the district to continue the student's special education and related services under pendency and an order awarding the student three weekly sessions of SETSS at an "enhanced rate" for the 2023-24 school year (Parent Ex. A at p. 2). The parent also requested an "[a]llowance of funding for payment to the student's special education teacher provider/agency" for the provision of the three weekly sessions of SETSS at the enhanced rate for the 2023-24 school year (id.). Lastly, the parent requested an "[a]ward[of] all related services and aides on the IESP for the 2023-2024 school year and (a) related services authorizations for such services if accepted by the parent's chosen providers; or (b) direct funding to each of the parent's chosen providers at the rate each charges, even if higher than the standard [district] rate for such service" and "[s]uch other and further relief" that was deemed appropriate (id.).

B. Impartial Hearing and Decision

An impartial hearing convened before an IHO with the Office of Administrative Trials and Hearings (OATH) on March 5, 2024. The parent did not attend the impartial hearing and instead, the parties, through their representatives, submitted documentary evidence, the director of Step Ahead testified, and both parties provided combined opening and closing statements (Tr. pp. 1-16).[3] During the impartial hearing, the director of Step Ahead testified that the student was

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

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

[3] The hearing record reflects that the parent withdrew her submission of exhibit E (see IHO Decision at p. 3; Tr. pp. 4-5; Supp. Ex. 6).

receiving speech-language therapy and OT services from the agency, but not SETSS (Tr. pp. 7-9).[4]

In a decision dated March 26, 2024, the IHO initially recounted the procedural history and then briefly discussed the legal standards and framework under Burlington/Carter that apply to examining relief in the form of unilaterally-obtained private services in instances where a student is dually enrolled in a nonpublic school and also sought special education services from a district under Education Law § 3602-c (IHO Decision at pp. 3-5). The IHO found that the district denied the student a FAPE for the 2023-24 school year (id. at p. 4). Relying on a "detailed progress report" from the student's speech-language therapist that the parent submitted into the hearing record, the IHO determined that the parent sustained her burden to demonstrate how the speech-language services delivered to the student by Step Ahead were tailored to meet the student's special education needs (id. at pp. 5-6). However, the IHO found that there was insufficient evidence in the hearing record with regard to the delivery of OT services to the student from Step Ahead (id. at p. 6). The IHO noted that there "were no OT progress reports, session notes, schedule or any documentary evidence that discussed specific OT goals that were created for the [s]tudent, and specs on what areas of need were address with [the s]tudent" (id.). The IHO also cited to the agency director's testimony to find that the student was not receiving any SETSS from Step Ahead (id.). Lastly, the IHO determined that equitable considerations weighed in favor of awarding the parent direct funding from the district for the costs of the speech-language therapy delivered to the student by Step Ahead (id.).

IV. Appeal for State-Level Review

The parent appeals and argues that the IHO erred only to the extent the IHO denied her request to award direct funding for all OT services delivered to the student by Step Ahead for the 2023-24 school year. Initially, the parent argues that a Burlington/Carter analysis should not apply to this matter. The parent further asserts that the IHO erred in finding the parent's unilaterally-obtained OT was inappropriate. As relief, the parent requests direct funding for two 30-minute sessions per week of OT provided to her son at a rate of $250 per hour for the 2023-24 school year.

In an answer, the district denies the parent's claims and argues that the IHO correctly denied her request for direct funding of unilaterally obtained OT services. The district argues that the IHO applied the correct legal standard, the Burlington/Carter standard, and correctly found that the parent failed to meet her burden to show that the OT delivered to the student was appropriate. Lastly, the district argues that since the parent is not seeking any relief with respect to an award for SETSS in her request for review and did not challenge the IHO's finding that SETSS was not provided by Step Ahead, the IHO's findings with respect to SETSS should be considered final and binding.

V. Applicable Standards

A board of education must offer a FAPE to each student with a disability residing in the school district who requires special education services or programs (20 U.S.C. § 1412[a][1][A];

[4] Step Ahead 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).

Educ. Law § 4402[2][a], [b][2]). However, the IDEA confers no individual entitlement to special education or related services upon students who are enrolled by their parents in nonpublic schools (see 34 CFR 300.137[a]). Although districts are required by the IDEA to participate in a consultation process for making special education services available to students who are enrolled privately by their parents in nonpublic schools, such students are not individually entitled under the IDEA to receive some or all of the special education and related services they would receive if enrolled in a public school (see 34 CFR 300.134, 300.137[a], [c], 300.138[b]).

However, under State law, parents of a student with a disability who have privately enrolled their child in a nonpublic school may seek to obtain educational "services" for their child by filing a request for such services in the public school district of location where the nonpublic school is located on or before the first day of June preceding the school year for which the request for services is made (Educ. Law § 3602-c[2]).[5] "Boards of education of all school districts of the state shall furnish services to students who are residents of this state and who attend nonpublic schools located in such school districts, upon the written request of the parent" (Educ. Law § 3602-c[2][a]). In such circumstances, the district of location's CSE must review the request for services and "develop an [IESP] for the student based on the student's individual needs in the same manner and with the same contents as an [IEP]" (Educ. Law § 3602-c[2][b][1]). The CSE must "assure that special education programs and services are made available to students with disabilities attending nonpublic schools located within the school district on an equitable basis, as compared to special education programs and services provided to other students with disabilities attending public or nonpublic schools located within the school district (id.).[6] Thus, under State law an eligible New York State resident student may be voluntarily enrolled by a parent in a nonpublic school, but at the same time the student is also enrolled in the public school district, that is dually enrolled, for the purpose of receiving special education programming under Education Law § 3602-c, dual enrollment services for which a public school district may be held accountable through an impartial hearing.

The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding

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

[6] State guidance explains that providing services on an "equitable basis" means that "special education services are provided to parentally placed nonpublic school students with disabilities in the same manner as compared to other students with disabilities attending public or nonpublic schools located within the school district" ("Chapter 378 of the Laws of 2007–Guidance on Parentally Placed Nonpublic Elementary and Secondary School Students with Disabilities Pursuant to the Individuals with Disabilities Education Act (IDEA) 2004 and New York State (NYS) Education Law Section 3602-c," Attachment 1 at p. 11, VESID Mem. [Sept. 2007], available at hhttps://www.nysed.gov/special-education/guidance-parentally-placed-nonpublic-elementary-and-secondary-school-students). The guidance document further provides that "parentally placed nonpublic students must be provided services based on need and the same range of services provided by the district of location to its public school students must be made available to nonpublic students, taking into account the student's placement in the nonpublic school program" (id.). The guidance has recently been reorganized on the State's web site and the paginated pdf versions of the documents previously available do not currently appear there, having been updated with web based versions.

the appropriateness of such placement (Educ. Law § 4404[1][c]; see R.E. v. New York City Dep't of Educ., 694 F.3d 167, 184-85 [2d Cir. 2012]).

VI. Discussion

The district does not cross-appeal from the IHO's decision that the failure to implement the September 2022 IESP resulted in a denial of a FAPE to the student for the 2023-24 school year and did not cross-appeal the IHO's finding that the parent met her burden to demonstrate that the speech-language therapy delivered by Step Ahead to the student for the 2023-24 school year was appropriate and resulting remedial relief (IHO Decision at pp. 4-6). The parent does not challenge the IHO's finding that Step Ahead did not deliver any SETSS to the student nor does the parent seek any relief in her request for review with respect to SETSS (id. at p. 5). Accordingly, I do not address these determinations because they have become final and binding upon the parties (see 34 CFR 300.514[a]; 8 NYCRR200.5[j][5][v]; see M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6-*7, *10 [S.D.N.Y. Mar. 21, 2013]). On appeal, the crux of the dispute between the parties relates to the appropriateness of the parent's unilaterally-obtained OT delivered to the student by Step Ahead during the 2023-24 school year.

A. Legal Standard

The parent challenges the IHO's reliance on the Burlington/Carter model of analysis for resolving the parties' dispute. Accordingly, I will first address the appropriate legal standard to be applied. In this matter, the student has been parentally placed in a nonpublic school and the parent does not seek tuition reimbursement for the cost of the student's attendance there. In her January 15, 2024 due process complaint notice, the parent alleged that the district had not implemented the September 2022 IESP and the parent was unable to locate providers willing to accept the district's standard rates (Parent Ex. A at p. 1). As a result, the parent unilaterally obtained private services from Step Ahead for the student without the consent of the school district officials, and then commenced due process to obtain remuneration for the costs thereof (id. at pp. 1-2). Accordingly, the issue in this matter is whether the parent is entitled to public funding of the costs of the private OT. "Parents who are dissatisfied with their child's education can unilaterally change their child's placement . . . and can, for example, pay for private services, including private schooling. They do so, however, at their own financial risk. They can obtain retroactive reimbursement from the school district after the [IESP] dispute is resolved, if they satisfy a three-part test that has come to be known as the Burlington-Carter test" (Ventura de Paulino v. New York City Dep't of Educ., 959 F.3d 519, 526 [2d Cir. 2020] [internal quotations and citations omitted]; see Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 14 [1993] [finding that the "Parents' failure to select a program known to be approved by the State in favor of an unapproved option is not itself a bar to reimbursement"]).[7]

The parent's request for district funding of unilaterally-obtained services must be assessed under this framework. That is, 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

[7] State law provides that the parent has the obligation to establish that a unilateral placement is appropriate, which in this case is the special education services that the parent obtained from Step Ahead for the student (Educ. Law § 4404[1][c]).

services offered by the board of education were inadequate or inappropriate, the services selected by the parents were appropriate, and equitable considerations support the parents' claim (Carter, 510 U.S. 7; Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369-70 [1985]; R.E., 694 F.3d at 184-85; T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 252 [2d Cir. 2009]). In Burlington, the Court found that Congress intended retroactive reimbursement to parents by school officials as an available remedy in a proper case under the IDEA (471 U.S. at 370-71; see Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 111 [2d Cir. 2007]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). "Reimbursement merely requires [a district] to belatedly pay expenses that it should have paid all along and would have borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148).

The parent's claims involve a self-help remedy seeking public funding of the special education services that she privately obtained from Step Ahead. That is the hallmark of a Burlington/Carter style of claim and analysis, and such relief is permissible if the parent meets the evidentiary burden of showing that the private services she obtained were appropriate under the totality of the circumstances. Based on the foregoing, the IHO in this case correctly relied on the Burlington/Carter analysis.

B. Unilaterally-Obtained OT

Turning to a review of the appropriateness of the unilaterally-obtained services, the federal standard for adjudicating these types of disputes is instructive.

A private school placement must be "proper under the Act" (Carter, 510 U.S. at 12, 15; Burlington, 471 U.S. at 370), i.e., the private school offered an educational program which met the student's special education needs (see Gagliardo, 489 F.3d at 112, 115; Walczak, 142 F.3d at 129). Citing the Rowley standard, the Supreme Court has explained that "when a public school system has defaulted on its obligations under the Act, a private school placement is 'proper under the Act' if the education provided by the private school is 'reasonably calculated to enable the child to receive educational benefits'" (Carter, 510 U.S. at 11). A parent's failure to select a program approved by the State in favor of an unapproved option is not itself a bar to reimbursement (Carter, 510 U.S. at 14). The private school need not employ certified special education teachers or have its own IEP for the student (Carter, 510 U.S. at 13-14). Parents seeking reimbursement "bear the burden of demonstrating that their private placement was appropriate, even if the IEP was inappropriate" (Gagliardo, 489 F.3d at 112; see M.S. v. Bd. of Educ. of the City Sch. Dist. of Yonkers, 231 F.3d 96, 104 [2d Cir. 2000]). "Subject to certain limited exceptions, 'the same considerations and criteria that apply in determining whether the [s]chool [d]istrict's placement is appropriate should be considered in determining the appropriateness of the parents' placement'" (Gagliardo, 489 F.3d at 112, quoting Frank G. v. Bd. of Educ. of Hyde Park, 459 F.3d 356, 364 [2d Cir. 2006]; see Rowley, 458 U.S. at 207). Parents need not show that the placement provides every special service necessary to maximize the student's potential (Frank G., 459 F.3d at 364-65). When determining whether a unilateral placement is appropriate, "[u]ltimately, the issue turns on" whether the placement is "reasonably calculated to enable the child to receive educational benefits" (Frank G., 459 F.3d at 364; see Gagliardo, 489 F.3d at 115; Berger v. Medina City Sch. Dist., 348 F.3d 513, 522 [6th Cir. 2003] ["evidence of academic progress at a private school does not itself establish that the private placement offers adequate and appropriate education under the IDEA"]).

A private placement is appropriate if it provides instruction specially designed to meet the unique needs of a student (20 U.S.C. § 1401[29]; Educ. Law § 4401[1]; 34 CFR 300.39[a][1]; 8 NYCRR 200.1[ww]; Hardison v. Bd. of Educ. of the Oneonta City Sch. Dist., 773 F.3d 372, 386 [2d Cir. 2014]; C.L. v. Scarsdale Union Free Sch. Dist., 744 F.3d 826, 836 [2d Cir. 2014]; Gagliardo, 489 F.3d at 114-15; Frank G., 459 F.3d at 365).

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

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

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

In this case, although the student's needs related to areas addressed by OT are not in dispute, a description thereof provides some context to determine whether the parent's unilaterally-obtained OT was appropriate to address those needs. Here, the September 2022 IESP reflects that the student exhibited "poor visual perceptual and visual motor skills" and had "challenges in the ability to organize areas and focus on the visual areas" (Parent Ex. B. at p. 4). According to the IESP, the parent reported that the student was "very active" and participated in a variety of sports (id.). The September 2022 IESP reflected no concerns with respect to the student's physical development (id.).

Turning to the annual goals in the September 2022 IESP, in the area of OT, the CSE developed three annual goals (Parent Ex. B at pp. 5-6). The first OT goal targeted the student's ability to copy homework assignments from the chalkboard to his notebook with minimal errors and at an appropriate writing speed (id. at p. 5). The other OT goals targeted improving the student's ability to focus by using visual motor exercises and learning strategies to improve his visual perceptual skills (id. at pp. 5-6). With respect to OT, the September 2022 CSE recommended that the student receive two 30-minute sessions per week of individual OT (id. at p. 9).

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

Here, as the district argues and the IHO determined, the hearing record is devoid of any evidence to show that the OT purportedly delivered by Step Ahead to the student constituted specially designed instruction sufficient to meet the student's identified needs (see IHO Decision at p. 6). For example, consistent with the district's arguments, the record is devoid of any progress reports or session notes describing the OT delivered by the agency, which could shed light on the specific strategies used with the student and how the OT was tailored to the student and met his unique needs. Moreover, the hearing record does not set forth the name of a provider who delivered OT, his or her qualifications, or a statement of where or when the services were purportedly delivered, or how they related to his educational objectives in the nonpublic school (see generally Tr. pp. 1-16; Parent Exs. A-D, F-G). Neither the OT provider nor the parent testified at the impartial hearing to describe the services or how, if at all, the occupational therapist addressed the student's unique needs (see generally id.). Without such evidence, I find that the parent did not sustain her burden to demonstrate how the unilaterally-obtained OT services provided specially designed instruction to meet the student's unique needs (see L.K. v. Northeast Sch. Dist., 932 F. Supp. 2d 467, 491 [S.D.N.Y. 2013] [in reviewing the appropriateness of a unilateral placement, courts prefer objective evidence over anecdotal evidence]).

In review of the IHO's findings, the IHO correctly applied a Burlington/Carter analysis to the parent's claims and correctly determined that the hearing record did not include sufficient information to find that the OT purportedly procured for the student was appropriate for the student during the 2023-24 school year. Accordingly, the IHO correctly denied the parent's request for direct funding of her unilaterally-obtained OT for the 2023-24 school year.

VII. Conclusion

In summary, much of the IHO's decision was unappealed. As for the portion that the parent appealed, she failed to demonstrate the appropriateness of her unilaterally-obtained OT services. Accordingly, I decline the parent's request to overturn the IHO's denial of relief in the form of district funding for unilaterally-obtained OT delivered by Step Ahead during the 2023-24 school year.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
June 20, 2024

JUSTYN P. BATES
STATE REVIEW OFFICER