The University of the State of New York

The State Education Department
State Review Officer
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No. 24-214

**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 Berger, Esq.

## DECISION

### I. Introduction

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

### II. Overview—Administrative Procedures

When a student who resides in New York is eligible for special education services and attends a nonpublic school, Article 73 of the New York State Education Law allows for the creation of an individualized education services program (IESP) under the State's so-called "dual enrollment" statute (see Educ. Law § 3602-c). The task of creating an IESP is assigned to the same committee that designs educational 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 parties' familiarity with this matter is presumed and, therefore, the facts and procedural history of the case and the IHO's decision will not be recited in detail here.

A CSE convened on July 14, 2023, found the student eligible for special education as a student with an other health-impairment, and developed an IESP for the student with a projected implementation date of September 9, 2023 for the 2023-24 school year (fourth grade) (Parent Ex. B).[1] The CSE recommended that the student receive five periods per week of group special education teacher support services (SETSS) and three 30-minute sessions per week of individual occupational therapy (OT) (id. at p. 7). The IESP reflects that the student was "Parentally Placed in a Non-Public School" (id. at p. 10).

In a due process complaint notice, dated August 29, 2023, the parent alleged that the district failed to offer the student a free appropriate public education (FAPE) and/or equitable services under State law for the 2023-24 school year by failing to provide special education and related service providers (Parent Ex. A at p. 1). The parent asserted she was unable to locate service providers on her own at the district's standard rates for the 2023-24 school year and the district failed to provide those services in accordance with the July 2023 IESP (id.). The parent claimed that she found providers willing to provide the student "with all required services" for the 2023-24 school year but at rates higher than the standard district rates (id.). The parent sought an order requiring the district to continue the student's services under pendency, an award of funding for five sessions per week of SETSS delivered by the private agency at an enhanced rate, and an award of "all related services and aides on the IESP" via related services authorizations (RSAs) or direct funding (id. at p. 2).

On November 30, 2023, the parent electronically signed a document on Step Ahead's letterhead indicating that she was "aware of" the rate charged for SETSS and related services provided to the student and that, if the district did not fund the services, she "w[ould] be liable to pay for them" (Parent Ex. D).[2]

An impartial hearing convened and concluded on March 13, 2024 before an IHO with the Office of Administrative Trials and Hearings (OATH) (Tr. pp. 1-37).[3] In a decision dated April 15, 2024, the IHO found that there was no dispute that the student was entitled to the services set forth in the July 2023 IESP during the 2023-24 school year and that the district conceded it failed to implement the IESP during the 2023-24 school year; accordingly, the IHO found that the district denied the student a FAPE (IHO Decision at pp. 2-3).[4] However, the IHO also denied the relief sought by the parent (id. at p. 2). The IHO noted that parent's request for privately-obtained services must be assessed under the Burlington-Carter test and determined that the parent "failed submit credible evidence to establish that the SETSS provider and OT provider created a program

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

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

[3] The IHO issued a "Standing Order," dated February 20, 2024, listing 42 cases to which the order applied, including the present matter and setting forth the IHO's expectations for the impartial hearings (see IHO Ex. I).

[4] The IHO decision is not paginated; for the purposes of this decision, the pages will be cited by reference to their consecutive pagination with the cover page as page one (see IHO Decision at pp. 1-6).

that was reasonably calculated to enable [the] Student to receive educational benefits" since "[n]o evidence or testimony was provided as to how the services were provided to [the] Student, the quality, frequency, goals, progress, or even when [the] Student began receiving these services" (id. at pp. 5-6). Accordingly, the IHO denied the parent's request for district funding of SETSS and OT purportedly obtained by the parent (id.). As relief the IHO ordered the district to implement the student's SETSS and OT services for the remainder of the school year (id. at p. 6).

## IV. Appeal for State-Level Review

The parent appeals, alleging that the IHO erred in denying her requested relief. The parent asserts that this is an equitable services case under Education Law §3602-c, that the burden of proof and persuasion lies entirely with the district, and since the district did not offer proof of an appropriate program or funding for that program, she should be entitled to funding for her private providers pursuant to the last agreed upon education program. The parent also asserts that even under the Burlington/Carter analysis, she is entitled to her requested relief. The parent argues that she utilized the services of Step Ahead, which used appropriately credentialed/licensed providers for each service for which funding was requested, and each provider followed the detailed discussions, goals, and frequency of services the district itself created and recommended. The parent asserts that she was simply requesting that the providers be paid for delivering the services recommended in the student's IESP and that such a program cannot be deemed inappropriate. The parent further argues that the evidence in the hearing record fully supported an award of direct funding to Step Ahead for the SETSS and OT delivered to the student during the 2023-24 school year at the contracted rates. The parent contends that she contracted with Step Ahead, and no evidence was introduced showing the rates charged by the company to be unreasonable.

Although the district filed the hearing record with its certification with the Office of State Review on May 20, 2024, the district did not submit an answer to the parent's request for review.

## V. Applicable Standards

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

However, under State law, parents of a student with a disability who have privately enrolled their child in a nonpublic school may seek to obtain educational "services" for their child by filing a request for such services in the public school district of location where the nonpublic school is located on or before the first day of June preceding the school year for which the request for services is made (Educ. Law § 3602-c[2]).[5] "Boards of education of all school districts of the state

[5] State law provides that "services" includes "education for students with disabilities," which means "special

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 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**

Initially, as the district has not appealed the IHO's determination that it denied the student a FAPE for the 2023-24 school year, that finding is final and binding on the parties and will not be reviewed on appeal (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; see M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6-*7, *10 [S.D.N.Y. Mar. 21, 2013]). Further, upon careful review, the hearing record reflects that the IHO, in a well-reasoned and well-supported decision, correctly reached the conclusion that the parent failed to meet her burden to show that the unilaterally obtained SETSS and OT provided by Step Ahead were appropriate to meet the student's special education needs (IHO Decision at pp. 3, 5-6). The IHO accurately recounted the facts of the case (id. at p. 2), identified the issues to be resolved (id. at p. 3), set forth the proper

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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 (Questions and Answers), VESID Mem. [Sept. 2007], available at https://www.nysed.gov/special-education/guidance-parentally-placed-nonpublic-elementary-and-secondary-school-students). The guidance document further provides that "parentally placed nonpublic students must be provided services based on need and the same range of services provided by the district of location to its public school students must be made available to nonpublic students, taking into account the student's placement in the nonpublic school program" (id.). The guidance has recently been reorganized on the State's web site and the paginated pdf versions of the documents previously available do not currently appear there, having been updated with web based versions.

legal standard to determine whether the services provided by Step Ahead were appropriate (id. at pp. 3-5), and applied that standard to the facts at hand (id. at pp. 5-6). The decision shows that the IHO carefully considered the testimonial and documentary evidence presented by both parties and, further, that she weighed the evidence and properly supported her conclusions. Furthermore, an independent review of the hearing record reveals that the impartial hearing was conducted in a manner consistent with the requirements of due process and that there is not a sufficient basis presented on appeal to modify the determinations of the IHO (see 20 U.S.C. § 1415[g][2]; 34 CFR 300.514[b][2]). Thus, while I will briefly discuss some the parent's allegations on appeal, particularly where the parent asserts the IHO erred by applying the Burlington/Carter standard and related to her determinations on the lack of certain evidence or a failure to consider specific evidence, the conclusions of the IHO are hereby adopted.

In this matter, the student has been parentally placed in a nonpublic school and the parent does not seek tuition reimbursement from the district for the cost of the parental placement. Instead, the parent alleged that the district failed to implement the student's mandated public special education services under the State's dual enrollment statute for the 2023-24 school year and, as a self-help remedy, she 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. Generally, districts who fail to comply with their statutory mandates to provide special education can be made to pay for special education services privately obtained for which a parent paid or became legally obligated to pay, a process that is essentially the same as the federal process under IDEA. Accordingly, the issue in this matter is whether the parent is entitled to public funding of the costs of the private services. "Parents who are dissatisfied with their child's education can unilaterally change their child's placement . . . and can, for example, pay for private services, including private schooling. They do so, however, at their own financial risk. They can obtain retroactive reimbursement from the school district after the [IESP] dispute is resolved, if they satisfy a three-part test that has come to be known as the Burlington-Carter test" (Ventura de Paulino v. New York City Dep't of Educ., 959 F.3d 519, 526 [2d Cir. 2020] [internal quotations and citations omitted]; see Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 14 [1993] [finding that the "Parents' failure to select a program known to be approved by the State in favor of an unapproved option is not itself a bar to reimbursement."]).

The parent's request for district funding of privately-obtained services must be assessed under this framework. Thus, a board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents if the services offered by the board of education were inadequate or inappropriate, the services selected by the parents were appropriate, and equitable considerations support the parents' claim (Carter, 510 U.S. 7; Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369-70 [1985]; R.E., 694 F.3d at 184-85; T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 252 [2d Cir. 2009]).[7] 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

[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 that the parent obtained from Step Ahead (Educ. Law § 4404[1][c]).

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.

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 v. Fla. Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998]). Citing the Rowley standard, the Supreme Court has explained that "when a public school system has defaulted on its obligations under the Act, a private school placement is 'proper under the Act' if the education provided by the private school is 'reasonably calculated to enable the child to receive educational benefits'" (Carter, 510 U.S. at 11; see Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 203-04 [1982]; 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.; 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).

Here, the only evidence of the student's needs is the description of the student in the July 2023 IESP (Parent Ex. B). Since the student's needs as set forth in the IESP are not in dispute (see Parent Ex. A at p. 1), and the IHO described the student's needs as indicated in the July 2023 IESP in her decision (IHO Decision at p. 5), I will not recite them in detail in this decision. Generally, the IESP indicated that the student's overall intellectual ability fell in the average range of functioning when compared to other children his age; his verbal comprehension and working memory skills were relative strengths compared to his fluid reasoning and processing speed skills, and there were no behavior concerns reported (Parent Ex. B at p. 1). According to the IESP, standardized measures of the student's academic achievement yielded scores in the average range on assessments of the student's broad reading, broad math, and spelling skills; however, the school reported that the student had difficulty with reading, comprehension, fluency, and math (id. at p. 1, 2). The IESP also indicated that the student's expressive and receptive language skills were "within normal limits" on standardized testing although according to a May 2023 speech progress report he presented with language delays, had limited vocabulary, and had difficulty answering wh- questions, following stories, and following directions (id. at p. 2). In OT, the IESP indicated that the student's focusing and attention issues, his slow writing and overall incoordination, and lack of adequate visual motor and visual perceptual skills affected his classroom performance (id.).

With regard to the services from Step Ahead, the hearing record includes a document on the letterhead of Step Ahead, dated September 1, 2023, which was electronically signed by the parent on November 30, 2023, wherein the parent stated that she was aware that she would be liable for the costs of SETSS and "related services" delivered to the student at specified rates (Parent Ex. D). The hearing record also includes printouts reflecting the certifications/licenses of two individuals (Parent Ex. C). The hearing record also includes a document on the letterhead of Step Ahead notarized on November 30, 2023 and signed by the case manager of Step Ahead, wherein the case manager also stated the rate charged for SETSS and OT and the rates paid the providers and that the providers reviewed and were providing services in accordance with the student's July 2023 IESP (Parent Ex. E).

Although the case manager for Step Ahead testified the Step Ahead providers were following the IESP and provided services on a pull-out basis at the student's school (see generally Tr. pp. 21-22; Parent Ex. D), the hearing record does not include any other evidence regarding the services provided the student during the 2023-24 school year (see generally Tr. pp. 1-37; IHO Ex.

I; Parent Exs. A-E). Neither the parent nor the providers from Step Ahead testified at the impartial hearing, and the hearing record does not include any progress report, service records, or even invoices.[8] The IHO correctly determined that the parent must still come forward with evidence that describes the services and the delivery thereof (IHO Decision at pp. 5-6). As determined by the IHO, the hearing record lacks any information about the level of services the student received or where or when the services were delivered and does not explain how any services that may have been delivered by Step Ahead provided specially designed instruction that addressed the student's needs (see L.K. v. Ne. Sch. Dist., 932 F. Supp. 2d 467, 490-91 [S.D.N.Y. 2013] [rejecting parents' argument that counseling services met student's social/emotional needs where "[t]here was no evidence . . . presented to establish [the counselor's] qualifications, the focus of her therapy, or the type of services provided" and, further, where "[the counselor] did not testify at the hearing and no records were introduced as to the nature of her services or how those services related to [the student's] unique needs"]; R.S. v. Lakeland Cent. Sch. Dist., 2011 WL 1198458, at *5 [S.D.N.Y. Mar. 30, 2011] [rejecting the parents' argument that speech-language therapy services met student's needs where parents "did not offer any evidence as to the qualifications of the provider of the therapy, the focus of the therapy, or when and how much therapy was provided"], aff'd sub nom, 471 Fed. App'x 77 [2d Cir. June 18, 2012]).

In review of the IHO's findings, the IHO correctly determined that the evidence in the hearing record did not include sufficient information to support a finding that the unilaterally obtained services, which may have been delivered to the student during the 2023-24 school year, were appropriate. Accordingly, the IHO correctly denied the parent's request for direct funding of the services Step Ahead provided to the student during the 2023-24 school year.

## VII. Conclusion

Having determined that the hearing record supports the IHO's determination that the parent failed to demonstrate the appropriateness of the services unilaterally obtained from Step Ahead during the 2023-24 school year, the necessary inquiry is at an end and there is no need to reach the issue of whether equitable considerations weighed in favor of the parent's request for relief.

**THE APPEAL IS DISMISSED.**

**Dated:** **Albany, New York**
**July 3, 2024**

**SARAH L. HARRINGTON**
**STATE REVIEW OFFICER**

[8] Counsel for the parent cites only to the parent's due process complaint notice and the provider certifications in support of the parent's contention that Step Ahead was delivering services in accordance with the student's IESP (Req. for Rev. at ¶17); however, the August 29, 2023 due process complaint notice does not refer to Step Ahead and does not indicate that any services were delivered to the student pursuant to the IESP (Parent Ex. A). Additionally, as noted above, the 10-month 2023-24 school year had not yet started at the time the due process complaint notice was filed in this matter—so, even if it was evidence, it would not provide any support to an assertion that services were delivered to the student during the 2023-24 school year pursuant to the student's IESP.