



The University of the State of New York

The State Education Department

State Review Officer

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No. 24-371

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

Appearances:

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

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

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from a decision of an impartial hearing officer (IHO) which denied her request that respondent (the district) fund the costs of her son's private special education teacher support services (SETSS) delivered by Always a Step Ahead, Inc. (Step Ahead) for the 2023-24 school year. The district cross-appeals from that portion of the IHO's decision which directed the district to fund speech-language therapy and occupational therapy (OT) delivered by Step Ahead for the 2023-24 school year. 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]). Similarly, when a preschool student in New York is eligible for special education services, the IDEA calls for the creation of an IEP, which is delegated to a local Committee on Preschool Special Education (CPSE) that includes, but

is not limited to, parents, teachers, an individual who can interpret the instructional implications of evaluation results, and a chairperson that falls within statutory criteria (Educ. Law § 4410; see 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.1[mm], 200.3, 200.4[d][2], 200.16; see also 34 CFR 300.804). 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]).

Additionally, 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 programming 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.

Briefly, the CPSE convened on July 28, 2021, found the student eligible for special education as a preschool student with a disability and developed an IEP for the student (see Parent Ex. B). The CPSE recommended that the student receive four 60-minute sessions per week of special education itinerant teacher (SEIT) services in a group of two, two 30-minute sessions per week of individual speech-language therapy, and two 30-minute sessions per week of individual OT (id. at pp. 1, 16).¹

Subsequently, on March 23, 2023, the CSE convened and found the student eligible for special education as a student with a speech or language impairment (see Dist. Ex. 1). The March 2023 CSE developed an IESP for the student and recommended related services of two 30-minute sessions per week of individual speech-language therapy and two 30-minute sessions per week of individual OT (Dist. Ex. 1 at p. 8).

A. Due Process Complaint Notice

In a due process complaint notice dated May 24, 2024, the parent alleged that the district denied the student a free appropriate public education (FAPE) for the 2023-24 school year (see generally Parent Ex. A). The parent asserted that the last program developed by the district that she agreed with was the July 2021 IEP and argued that the student required that same program for

¹ State law defines SEIT services (or, as referenced in State regulation, "Special Education Itinerant Services" [SEIS]) as "an approved program provided by a certified special education teacher . . . , at a site . . . , including but not limited to an approved or licensed prekindergarten or head start program; the child's home; . . . or a child care location" (Educ. Law § 4410[1][k]; 8 NYCRR 200.16[i][3][ii]; see "[SEIS] for Preschool Children with Disabilities," Office of Special Educ. Field Advisory [Oct. 2015], available at <https://www.nysed.gov/special-education/special-education-itinerant-services-preschool-children-disabilities>). A list of New York State approved special education programs, including SEIS programs, can be accessed at: <https://www.nysed.gov/special-education/approved-preschool-special-education-programs>.

the 2023-24 school year (id.). The parent argued that she was unable to locate providers at the district standard rates for the 2023-24 school year and that the district did not supply providers to implement the services (id.). According to the parent, she was able to find providers to deliver all required services for the 2023-24 school year, but at rates higher than the standard district rates (id.). As relief, the parent requested a determination as to the student's pendency placement and an order directing the district to fund the student's special education teacher, speech-language therapy, and OT at enhanced rates for the 2023-24 school year (id. at p. 2). The parent also requested any other relief deemed appropriate (id.). The district submitted a response to the parent's due process complaint notice (see Parent Ex. F).

On April 14, 2024, the parent electronically signed a document on Step Ahead's letterhead indicating that she was "aware that the services being provided to [her] child [we]re consistent with those listed in [the July 2021 IEP]" (Parent Ex. C).² She also indicated that she was "aware that the rate of the related services provided to [her] child [we]re \$250 an hour" and the special education teacher support services (SETSS) "provided to [her] child [were] \$200 an hour" and that if the district did not pay for the services she would be liable for them (id.).³

B. Impartial Hearing Officer Decision

An impartial hearing convened and concluded before an IHO appointed by the Office of Administrative Trials and Hearings (OATH) on July, 2024 (see Tr. pp. 1-36). Prior to the impartial hearing, the IHO issued an "IHO Rules for Omnibus Cases" as an "Interim Order" for all cases to which she was currently assigned (see IHO Omnibus Rules).

In a decision dated July 26, 2024, the IHO held that the district failed to implement the services recommended in the March 2023 IESP and failed to offer an explanation as to why SETSS were not recommended for the student for the 2023-24 school year (IHO Decision at p. 7). Therefore, the IHO concluded that the district failed to meet its burden that it offered the student a FAPE (id.). In connection with the parent's request for funding of SETSS, the IHO found that the hearing "record [wa]s also devoid of information regarding [p]arent's disagreement with subsequent IEPs, why [the p]arent believe[d] [the s]tudent should continue to receive SETSS, or why the provider believe[d] [the s]tudent should continue to receive 4 hours of SETSS" (id.). In reviewing the March 2023 IESP, the IHO stated that most concerns were noted in the area of speech and language, the parent did not express any academic concerns, and the parent also stated that the student "had made great progress over the past year" (id.). Next, the IHO referenced the student's SETSS progress report which indicated that the services focused on reading, writing, math, language, and social/emotional skills (id.). The IHO also noted that the SETSS progress report stated that the student was on grade level for math and reading, struggled with reading comprehension, and functioned at the prekindergarten level in writing (id.). However, the SETSS progress report further indicated that the student was "way below grade level" in all areas (id.).

² 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).

³ SETSS is not defined in the State continuum of special education services (see 8 NYCRR 200.6). As has been laid out in prior administrative proceedings, the term is not used anywhere other than within this school district and a static and reliable definition of "SETSS" does not exist within the district.

The IHO found nothing in the hearing record to "reconcile the apparent discrepancy" and found that the evidence did not support a finding that the student required four hours per week of SETSS (id.).

Next, the IHO determined that both the speech-language therapy and OT provided by Step Ahead were appropriate for the student (IHO Decision at pp. 7-8). The IHO found that the evidence in the hearing record described the student's needs and how the speech-language therapy and OT addressed the student's needs (id. at pp. 7-8).

In connection with equitable considerations, despite arguments by the district, the IHO found that the agreement to pay for the related services was valid and the parent was responsible for the cost of the services if the district failed to pay (IHO Decision at p. 8). The IHO found that the fact that the parent did not sign the agreement until April 14, 2024 was "inconsequential" and the district failed to offer what constituted a reasonable rate for the related services (id.). Accordingly, the IHO ordered the district to fund the speech-language therapy and OT at the contracted for rate less any legal fees paid either "directly or indirectly" by the agency on behalf of the parent (id.).

IV. Appeal for State-Level Review

The parent appeals, alleging that the IHO erred in finding that she did not meet her burden to prove that unilaterally obtained SETSS from Step Ahead were appropriate. The parent asserts that a Burlington/Carter analysis should not apply in this matter and also argues that, if a Burlington/Carter analysis is applied, she is entitled to the requested relief. The parent argues that she utilized the services of Step Ahead, which used "appropriately credentialed/license[d] providers" to deliver the SETSS for which funding was requested and that the providers followed the detailed discussions, goals, and frequency of services the district itself created and recommended in the July 2021 IEP. The parent also argues that, while it should not be considered, the student's March 2023 IESP similarly demonstrated that the student "required substantial academic help" and further detailed the student's present levels of performance.⁴ Next, the parent asserts that there was no reason or explanation why the district failed to recommend SETSS for the student. The parent contends that the progress report detailed the student's present levels in math, reading, writing, language, and social/emotional functioning and further described the "modifications and methods" used by the SETSS provider to address each area of need. Furthermore, the parent asserts that even if SETSS are not awarded, "SETSS delivered under pendency should be funded under [the s]tudent's automatic entitlement to pendency."⁵

Regarding equitable considerations, the parent argues that the agreement with Step Ahead, which was signed by the parent, established the parent's legal obligation to pay for the SETSS and related services. In addition, the parent asserts that the 10-day notice rule does not apply to matters

⁴ The parent argues that the IHO erred by allowing the March 2023 IESP into evidence as it was not timely disclosed five days prior to the impartial hearing.

⁵ It is unclear what the parent is seeking based on this general allegation in the request for review. Furthermore, there is no discussion of pendency in the hearing record, and it is unclear whether the student did receive any services under pendency (see Tr. pp. 1-36). Therefore, the issue of pendency will not be further discussed.

arising under Education Law § 3602-c or in instances where the district did not offer a placement, but, even if it did apply, reduction or denial of reimbursement is not authorized when, as here, the parent did not receive a procedural safeguards notice from the district. The parent argues that the evidence in the hearing record fully supports 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.

In an answer with cross-appeal, the district responds to the parent's allegations and argues that the IHO correctly determined that the parent did not meet her burden to prove the appropriateness of SETSS from Step Ahead for the 2023-24 school year. As a cross-appeal, the district argues that the IHO should have denied funding for speech-language therapy and OT services as the hearing record did not establish that the services delivered to the student were appropriate. Additionally, the district asserts that should it be determined that the services from Step Ahead were appropriate, relief should be denied on equitable grounds.

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]).⁶ "Boards of education of all school districts of the state shall furnish services to students who are residents of this state and who attend nonpublic schools located in such school districts, upon the written request of the parent" (Educ. Law § 3602-c[2][a]). In such circumstances, the district of location's CSE must review the request for services and "develop an [IESP] for the student based on the student's individual needs in the same manner and with the same contents as an [IEP]" (Educ. Law § 3602-c[2][b][1]). The CSE must "assure that special education programs and services are made available to students with disabilities attending nonpublic schools located within the school district on an equitable basis, as compared to special education programs and services provided to other students with disabilities attending public or nonpublic schools located within the school district (*id.*).⁷ Thus, under State law an eligible New

⁶ State law provides that "services" includes "education for students with disabilities," which means "special educational programs designed to serve persons who meet the definition of children with disabilities set forth in [Education Law § 4401(1)]" (Educ. Law § 3602-c[1][a], [d]).

⁷ 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

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

Here, the district did not appeal from the IHO's determination that the district failed to meet its burden to prove that it implemented the student's IESP for the 2023-24 school year or that the recommendations in the IESP were appropriate without a recommendation for SETSS and, thus, that the district failed to offer the student a FAPE for the 2023-24 school year, and neither party has appealed from the IHO's finding any amounts awarded for related services would be reduced by any attorney fees directly or indirectly paid by the agency on behalf of the parent (IHO Decision at pp. 7-8). 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. In this matter, the student has been parentally placed in a nonpublic school and the parent does not seek tuition reimbursement for the cost of the student's attendance there. The parent alleged that she 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, speech-language therapy, and OT services obtained by the parent from Step Ahead constituted appropriate unilaterally obtained services for the student such that the cost is reimbursable to the parent or, alternatively, should be directly paid by the district to Step Ahead, upon proof that the parent has paid for the services or is legally obligated to pay but does not have adequate funds to do so. "Parents who are dissatisfied with their child's education can unilaterally change their child's

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.

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."]).⁸

Accordingly, the parent's request for district funding of the privately obtained SETSS, speech-language therapy, and OT services at issue here must be assessed under this framework. That is, a board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents if the 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; Burlington, 471 U.S. at 369-70; R.E., 694 F.3d at 184-85; T.P., 554 F.3d at 252).

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

⁸ State law provides that the parent has the obligation to establish that a unilateral placement is appropriate, which in this case is the special education services that the parent obtained from Step Ahead for the student (Educ. Law § 4404[1][c]).

§ 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's Needs

Although not in dispute, a discussion of the student's needs provides context to resolve the issue on appeal, namely whether the SETSS, speech-language therapy, and OT services delivered by Step Ahead were appropriate to meet the student's needs.

Although the March 2023 IESP includes a description of the student's academic, social, and physical needs, the present levels of performance appear to be primarily cut and paste from the student's July 2021 preschool IEP (compare Dist. Ex. 1, with Parent Ex. B). Notably, much of the description of the student is prefaced by the phrase "As per the previous IESP"; however, there is no previous IESP in the hearing record, only the July 2021 IEP (Dist. Ex. 1 at pp. 1-4).

The July 2021 IEP was developed when the student was three and a half years old and included the results of standardized testing completed on an unknown date (Parent Ex. B at p. 3). According to the IEP, the student's overall level of cognitive ability, as measured by the Stanford Binet Intelligence Scale – Fifth Edition (SB-5), fell in the borderline delayed range (full scale IQ 72) (id.). In addition, the student's adaptive behavior composite, as measured by parent responses to the Vineland Adaptive Behavior Scales, fell in the moderately low range with domain scores suggesting a relative weakness in communication (id. at pp. 3-4). Administration of the Clinical Evaluation of Language Fundamentals – Preschool 3 (CELF P3) yielded a core language score of 93 which placed the student's skills in the low average range (id. at p. 4). The IEP indicated that the student exhibited inconsistent understanding of prepositions and negation, difficulty following one- to two-step directions, inconsistent use of copula and auxiliary be forms, and limited receptive and expressive vocabulary (id.). The student spoke in short phrases and sentences of one to three words and typically only in response to questions (id.). The IEP indicated

that the student's performance on the Goldman-Fristoe Test of Articulation – Third Edition (GFTA-3) resulted in a standard score of 70 and noted that consistent with parent report the student's speech was mostly unintelligible and contained many speech sound errors (*id.* at p. 4). Administration of the Peabody Developmental Motor Scales – Second Edition (PDMS-II) revealed weaknesses in the student's fine motor, visual motor, and sensory processing skills (*id.*).

The July 2021 IEP indicated that the student was able to recall where objects were placed and replicate the examiner's block banging task, follow prepositional directives and combine an action and object in response to instructions, and make comparisons between objects with respect to quantity and size (Parent Ex. B at p. 5). The IEP noted that the student was unable to communicate with his peers or attempt to join them in play as he often moved from area to area without establishing real play (*id.* at p. 7). The IEP further noted that the student did not readily attempt to communicate with his peers or express his wants and needs due to weaknesses in expressive language and articulation (*id.*).

The March 2023 IESP, developed when the student was five years old, included the same test scores as the July 2021 IEP (compare Parent Ex. B at pp 3-9, with Dist. Ex. 1 at pp. 1-4). In addition, the IESP included a notation that, at the student's March 2022 "Turning Five" conference, the parent did not have any academic concerns and the student had made great progress over the past year (Dist. Ex. 1 at p. 2). The IESP indicated that, as reported by the student's mother, the student could follow one-step but not multi-step directions, could recognize letters in his name but not letter sounds, was able to answer basic "wh" questions inconsistently, could rote count to 11 but did not recognize numbers, had made improvements in social interactions and could engage in and initiate conversations, and presented with intelligible speech and spoke in more than six word sentences (*id.*). The IESP indicated that the student was in kindergarten and was learning the English alphabet but also that "he receive[d] both Hebrew and English during the school day" (*id.* at pp. 2-3). The IESP identified modifications and resources needed to address the student's management needs including multisensory activities and lessons; scaffolding, prompting and encouragement to complete tasks; repeated instructions and feedback; increased amounts of modeling, demonstration, and guided practice; repetition and rephrasing as needed; work broken down and rewards for small gains; use of a daily planner to help organize, track, and encourage independence; use of positive reinforcement, praise, and encouragement; reading/math drills to improve fluency; modeling of step-by-step problem solving; and preferential seating/transition warnings (*id.* at p. 4). However, the present levels of performance of the March 2023 IESP mostly consisted of descriptions of the student's strength and weaknesses borrowed from his July 2021 preschool IEP and also included essentially the same annual goals (compare Parent Ex. B at pp. 3-15, with Dist. Ex. 1 at pp. 1-8).

The progress reports completed by the student's private providers included some additional detail regarding the student's educational needs during the 2023-24 school year.

According to the December 2023 speech-language therapy progress report, the student exhibited delays in his expressive and receptive language and articulation skills (Parent Ex. J at p. 1; see Parent Ex. E at p. 1) at p. 1). Specifically, the Step Ahead speech-language pathologist reported the student was able to answer comprehension questions related to a story with prompting but experienced difficulty with higher level questions (i.e., "how" and "why") and forming inferences based on story information (*id.*). In addition, he "grapple[d] with problem-solving and

critical thinking tasks" (id.). The speech-language pathologist reported that the student often used incomplete sentences or nonspecific language and frequently omitted crucial details when summarizing information retelling a story or interpreting picture cards (id.). The provider further indicated that the student was able to follow single-step directions; however, he struggled with unrelated multistep directions often requiring multiple repetitions to complete a task (id.). Finally, the speech-language pathologist reported that the student's articulation delays impacted his intelligibility and had a "negative impact on his speech" (id.).

Additionally, the December 2023 speech-language therapy progress report indicated that the student was "incorporating copulas and auxiliary forms when describing uncomplicated images of play scenes, aided by modeling," had expanded his vocabulary "through the labeling of a specific set of curriculum-based target words," and that when provided with modeling, he was able to follow one to two step directions that involved spatial and negation concepts (Parent Ex. J at p. 2). Additionally, the student did not consistently utilize two-to-four-word phrases when making requests, comments or asking questions during social and play activities (id.). Finally, the speech-language pathologist reported that the student had difficulty producing /th/ in the final position and /r/ phonemes in all positions across various contexts (id.).

According to the January 2024 OT progress report, the student exhibited delays in his fine motor skills, visual perceptual and visual motor skills, sensory processing ability, motor planning skills, balance and gross motor coordination, ability to follow directions, and graphomotor skills and noted that delays in these areas "hinder[ed] his ability to participate in classroom activities and achieve age-appropriate skills" (Parent Ex. L at p. 1). The occupational therapist indicated that the student's graphomotor delays were manifested by his "inability to write within appropriate boundaries or with appropriate sizing, directionality and shaping of letters and numbers thus requiring verbal and visual cueing" (id. at p. 2). The occupational therapist indicated that the student was able to imitate vertical and horizontal strokes and copy a circle and a cross with minimal verbal cues (id.). With regard to visual perception, the occupational therapist reported that the student could complete a 24-piece interlocking puzzle with minimal cues; however, he required moderate assistance while completing discriminatory and visual scanning tasks (id.). Additionally, the student had difficulty with ocular motor tasks such as fixating on an object, tracking, convergence, and divergence as well as moving his eyes quickly back and forth (id.). The occupational therapist further reported that the student could string beads and lace a board with good motor control, reproduce a 3-dimensional block design and properly align the blocks with minimal cueing (id.). The student continued to experience difficulty "manipulating a few small coins at a time while translating pennies to palm and vice versa" (id.). The occupational therapist indicated that the student could use scissors with appropriate positioning; however, he continued to deviate from the line while cutting and did not "utilize scissors with increased fluidity" (id.). The occupational therapist further reported that the student was unable to perform balancing and gross motor coordination exercises (i.e., jumping jacks, hopping on one foot) with fluidity, and he struggled to alternate his feet while going up or down stairs (id.). Finally, the student had difficulty following multistep verbal directions, was easily distracted, and was unable to sustain attention for more than 10 minutes (id.). The student was able to demonstrate appropriate emotional control using techniques such as deep breathing, deep pressure, and moderate verbal cueing (id.).

According to a January 2024 special education progress report, the student was receiving four hours per week of individual SETSS which focused on building reading, writing, math, language, and social-emotional skills (Parent Ex. K at p. 1). The special education teacher (teacher) reported that the student was on grade level for math, could rote count to twenty and identify numerals 1-10; however, she noted that the student's difficulty with focusing led to "careless mistakes" and that he occasionally skipped numbers when counting (id.). The teacher further reported that the student was on grade level in reading; however, she explained that he struggled with reading comprehension and was "generally unable to answer simple questions on the story or sequence cards" (id. at p. 2). Additionally, the teacher noted that the student had mastered the letters of the alphabet but would sometimes confuse the sounds (id.). In writing, the teacher reported the student was functioning on a pre-kindergarten level, specifically noting that he had difficulty holding a pencil or crayon properly, which was impacting his ability to trace, copy, and write letters and shapes (id. at p. 3). With regard to the student's language skills, the progress report indicated that he was deficient in both expressive and receptive language development; he struggled to express himself clearly and to initiate with peers (id. at p. 2). Receptively, the teacher reported that the student grasped concepts taught in class and could answer questions; however, his "weak attention span and struggle focusing prevent[ed] him from fully comprehending the lesson" (id. at p. 3). Additionally, the teacher reported that the student had difficulty following directions properly and required 1:1 explicit instruction (id.). Finally, the teacher reported that the student had deficits in his social-emotional skills, specifically describing that while he enjoyed playing and got along well with peers, his "wild and excited nature often impeded his relationships" and he would grab things he wanted and would jump from one activity to the next (id.).

2. Unilateral Services From Step Ahead

As noted above, the hearing record shows that, for the 2023-24 school year or portions thereof, the parent obtained SETSS, speech-language therapy, and OT from Step Ahead (Parent Exs. C; I; J-L) and the parent seeks direct funding to Step Ahead for the costs of those services.

Initially, the parent asserts that she was implementing the same educational program as recommended by the district; however, the hearing record does not bear out this contention. Review of the March 2023 IESP showed that the CSE recommended the student receive two 30-minute sessions weekly of individual speech-language therapy and two 30-minute sessions weekly of individual OT (Dist. Ex. 1 at p. 8). In addition, even going back to the July 2021 IEP—although the IEP included recommendations for similar related services—the IEP recommended four hours per week of group SEIT services to be delivered in Yiddish and to be provided in an early childhood program selected by the parent (Parent Ex. B at p. 16). Review of the hearing record shows that the student began receiving SETSS, OT, and speech-language therapy on September 11, 2023 which continued through March 27, 2024 (Parent Ex. I; see Parent Exs. C; J-L). However, there is no explanation in the hearing record as to how the SETSS provided as an individual pull-out service by Step Ahead during the 2023-24 school year would have equated to the group SEIT services as recommended in the July 2021 IEP (compare Parent Ex. B, with Parent Ex. K).

Nevertheless, the test for whether a unilateral placement is appropriate is whether it provides instruction specially designed to meet the unique needs of the student. Accordingly, if

under the totality of the circumstances, the SETSS, OT, and speech-language therapy provided to the student during the 2023-24 school year addressed the student's needs, then they were appropriate regardless of whether they mimicked the district's recommended educational programming.

The December 2023 speech-language therapy progress report provided a description of the student's language and articulation needs and indicated that he was mandated to receive 60 minutes of individual speech-language therapy per week to address his receptive, expressive and articulation skills (Parent Ex. J at p. 1). The speech-language progress report included "new" annual goals designed to improve the student's ability to: increase expressive language skills by retelling and summarizing information using complete sentences, sequencing events and problem solving based on a picture story; increase his receptive language skills by responding to comprehension questions, following multiple step directions, making inferences, forming predictions, and drawing conclusions based on a picture story; increase his literacy skills by decoding and encoding consonant vowel consonant CVC, CVCV, and CVVC words; and improve his articulation skills by producing /th/ and /r/ in all positions when prompted by the clinician (*id.* at p. 3). The speech-language pathologist's session notes indicated the student demonstrated progress in his ability to imitate words containing the voiced /th/ sound as well as imitating words ending in "-ing" (Parent Ex. I at pp. 3, 8).

With regard to the student's fine, sensory, and visual motor needs the occupational therapist indicated that the student received 60 minutes of individual OT per week to address his identified needs (Parent Ex. L at p. 1). The occupational therapist described the student's progress on current goals, as discussed in detail above, and recommended approximately seven annual goals to address the student's graphomotor skills during writing activities; general processing skills such as following multiple step verbal and visual directions and remaining focused throughout a task for 15 minutes; to improve oculomotor, visual motor perceptual skills by completing 24-48 interlocking puzzles, word search, hidden pictures, and discriminatory tasks; to improve motor planning, gross motor coordination and balance; to improve self-emotional control and regulation skills; to tolerate upper body and core strengthening exercises for 10 minutes each session; and to improve fine motor coordination and manipulation of classroom materials and equipment (*id.* at p. 3).

Turning next to the SETSS services unilaterally obtained by the parent, the hearing record shows that the student had identified needs in the areas of academics, attention, and social-emotional skills (Parent Exs. J-L). According to the January 2024 SETSS progress report, the teacher employed a variety of interventions and strategies while providing instruction to the student including: a multisensory approach in reading, writing, math, and language skills; explicit instruction and behavior charts to assist with focusing and comprehension; and modeling and reinforcement of social skills (Parent Ex. K at p. 4). Further, the teacher recommended the following annual goals designed to improve the student's ability to: count to 100; count forward beginning from a given number within the known sequence; ask and answer questions about key details in a text, with prompting and support; apply grade level phonics and word analysis skills in decoding words, demonstrate basic knowledge on one-to-one letter sound correspondences by producing the primary sound or many of the most frequent sounds for each consonant, associate long and short sounds with common spellings, and distinguish between similarly spelled words by identifying the sounds of the letter that differ; demonstrate command of the conventions of

standard English grammar and usage when writing or speaking, print many upper-case and lowercase letters, use frequently occurring nouns and verbs, form regular plural nouns orally by adding "s" or "es," understand and use question words, use the most frequently occurring prepositions, and produce and expand complete sentences in shared language activities; demonstrate command of the conventions of standard English capitalization, punctuation and spelling when writing, capitalize the first word in a sentence and the pronoun, recognize and name end punctuation, write a letter or letters for most consonant and short vowel sounds, and spell simple words phonetically drawing on knowledge of sound-letter relationships (id. at pp. 1-3).

Furthermore, the hearing record includes a fillable document that reflected the names of the speech-language pathologist, occupational therapist, and SETSS provider, dates of sessions, times in and times out, and locations, with areas to describe goals and notes (session notes) (see Parent Ex. I). In addition, the hearing record included a document reflecting the State licensure and registration of the providers to practice as a speech-language pathologist, occupational therapist, and special education teachers (see Parent Ex. E). The combined session notes indicated that the student began services on September 11, 2023 and continued through to March 27, 2024 (see generally Parent Ex. I). Review of the session notes from the speech-language pathologist showed that the student was provided with 30-minute therapy sessions at the student's school from September 11, 2023 through March 27, 2024 (see Parent Ex. I). While none of the entries stated the annual goals targeted during a particular session, the notes from the sessions detailed the skills and activities the speech-language pathologist worked on with the student (see Parent Ex. I). The session notes from the occupational therapist demonstrated that the student received 30-minute therapy sessions at the student's school beginning on September 12, 2023 through March 26, 2024 (see Parent Ex. I). Again, none of the entries for the occupational therapist contained goals but did detail work with the student on his fine motor and visual motor skills (see Parent Ex. I). The session notes from the various SETSS providers indicated that the student received either 60-minute sessions or three-hour sessions starting on September 11, 2023 through March 26, 2024 (see Parent Ex. I). Although the SETSS providers did not identify goals, there were notes reflecting that the student was working on "letter-sound recognition, writing, numbers," alphabet awareness, math, reading words, and reviewing sight words (Parent Ex. I at pp. 1-9, 16-23). All of the skills being worked on were identified needs in the March 2023 IESP (see Dist. Ex. 1 at p. 2).

Based on the foregoing, while it would be preferable to have the testimony of the speech-language pathologist, occupational therapist, and SETSS providers at the impartial hearing, there is nonetheless sufficient documentary evidence to show that the student received speech-language therapy, OT, and SETSS from Step Ahead and that such services addressed the student's identified needs related to language, fine motor, and visual skills, as well as reading, writing, and mathematics during the 2023-24 school year. In light of the foregoing, the evidence in the hearing record supports a finding that the parent sustained her burden to prove that the unilaterally-obtained speech-language therapy, OT, and SETSS delivered by Step Ahead were appropriate to meet the student's needs.

Accordingly, I find a sufficient basis to overturn the IHO's finding that the parent failed to meet her burden that the unilaterally obtained SETSS were appropriate for the student and, moreover, looking at the SETSS, speech-language therapy, and OT services, as a whole, there was sufficient evidence to show that they were appropriate for the student for the 2023-24 school year.

B. Equitable Considerations

The final criterion for a reimbursement award is that the parents' claim must be supported by equitable considerations. Equitable considerations are relevant to fashioning relief under the IDEA (Burlington, 471 U.S. at 374; R.E., 694 F.3d at 185, 194; M.C. v. Voluntown Bd. of Educ., 226 F.3d 60, 68 [2d Cir. 2000]; see Carter, 510 U.S. at 16 ["Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable"]; L.K. v. New York City Dep't of Educ., 674 Fed. App'x 100, 101 [2d Cir. Jan. 19, 2017]). With respect to equitable considerations, the IDEA also provides that reimbursement may be reduced or denied when parents fail to raise the appropriateness of an IEP in a timely manner, fail to make their child available for evaluation by the district, or upon a finding of unreasonableness with respect to the actions taken by the parents (20 U.S.C. § 1412[a][10][C][iii]; 34 CFR 300.148[d]; E.M. v. New York City Dep't of Educ., 758 F.3d 442, 461 [2d Cir. 2014] [identifying factors relevant to equitable considerations, including whether the withdrawal of the student from public school was justified, whether the parent provided adequate notice, whether the amount of the private school tuition was reasonable, possible scholarships or other financial aid from the private school, and any fraud or collusion on the part of the parent or private school]; C.L., 744 F.3d at 840 [noting that "[i]mportant to the equitable consideration is whether the parents obstructed or were uncooperative in the school district's efforts to meet its obligations under the IDEA"]).

1. 10-day/CSE Notice of Placement

The parent asserts that she was not required to provide 10-day notice because it was an equitable services matter and the student had not been removed from a public-school placement (Req. for Rev. ¶ 25). Additionally, the parent claims that she was not required to provide 10-day notice because the district did not provide the parent with a copy of the procedural safeguards notice. The district asserts that equitable considerations do not favor any relief for the parent.

Reimbursement may be reduced or denied if parents do not provide notice of the unilateral placement either at the most recent CSE meeting prior to their removal of the student from public school, or by written notice ten business days before such removal, "that they were rejecting the placement proposed by the public agency to provide a [FAPE] to their child, including stating their concerns and their intent to enroll their child in a private school at public expense" (20 U.S.C. § 1412[a][10][C][iii][I]; see 34 CFR 300.148[d][1]). This statutory provision "serves the important purpose of giving the school system an opportunity, before the child is removed, to assemble a team, evaluate the child, devise an appropriate plan, and determine whether a [FAPE] can be provided in the public schools" (Greenland Sch. Dist. v. Amy N., 358 F.3d 150, 160 [1st Cir. 2004]). Although a reduction in reimbursement is discretionary, courts have upheld the denial of reimbursement in cases where it was shown that parents failed to comply with this statutory provision (Greenland, 358 F.3d at 160; Ms. M. v. Portland Sch. Comm., 360 F.3d 267 [1st Cir. 2004]; Berger v. Medina City Sch. Dist., 348 F.3d 513, 523-24 [6th Cir. 2003]; Rafferty v. Cranston Public Sch. Comm., 315 F.3d 21, 27 [1st Cir. 2002]); see Frank G., 459 F.3d at 376; Voluntown, 226 F.3d at 68).

Here, there is no evidence in the hearing record that the parent submitted a ten-day notice to the district. In fact, based on the evidence in the hearing record, the parent did not inform the district about her dissatisfaction with the recommended program until she filed the due process complaint notice, dated May 24, 2024 (see generally Parent Ex. A).

The IDEA provides that an award of reimbursement may not be reduced or denied if the parent did not receive a procedural safeguards notice (20 U.S.C. § 1412[a][10][C][iv][I][bb]; 34 CFR 300.148[e][1][ii]; see 20 U.S.C. § 1415; 34 CFR 300.504). Ultimately, however, there was no argument or allegation during the impartial hearing regarding either the lack of 10-day notice or a lack of procedural safeguards notice or prior written notice. The IHO should utilize the prehearing conference procedures to discuss with the parties whether such issues are germane to the matter before her so that the parties are on notice and the hearing record is properly developed (see 8 NYCRR 200.5[j][3][xi]). While the hearing record does not include a 10-day notice from the parent, given the lack of discussion during the impartial hearing and the undeveloped state of the hearing record, I decline to exercise my discretion to reduce the award of district funding for the unilaterally-obtained services based solely on equitable grounds of the absence of a 10-day notice.

However, the session notes submitted by the parent indicate that the student received SETSS and related services from September 11, 2023 and continuing through to March 27, 2024 (see generally Parent Ex. I). The impartial hearing in this matter was held on July 11, 2024, after the conclusion of the 2023-24 school year (Tr. pp. 1-36). Accordingly, the parent had ample opportunity to have submitted session notes for the entirety of the 2023-24 school year but she elected not to do so. Therefore, any award shall be limited to direct funding for the SETSS and related services that the hearing record shows were actually provided to the student, services delivered between September 11, 2023 and March 27, 2024 (Parent Ex. I).

Lastly, the parties did not appeal the IHO's finding that the district's funding of the speech-language therapy and OT services be at the contracted rate minus any part of the rate "that represents counsel/legal fees, directly or indirectly paid by the [p]rovider [a]gency on behalf of the parent" (IHO Decision at p. 8). Also, the parent did not appeal the IHO's order for the parent to submit an affirmation "setting forth the amount of the rate, if any, that represents counsel/legal fees, directly or indirectly paid by [Step Ahead] on behalf of the parent" (id.). Therefore, the parent is directed to comply with the IHO's directive. In addition, in my discretion, for consistency, funding of the SETSS will be awarded at the contract rate minus any part of the rate that represents counsel/legal fees, directly or indirectly paid by Step Ahead on behalf of the parent. In connection with the SETSS, the parent will be required to submit a similar affirmation describing what amount of the rate, if any, constitutes legal fees.⁹

⁹ The due process hearing provisions in the IDEA do not authorize an administrative hearing officer to grant relief in the form of attorney's fees, and instead, at least in this jurisdiction, "in any action or proceeding brought under the IDEA, a court 'may award reasonable attorneys' fees...to a prevailing party who is the parent of a child with a disability'" (S.J. v. New York City Dep't of Educ., 2022 WL 1409578, at *1 [2d Cir. May 4, 2022]; see 20 U.S.C. § 1415[i][3][B][i][I]). Thus, it would not be permissible for the IHO or the undersigned to award any reimbursement related to attorney fees or expenses, and I note that the parent's attorney failed to clarify on the record whether Step Ahead was responsible for or facilitating the collection of the attorney fees for the parent.

VII. Conclusion

Having found that the parent sustained her burden of demonstrating the appropriateness of the unilaterally-obtained SETSS from Step Ahead and further having found that the speech-language therapy and OT services were appropriate for the student, and that equitable considerations weigh in favor of the parent's requested relief, the necessary inquiry is at an end.

THE APPEAL IS SUSTAINED.

THE CROSS-APPEAL IS DISMISSED.

IT IS ORDERED that the IHO's decision dated July 26, 2024, is modified by reversing those portions which found that the parent did not meet her burden to prove that the unilaterally-obtained SETSS from Step Ahead were appropriate, and which denied the parent's request for the district to fund the unilaterally-obtained SETSS delivered by Step Ahead during the 2023-24 school year; and,

IT IS FURTHER ORDERED that, upon proof of delivery, the district shall directly fund the costs of up to four hours per week of SETSS delivered to the student by Step Ahead during the 2023-24 school year for the period of September 11, 2023 and continuing through to March 27, 2024; and,

IT IS FURTHER ORDERED that the unilaterally obtained speech-language therapy and OT services delivered to the student by Step Ahead shall be directly funded by the district for the period of September 11, 2023 and continuing through to March 27, 2024; and,

IT IS FURTHER ORDERED that the rate of the SETSS, speech-language therapy, and OT services shall be at the contract rate minus any part of the rate that represents counsel/legal fees, directly or indirectly paid by Step Ahead on behalf of the parent.

Dated: **Albany, New York**
 October 25, 2024

STEVEN KROLAK
STATE REVIEW OFFICER

While awarding attorney fees is not permissible in a due process proceeding, it is a permissible to inquire and determine the extent which any fees may be part of any of relief sought from the IHO, whether the inquiry is directed at the staff of the private school, the private company, or the parent. There is no evidence in the hearing record, or specifically within the parent's contract with Step Ahead, that suggests Step Ahead incorporated the costs of attorney's fees within the hourly rate it charges for SETSS and related services (see Parent Ex. C; see generally Tr. pp. 1-36; Parent Exs. A-L; Dist. Ex. 1); however, it is worth noting that it would be permissible for an IHO or district to further develop a hearing record to confirm whether an agency is paying the fees for a parent's attorney such that they are being included in the relief sought by the parent at the impartial hearing.