



# The University of the State of New York

## The State Education Department

State Review Officer

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No. 24-297

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

### **Appearances:**

Gulkowitz Berger LLP, attorneys for petitioners, by Shaya Berger, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Lindsay R. VanFleet, Esq.

## **DECISION**

### **I. Introduction**

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioners (the parents) appeal from a decision of an impartial hearing officer (IHO) which denied their request that respondent (the district) fund the costs of their son's private special education teacher support services (SETSS) delivered by Always a Step Ahead (Step Ahead) for the 2023-24 school year. The district cross-appeals the IHO's award of funding for speech-language services delivered by Step Ahead during the 2023-24 school year and requests an annulment of the IHO's award of compensatory SETSS. The appeal must be sustained. 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 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 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.

Briefly, the CSE convened on June 7, 2022, and after finding the student eligible for special education as a student with a speech or language impairment, developed an IEP for the student for

the 2022-23 school year (see generally Parent Ex. B).<sup>1</sup> The June 2022 CSE recommended that the student receive four periods per week of group SETSS and two 30-minute sessions per week of individual speech-language therapy (Parent Ex. B at p. 10).<sup>2</sup> The district sent the parents a prior written notice, dated June 20, 2022, documenting the CSE's June 2022 IEP recommendations (Dist. Ex. 6).

### **A. Due Process Complaint Notice and Subsequent Facts**

In a due process complaint notice, dated February 13, 2024, the parents 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 because the district did not provide the student with the services recommended in the June 2022 IEP (Parent Ex. A at p. 1).<sup>3</sup> The parents asserted they were unable to locate service providers on their 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 June 2022 IEP (id.). The parents claimed that they 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 four 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 April 8, 2024, the parents electronically signed a document on Step Ahead's letterhead indicating that they were "aware of" the rate charged for SETSS and related services provided to the student and that, if the district did not fund the services, they "w[ould] be liable to pay for them" (Parent Ex. C). The contract further indicated that the parents "were aware that the services being provided to [their] child [we]re consistent with those listed in [the student's] IEP/IESP dated 9/01/2022" (id.).<sup>4, 5</sup>

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<sup>1</sup> The hearing record includes duplicate copies of the June 2022 IEP (Parent Ex. B; Dist. Ex. 7). Throughout this decision, citations will be made to the Parent Exhibits when there are duplicates, such as with the June 2022 IEP.

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

<sup>3</sup> The parents, in their due process complaint notice, throughout the hearing, and on appeal, referred to the June 2022 IEP as an individualized education services plan (IESP); however, review of the June 2022 IEP shows that it was not developed for implementation in a parental placement, but for placement in a district "non-specialized" school (Parent Ex. B at p. 14). Accordingly, the June 2022 IEP will be referenced as an IEP herein, except when directly quoting the parents' or district's arguments.

<sup>4</sup> There is no IEP or IESP included in the hearing record bearing the date of September 1, 2022; however, this may have been a typographical error as the June 2022 IEP identified an implementation date of September 1, 2022 (see Parent Ex. B at p. 1).

<sup>5</sup> Step Ahead is a private corporation and 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).

## B. Impartial Hearing Officer Decision

An impartial hearing convened before the Office of Administrative Trials and Hearings (OATH) on April 17, 2024 and concluded on May 9, 2024 after two days of hearings (Tr. pp. 1-70). In a decision dated May 28, 2024, the IHO held that: the district failed to provide the student with a FAPE on an equitable basis for the 2023-24 school year; the parents failed to meet their burden of proving that Step Ahead provided SETSS to the student that met the student's unique educational needs; and the parents sustained their burden of proving that Step Ahead provided the student with appropriate speech-language services as per the June 2022 IEP (IHO Decision at pp. 5-6). With respect to SETSS, the IHO indicated that she was unable to determine "what, if any, SETSS programming was actually administered to the [s]tudent, or whether the [s]tudent [wa]s actually making progress" (*id.* at p. 6). According to the IHO, in contrast to the session notes for SETSS, session notes prepared by the speech provider "consistently detail[ed] the substance of each session," which in conjunction with the progress report demonstrated the speech services being provided to the student and the student's response (*id.*). As relief, the IHO ordered the district to reimburse Step Ahead for the speech-language services provided to the student during the 2023-24 school year and directed the district to reimburse or directly fund four sessions per week of SETSS for the student for the remainder of the 2023-24 school year to be administered "by a qualified provider of the Parent[s'] choosing other than [Step Ahead]" (*id.* at pp. 6-7).

## IV. Appeal for State-Level Review

The parents appeal, alleging that the IHO erred in denying their requested relief. The parents argue that a Burlington/Carter analysis should not apply to an equitable services case, such as the present matter, and that, therefore, the burden of production and persuasion should remain entirely with the district. However, the parents assert that, even under the Burlington/Carter standard, their requested relief should be granted. The parents contend that the SETSS and speech-language providers were providing services consistent with the student's IEP. The parents further argue that they used the services of an agency which employed appropriately credentialed/licensed providers for each service for which funding was requested and the IHO erred in using progress as a determining factor regarding the appropriateness of the delivered SETSS. The parents further assert that equitable considerations favor them.<sup>6</sup> The parents request an award of direct funding to Step Ahead for SETSS delivered to the student during the 2023-24 school year at the rate set by Step Ahead.

The district submits an answer and cross-appeal, in which the district argues that the IHO's determination that the parents failed to prove that the unilaterally obtained SETSS were appropriate for the student should be upheld and cross-appeals from the IHO's finding that the unilaterally obtained speech-language therapy services were appropriate. The district raises a

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<sup>6</sup> The parents also allege that the "IHO, who is not an [sic] a licensed provider, replace[d] the credentialed providers' decision-making process as to what work should have been done to [s]tudent for the program to be implemented appropriately" (Req. for Rev. ¶19). However, the parents cite no authority for this argument. If the parent wanted to present an expert witness to provide evidence of the student's needs and the services being delivered to the student, the parent could have introduced such evidence during the hearing; however, the parents cannot wait until an appeal to attempt to qualify session notes or progress reports as expert testimony without having the providers testify.

number of concerns regarding the entries made in the session notes and asserts that without witness testimony from someone who delivered the services, the parents did not meet their burden. In addition, the district asserts that equities do not favor the parents, noting that the parents did not sign a contract with Step Ahead until seven months after the start of the school year. Finally, the district argues that the IHO's award of compensatory education consisting of SETSS for the remainder of the 2023-24 school year was not an appropriate award and was not requested by the parents.

The parents did not submit an answer to the district's cross-appeal.

## **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).

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]).<sup>7</sup>

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 in a proper case under the IDEA (471 U.S. at 370-71; see Gagliardo, 489 F.3d at 111; Cerra, 427

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<sup>7</sup> 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).

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**

Here, neither party appealed from the IHO's determinations that the student was entitled to services pursuant to the June 2022 IEP and that the district failed to meet its burden to show that it provided the student with services and thus, the district failed to offer the student a FAPE on an equitable basis for the 2023-24 school year (see IHO Decision). Accordingly, these findings have become final and binding on the parties and will not be reviewed on appeal (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; see M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at \*6-\*7, \*10 [S.D.N.Y. Mar. 21, 2013]).

### **A. Unilaterally Obtained Services**

Prior to reaching the substance of the parties' arguments, some consideration must be given to the appropriate legal standard to be applied.

The parents argue that the student's June 2022 IEP was "sufficient to demonstrate [the student's] present levels of performance before services began" and that the Step Ahead providers were simply "delivering the services based on the IESP, which ha[d] detailed discussions, goals and frequency of services" (Req. for Rev. ¶¶ 17-18). The parents' argument highlights some of its own faults as, according to the June 2022 IEP, the student was recommended for placement in a public school and, as Step Ahead is delivering services to the student at a nonpublic school, it cannot be said that Step Ahead is delivering the educational program as recommended in the June 2022 IEP.

Rather, in this matter, the student has been parentally placed in a nonpublic school and the parents do not seek tuition reimbursement for the cost of the student's attendance there. The parents allege that they unilaterally obtained private services from Step Ahead for the student and then commenced due process to obtain remuneration for the services provided by Step Ahead. Accordingly, the issue in this matter is whether the SETSS and speech-language therapy services obtained by the parents from Step Ahead constituted appropriate unilaterally obtained services for the student such that the cost is reimbursable to the parents or, alternatively, should be directly paid by the district to Step Ahead, upon proof that the parents have paid for the services or are legally obligated to pay but do not have adequate funds to do so. "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 IEP 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], cert. denied sub nom., Paulino v. NYC Dep't of

Educ., 2021 WL 78218 [U.S. Jan. 11, 2021], reh'g denied sub nom., De Paulino v. NYC Dep't of Educ., 2021 WL 850719 [U.S. Mar. 8, 2021]; see Carter, 510 U.S. at 14 [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."]). Accordingly, the parents' request for district funding of the privately obtained SETSS and speech-language therapy services at issue here must be assessed under this framework.

In review of the appropriateness of the unilaterally obtained services, the federal standard is instructive. A private school placement must be "proper under the Act" (Carter, 510 U.S. at 12, 15; Burlington, 471 U.S. at 370), i.e., the private school offered an educational program which met the student's special education needs (see Gagliardo, 489 F.3d at 112, 115; Walczak, 142 F.3d at 129). Citing the Rowley standard, the Supreme Court has explained that "when a public school system has defaulted on its obligations under the Act, a private school placement is 'proper under the Act' if the education provided by the private school is 'reasonably calculated to enable the child to receive educational benefits'" (Carter, 510 U.S. at 11; see Rowley, 458 U.S. at 203-04; Frank G. v. Bd. of Educ. of Hyde Park, 459 F.3d 356, 364 [2d Cir. 2006]; see also Gagliardo, 489 F.3d at 115; Berger v. Medina City Sch. Dist., 348 F.3d 513, 522 [6th Cir. 2003] ["evidence of academic progress at a private school does not itself establish that the private placement offers adequate and appropriate education under the IDEA"]). A parent's failure to select a program approved by the State in favor of an unapproved option is not itself a bar to reimbursement (Carter, 510 U.S. at 14). The private school need not employ certified special education teachers or have its own IEP for the student (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., 459 F.3d at 364; 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).

### **1. Student needs**

A brief discussion of the student's needs, which are not in dispute, is warranted to address the issues on appeal. As the district failed in meeting its obligations, the last IEP developed for the student appears to be the June 2022 IEP, which has an implementation period set for the 2022-23 school year (Parent Ex. B). In this instance, the SETSS and speech-language services Step Ahead provided to the student were delivered during the 2023-24 school year (compare Parent Ex. B at p. 10, with Parent Ex. F). Accordingly, it is unclear if the student's present levels of performance and annual goals as set forth in the June 2022 IESP for the 2022-23 school year continued to accurately describe the student's needs during the 2023-24 school year. Nevertheless, some of the only objective testing of the student included in the hearing record is set forth in the June 2022 IESP and a review of the student's present levels of performance as set forth therein is necessary (Parent Ex. B).

The June 2022 IEP reflected the results of several cognitive assessments, administered on unknown dates (Parent Ex. B at p. 1). The IEP reported that, as measured by the Wechsler Preschool and Primary Scale of Intelligence – Fourth Edition (WPPSI-IV), the student's full-scale IQ fell in the "[l]ow [a]verage range" of intellectual functioning (id.). The IEP further reported that the student's performance on the verbal comprehension index fell in the "[b]orderline range" and his performance on the visual spatial index fell in the "[a]verage range" (id.). Next, the IEP indicated that based on the "revised" Brigance Diagnostic Inventory of Early Development and Hawaii Early Learning Profile (HELP) the student was able to sort by color, shape, and type (id.). The student was able to identify primary colors but was unable to identify shapes (id.). The student was also able to stack cubes of varying size, but unable to nest them (id.). According to the IEP, the student did not understand the concept of opposites, such as big/little and day/night, and also did not understand spatial concepts, such as in/out or over/under (id.). He verbally identified body parts and articles of clothing (id.). The IEP indicated the student was able to classify objects including farm animals and modes of transportation (id.). However, he had difficulty describing the features or sounds of animals and while he could identify common objects, he had difficulty describing their function (id.). The student also had difficulty describing the actions of characters in action cards (id.). The IEP indicated that the student "scored in the [b]elow [a]verage range in the Cognitive domain," however, it is not clear from the IEP to which assessment this referred (id.).

The IEP further reported that the student "had no difficulty with quantitative concepts" and could rote count to 10 and give one or two objects when requested (Parent Ex. B at p. 2). Although the IEP noted that the student could count objects using 1:1 correspondence, it also indicated that the student skipped some objects (id.). Additionally, the IEP reported that the student was "unable to follow 1-2 step directions without prompting" (id.).

With regard to the student's communication abilities, the IEP appears to include a description of the student's present levels of performance from an earlier IEP, as well as a report of the student's progress as of the time the IEP was written in June 2022, and therefore includes slightly different descriptions of the student's abilities in this area (Parent Ex. B at pp. 1-5).

The presumed earlier description of the student's communication abilities noted that the student demonstrated receptive language delays and that his limited progress prevented him from understanding spatial concepts and hindered his ability to answer higher order thinking questions such as "why and how" (Parent Ex. B at p. 2). The IEP also noted that the student had difficulty problem solving, predicting, making inferences, and understanding time/sequence concepts (id.). In addition, the student had difficulty understanding the meaning of longer and more complex sentences (id.). According to the IEP, the student required cues and visual stimuli to answer questions, often needed directions repeated, and required repetition and cues to follow directives with two critical elements (id. at p. 3). The student benefitted from repetition and review to help him retain learned information (id.).

According to the June 2022 IEP, the student's articulation skills were deficient which impacted his intelligibility and ability to be understood by others (Parent Ex. B at p. 3). The student was unable to produce certain sounds and was asked to repeat himself in order to be understood (id.). The student had difficulty answering abstract questions, as well as limitations in his ability to describe a scene or object using longer sentences (id.).

In terms of receptive language, the IEP indicated that the student's significant weaknesses affected his ability to answer "WH" questions as quickly as other students and noted that he benefitted from "wait time" to respond to questions (Parent Ex. B at p. 3). The IEP indicated it was challenging for the student to follow the flow of a conversation and that he was reluctant to answer questions in the presence of many people (id.).

According to the IEP, the student also presented with oral motor concerns and had difficulty maintaining a closed-mouth posture, as well as with saliva control (Parent Ex. B at p. 3). In addition, the student demonstrated weaknesses related to maintaining the position of his tongue within his mouth, jaw stability, and appropriate lip pressure and strength (id.). The IEP indicated that the student needed to develop age-appropriate skills related to making inferences, categorization, time/sequence concepts, intelligibility, and rhyming and segmenting words (id.).

It what appears to be an update to the student's communication skills, the June 2022 IEP stated the student had made progress in his receptive language skills and was "now" able to identify familiar objects and people, as well as understand simple questions and respond to them when focused (Parent Ex. B at p. 2). It further stated that the student also showed improvement in his ability to follow unfamiliar one-step directions with two critical elements (id.). The IEP indicated that the student also made improvements in his expressive language skills, more specifically, that he had made progress answering simple questions based on a short story that was read to him, was able to answer simple "wh" questions and used approximately four-word utterances when speaking (id.). According to the IEP, the student's strengths included his ability to identify familiar objects and people, identify photographs of familiar objects, express what he was thinking, and have a conversation with someone (id.). However, the IEP noted the student demonstrated oral motor weaknesses and articulation issues that impacted his speech intelligibility (id.). According to the

IEP, the student's speech contained sound errors and distortions, with saliva pooling in his mouth (id. at p. 2).

According to the IEP, based on caregiver report, the student presented with moderate receptive language delays in addition to oral motor weaknesses and articulation issues, and had difficulty understanding many basic concepts (Parent Ex. B at p. 2). Although the IEP indicated that the student could respond to "wh" questions, it also indicated that he did not consistently respond to simple "wh" questions about a picture (id.). It further indicated that the student had difficulty maintaining a topic during a conversation, did not understand simple reasoning questions, and had difficulty responding appropriately to questions about a story (id.). The IEP noted that the models of intervention that would be used during therapeutic intervention would include articulation drills, picture cards, games, books, manipulatives, worksheets, therapist-made materials, turn-taking games, picture cards/fun decks, and language games (id.).

Turning to the student's social development, the IEP indicated that the student's score in the socialization domain fell in the "[a]dequate range," and alternately that he scored in the "[a]verage range in the [s]ocial/[e]motional [d]evelopment domain," however it did not identify the tool used to assess the student's skills in this area (Parent Ex. B at pp. 3, 4). According to the June 2022 IEP, the student smiled when he received praise or compliments (id. at p. 3). He was able to engage in make believe play and preferred playing with peers to solitary play (id.). In addition, the student was able to manage changes in routine, share toys appropriately, and use words to express his emotions (id. at pp. 3-4). The IEP described the student as well-mannered and generally well-behaved and noted that he generally interacted appropriately with peers and was not hesitant to initiate an activity with them (id. at p. 4). In seemingly contradictory language, the IEP also stated that the student had a preferred peer and had difficulty interacting and having a conversation with other friends (id.). The student needed to be reminded to make eye contact when talking to a friend and would not defend himself when a peer took a toy away from him (id.). The student did not ask for help resolving conflicts (id.). The IEP noted that the student had frequent toileting accidents because he did not always express his wants and needs (id.).

The June 2022 IEP stated that the student had difficulty expressing himself appropriately, as well as persevering on tasks, and he often gave up easily (Parent Ex. B at p. 4). He demonstrated insufficient understanding of directions and questions and had difficulty following through on teacher assigned tasks (id.). The IEP characterized the student's attention span and ability to focus as delayed (id.). According to the IEP, the student attempted to participate in classroom activities but had difficulty answering questions and offering information, and he would not initiate or maintain a conversation with peers or teachers but, he would attempt to approach his teachers to express his wants and needs or to indicate that something was bothering him (id.).

In terms of the student's physical development, the June 2022 IEP stated that the student presented with health and physical development that was within normal limits for his age (Parent Ex. B at p. 1). The student could hold a crayon correctly without difficulty, copy vertical and horizontal strokes, trace simple shapes, color within thick borders, position scissors correctly in his hand, snip the edges of paper, build an eight-block tower, string medium-sized beads, independently assemble a non-interlocking puzzle, and place shapes in a shape sorter (id. at p. 4). In addition, the student could negotiate stairs independently but not while alternating feet, stand on each leg for several seconds, throw and catch a ball, run a ball to its intended target, play

appropriately on low playground equipment, eat neatly with a spoon and fork, and drink from a cup and wash his face and hands independently (*id.*). However, the IEP indicated that the student could not dress or undress himself independently and could not manipulate large buttons or zippers (*id.*). The IEP noted that the student demonstrated an appropriate gait and could run and jump in an appropriate manner (*id.*). It stated that the student's score for daily living skills (ADLs) fell in the "[a]dequate range" but again did not identify the tool used to measure the student's ADLs (*id.*). The IEP stated that the student was toilet trained, able to use a tissue to wipe his nose, able to put on "pull-up" garments, did not cooperate when his hands and face were washed and could not brush his teeth (*id.* at pp. 4-5). The IEP identified the following "supportive strategies" to address the student's management needs: use of visual aids, preferential seating, prompting, use of manipulatives, multi-step verbal directions broken down into short steps, directions simplified and repeated, verbal prompts, refocusing and redirection to stay on task, and use of multi-sensory teaching strategies to sustain attention and concentration (*id.* at p. 5).

Overall, the June 2022 IEP recommended that the student be placed in a public school and receive the support of four periods per week of group SETSS in the student's general education classroom, as well as two 30-minute sessions per week of individual speech-language therapy services delivered in a separate location, therapy room (Parent Ex. B at pp. 10, 14).

## **2. Services from Step Ahead**

The hearing record does not identify what occurred with the student during the 2022-23 school year. During the 2023-24 school year, the student was parentally placed in a nonpublic school and received services from Step Ahead (Parent Exs. F-H).

The hearing record includes a printout that indicates the Step Ahead SETSS provider identified in the session notes and December 2023 SETSS progress report held initial New York State certifications for early childhood education (Birth-Grade 2) and students with disabilities (Birth-Grade 2) (Parent Ex. E at p. 2; *see* Tr. p. 34). Sessions notes submitted by the parent indicated that the student's SETSS were provided in one-hour sessions, primarily between 3:30 p.m. and 4:30 p.m. at the student's school (Parent Ex. F). The sessions took place between September 12, 2023 and April 3, 2023 (Tr. pp. 33-34; Parent Ex. F at p. 1). The session notes written between September and December 2023 included a description of skills addressed during SETSS sessions, such as "read aloud books and asking questions[,] reading sounds upper case A lower case a," "handwriting letter c worksheet," and "abc game centers middle sounds" (Parent Ex. F at pp. 1-7).<sup>8</sup>

A Step Ahead progress report, dated December 22, 2023, indicated that the agency provider was following the recommendations in the student's June 2022 IEP and providing the student with four hours of SETSS per week (Parent Ex. G at p. 1). The SETSS progress report indicated that the student had a desire to learn, despite experiencing a lot of frustration in the classroom (*id.*). It noted that the student was struggling academically, socially, and emotionally (*id.*). The progress

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<sup>8</sup> Subsequent entries on the session notes for January and February 2024 included the date and time that sessions took place but did not include any notes or identify any skills addressed (*id.* at pp. 7-12). Similarly, entries for March 2024 described skills that were addressed by the SETSS provider, but April 2024 session notes did not (Parent Ex. F at pp. 12-14).

report described the student as having "a strong nature," and indicated that he was sometimes stubborn, which made it challenging for the SETSS provider to redirect him (id.). The student did not express his frustration with words, rather he could become disruptive and get out of his seat, call out, and have tantrums (id.). According to the progress report, the student struggled to follow two step directions and needed positive reinforcement and encouragement (id.). He had difficulty persevering on tasks and also understanding questions (id.).

The December 2023 SETSS progress report indicated that the student struggled with math and that his math skills were very weak (Parent Ex. G at p. 1). The student could count from 1-10 but he could not recognize numbers up to 20 without prompts (id.). The student was beginning to write numbers but did not write them with proper proportion or within boundaries (id.). According to the progress note, during math activities the student lost focus and fidgeted with objects (id.). He became easily frustrated with math work and quickly lost his patience (id.). The student required constant prompting and redirection to complete the math task at hand (id.). In terms of reading, the progress report indicated that the student was struggling to learn the letters of the alphabet, including identifying upper- and lower-case letters, and did not always recognize corresponding letter sounds (id. at p. 2). Similar to writing numbers, the student had difficulty writing his full name within boundaries and in proper proportion (id.). The progress report stated that the student needed "lots of redirection, praise, and positive reinforcement" (id.). Turning to writing, the December 2023 SETSS progress report indicated that the student worked very slowly and required prompts, as well as visual and tactile cues (id.). The report noted that the student needed help to hold his pencil correctly and did not easily comprehend one- and two-step tasks (id.). The student struggled to draw basic shapes and required additional time to complete an alphabet worksheet (id.). He became impatient when he needed to write (id.).

The December 2023 progress report summarized the student's language weakness, specifically noting that he struggled to understand stories or directions and had difficulty identifying and labeling some emotions (Parent Ex. G at p. 3). The progress report noted that the student tried to engage in conversation with peers but had a hard time sustaining his engagement and had difficulty articulating words and was therefore at times difficult to understand (id.). With respect to social/emotional functioning, the progress report indicated that it was hard for the student to sit still for long periods of time, and he would stand up and walk around randomly (id.). According to the progress report, the student's SETSS provider would take him outside for "some one-on-one time" (id.). The student had high levels of frustration because instruction and schoolwork were challenging for him (id.). The progress report noted that the student required time to breathe and unwind when schoolwork was hard for him, and he became disappointed when a task was new or challenging (id.). In terms of interpersonal relationships, the progress report indicated that the student would sometimes not listen to adults due to the stress of schoolwork and although the teacher modified the work for him, he did not like to be different from his peers (id.). The student had a challenging time getting along with peers during recess, did not initiate conversations, and needed to be taught how to share and take turns in games (id.). The student worked well in centers but struggled with getting along with many classmates (id.).

The December 2023 progress report indicated that, at the time it was written, the student was working on goals that targeted his ability to identify and write single digit numbers; count to 100; understand the concepts of greater than, less than, and equal; identify letters and their corresponding sounds; match initial letter sounds to pictures; match upper and lower case letters;

draw shapes; write letters; initiate and engage in conversation with peers; ask for help when needed; take turns and wait patiently while playing games with peers; regulate his emotions during difficult tasks; speak intelligibly, improve oral motor skills; answer "wh" question in response to a story read by the teacher, and exhibit more self-control (see Parent Ex. G).

Turning to the provision of speech-language services, the hearing record shows that the provider identified in the session notes and who signed the speech-language progress report held initial certification for teaching students with speech and language disabilities (Parent Ex. E at p. 2; see Tr. p. 35). The Step Ahead session notes show that the student began receiving speech-language therapy on December 21, 2023 (Tr. pp. 35-36; Parent Ex. F at p. 6). The student received approximately 21 30-minute sessions of speech-language therapy between December 21, 2023 and March 27, 2024 (Parent Ex. F at pp. 6-14). According to the session notes, the speech-language therapist addressed such skills as categorization, answering questions related to a book, following directions, ABC sounds, articulation, describing picture scenes, syllabication, identifying opposites, rhyming, sequencing stories, use of descriptive language, encoding and decoding, developing vocabulary, and identifying initial sounds in words (id.).

The December 29, 2023 speech-language progress report from Step Ahead, completed approximately one week after the student began receiving speech-language therapy services, indicated that the agency was providing services in accordance with the student's June 2022 IEP (Parent Ex. H at p. 1). The speech-language progress report stated that the student exhibited delays related to speech intelligibility; understanding, asking and answering "wh" questions; following directions; expressing needs and feelings; using descriptive vocabulary; sequencing; understanding spatial concepts; turn-taking; and maintaining a conversation with teachers and peers (id.). The speech-language progress report listed the student's then-current annual goals, which included increasing speech intelligibility, improving oral motor skills, and answering (orally) "wh" questions in response to a teacher read story, and noted that "[m]oderate [a]ssistance [was] [r]equired" (id. at pp. 1-2).

According to the speech-language progress report, the student's progress was monitored using informal assessments (Parent Ex. H at p. 2). The report stated that the student's progress had been limited since he started treatment in mid-December and noted that the student quickly became distracted and required redirection to stay on task (id.). The speech-language progress report also indicated that the student misarticulated multiple phonemes and that his speech intelligibility was poor (id.). It further noted that the student required assistance with understanding "wh" questions, did not independently express his needs and feelings, and had difficulty taking turns in activities and maintaining a conversation with teachers or peers (id.). The speech-language progress report noted that the student could follow one- to two-step directions with support, required moderate prompting to describe an object, and could not sequence a story (id.). The speech-language progress report included a list of new annual goals that targeted the student's speech intelligibility, ability to follow one- to two-step directions, understanding of sequential concepts, ability to answer "wh" questions, and turn taking skills (id.).

The student's mother testified that the student's private school introduced her to Step Ahead (Tr. p. 50). She indicated that she did not speak with other agencies prior to choosing Step Ahead, and instead went with the private school's recommendation (Tr. pp. 50-51). According to her testimony, Step Ahead provided the student with speech two times a week for approximately 45

minutes and SETSS everyday "for at least a half hour a day, even more" (Tr. pp. 51-52). The student's mother was able to name the student's SETSS provider but could not recall the name of the speech provider (Tr. p. 52). She reported that she spoke with the SETSS provider "[o]ften. Whenever she needs to speak to me about [the student]" (*id.*). She reported that she spoke with the speech provider "once in a while" (Tr. p. 54). The student's mother further stated that the SETSS provider worked on "[w]hatever they're doing in the classroom" including ABCs, reading, and math (Tr. pp. 52-53). She also stated that she was sure she had received progress reports from the student's Step Ahead providers via text message (Tr. p. 55). The mother opined that the student was making progress in speech based on conversations with the speech provider and her observations (Tr. p. 54). She indicated that neither provider had expressed concerns to her regarding the student's progress and noted that the student was "progressing very nicely" (Tr. p. 55). The student's mother stated that speech was "a little bit harder for [the student], but [he was] definitely making his way" (*id.*). She reported that she had communicated with the providers via text and phone calls and that she had met the SETSS provider, but not the speech provider (Tr. pp. 55-56). She stated that she was not aware of the providers' certifications and did not know how many sessions had been provided to the student (Tr. p. 56). She testified that she had "no idea" how many weeks the student would receive services but indicated that it was just during the school year (*id.*). The student's mother reported that the sessions provided by Step Ahead took place in person, in school (Tr. p. 57). She noted that some of the SETSS sessions took place in class and others were pull out sessions (*id.* at pp. 57-58). She also indicated that speech was provided on a pull-out basis (Tr. pp. 57-58).

The hearing record shows that the student received SETSS on a regular basis between September 2023 and the beginning of April 2024; while speech-language services were provided between December 21, 2023 and the beginning of April 2024 on a more sporadic basis (Parent Ex. F). Overall, the session notes show that the SETSS provider worked with the student on letter sounds, reading comprehension, handwriting, shapes and sizes, math, CVC words and vowel sounds, sight words, and sequencing (*see* Parent Ex. F). Similarly, the SETSS progress report indicated that the student needed positive reinforcement, praise, encouragement, prompting and redirection, and visual and tactile cues (Parent Ex. G at pp. 1-3). The progress report indicated that the SETSS provider took the student outside for one-on-one time when he had difficulty sitting and played with the student and another student to work on sharing and turn-taking (*id.* at p. 3).

As noted above, according to the session notes, the Step Ahead speech-language provider addressed the student's needs related to categorization, answering questions related to a book, following directions, letter sounds, articulation, describing picture scenes, syllabication, identifying opposites, rhyming, sequencing stories, use of descriptive language, encoding and decoding, developing vocabulary, and identifying initial sounds in words (Parent Ex. F at pp. 6-9). The speech provider reported that she used games to facilitate descriptive language and to enhance the student's receptive language skills (*id.* at pp. 10-11).

Although neither the SETSS provider nor the speech-language service provider testified during the impartial hearing, the parents established through the session notes and progress reports that the SETSS and speech-language services provided by Step Ahead targeted the student's identified need areas as set forth in the June 2022 IEP and the progress reports. Notably, the district did not object to the parents' submission of the Step Ahead session notes or the progress reports

into the hearing record, accordingly, as the parent's evidence was presented without objection or rebuttal, there is no reason to discount the information as provided in those documents.

As the parents have met their burden of proving that the SETSS provided by Step Ahead afforded the student specially designed instruction adequate to meet the student's unique needs, the IHO's denial of direct funding to Step Ahead for the SETSS provided to the student for the 2023-24 school year must be reversed. Because the district is now directed to fund Step Ahead for the SETSS provide to the student for the entire 2023-24 school year, the IHO's award of compensatory SETSS services for the remainder of the 2023-24 school year is hereby annulled.

Regarding the speech-language services provided to the student by Step Ahead for a portion of the 2023-24 school year, the hearing record reflects that the services were appropriate to address the student's special education needs. As such, that portion of the IHO's order directing the district to reimburse or directly fund Step Ahead's speech-language services upon the submission of an affidavit from Step Ahead stating the dates of services and total hours provided is hereby affirmed.

### **B. Equitable Considerations**

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

Here, the district argues that the rates charged by Step Ahead were excessive; however, the district has failed to support this contention with evidence included in the hearing record. Although a rate study conducted by the "American Institutes of Research" (AIR study report) was admitted into evidence, the hearing record reflects that it was introduced by the district "as a guide for the IHO" (Tr. p. 7; Dist. Ex. 5). As the AIR study report was submitted primarily as general "guidance," and as the hearing record lacks testimony or other evidence explaining the applicability of the AIR study report to the rates sought in this matter or otherwise supporting a



finding that the rates charged by Step Ahead were excessive when compared to prevailing market rates for comparable services, the equities favor awarding the parents full reimbursement to Step Ahead.

To the extent that the district raises arguments regarding the contract entered into the hearing record by the parents, although the timing of the contract is questionable, the hearing record does establish that the parent signed an agreement of some kind with Step Ahead (Tr. p. 51). Additionally, regardless of when the parent signed the contract, the hearing record indicates that services were delivered to the student during the 2023-24 school year (Parent Ex. F-H). Accordingly, the information in the hearing record, although limited, supports awarding funding for the SETSS and speech-language services provided to the student during the 2023-24 school year at the rates specified in the parents' agreement with Step Ahead, specifically \$200 per hour for SETSS and \$250 per hour for speech-language therapy services (see Parent Ex. C at p. 1).

## **VII. Conclusion**

Having determined that the evidence in the hearing record establishes that the parents met their burden of proving that the SETSS and speech-language services provided by Step Ahead were appropriate to meet the unique needs of the student, and that equitable considerations weigh in favor of the requested relief, the necessary inquiry is at an end.

I have considered the parties remaining contentions and find that they are without merit.

**THE APPEAL IS SUSTAINED.**

**THE CROSS-APPEAL IS DISMISSED.**

**IT IS ORDERED** that the IHO's decision dated May 28, 2024 is modified by reversing those portions which determined that the parents failed to establish that the SETSS provided by Step Ahead during the 2023-24 school year were appropriate to meet the student's unique needs; and

**IT IS FURTHER ORDERED** that the IHO's decision dated May 28, 2024 is modified to order the district to directly fund Step Ahead for SETSS provided to the student during the 2023-24 school year at a rate of up to \$200 per hour within forty-five (45) days of the submission of an affidavit from Step Ahead detailing the dates of SETSS and total hours provided; and

**IT IS FURTHER ORDERED** that the IHO's order for the district to reimburse or directly fund up to four sessions per week of SETSS to the student for the remainder of the 2023-24 school year to a qualified provider of the parents' choosing other than Step Ahead at a reasonable market rate is hereby reversed.

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

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**STEVEN KROLAK**  
**STATE REVIEW OFFICER**