# CASE NUMBER: Enter # if known. - NYC: Enter #.

## FINDINGS OF FACT AND DECISION

Case Number: Re-enter NYC case #.

Student’s Name[[1]](#footnote-1): Enter name. (“Student”)

Date of Birth: Enter DOB.

School District: Enter name.

Hearing Requested by: Enter name. (“Parent(s)”)

Enter name or delete unused box.

Request Date/Date Complaint Filed: Enter date.

Date(s) of Hearing: Enter date.

Enter date or delete unused box.

Enter date or delete unused box.

Enter date or delete unused box.

Actual Record Closed Date: Enter date (must precede date of signature).

Date of Decision: Enter date (must be same as date of signature).

Date of Distribution (if Different than Decision Date): Enter date if applicable.

Time Sensitive Choose an item.

Hearing Officer: Enter your name.

### NAMES AND TITLES OF PERSONS WHO APPEARED ON Enter date.

For the Student:

Enter information. Press “enter” to add more as needed.

For the Department of Education:

Enter information. Press “enter” to add more as needed.

### NAMES AND TITLES OF PERSONS WHO APPEARED ON Enter date or delete this section.

For the Student:

Enter information. Press “enter” to add more as needed.

For the Department of Education:

Enter information. Press “enter” to add more as needed.

### NAMES AND TITLES OF PERSONS WHO APPEARED ON Enter date or delete this section.

For the Student:

Enter information. Press “enter” to add more as needed.

For the Department of Education:

Enter information. Press “enter” to add more as needed.

### NAMES AND TITLES OF PERSONS WHO APPEARED ON Enter date or delete this section.

For the Student:

Enter information. Press “enter” to add more as needed.

For the Department of Education:

Enter information. Press “enter” to add more as needed.

## INTRODUCTION

This is a decision in a hearing under the [Individuals with Disabilities Education Act (“IDEA”), the New York Education Law, and/or Section 504 of the Rehabilitation Act of 1973]. The [Parent/District] filed this case on Enter date..

## PROCEDURAL HISTORY

[Enter text of relevant information, dates, and references to exhibits as appropriate including, but not limited to, the following:

* Due Process Complaint allegations and DOE's Response;
* IHO appointment;
* Hearing date, parent representation, and DOE representation;
* Resolution meeting, pre-hearing conference, and summary of motions filed and significant agreements or rulings prior to the due process hearing and your decision;
* Extensions to the decision timeline; and
* Written closing arguments or briefs.]

I held a hearing on Enter date. It was a [closed/open] hearing. Parent [was/was not represented by [Enter name.]]. DOE was represented by Enter name. Parent entered into evidence exhibits Enter information . DOE entered into evidence exhibits Enter information[[2]](#footnote-2).

## FINDINGS OF FACT

[Enter text of relevant information, dates, and references to exhibits as appropriate including, but not limited to, the following:

* Student’s age, grade, and disability classification;
* Special education services and placement;
* Additional information relating to student’s disability and circumstances;
* Recommendations; and
* Allegations noted in the Due Process Complaint.]

## CONCLUSIONS OF LAW AND ANALYSIS

After a full review of the record generated at hearing, I make the following findings of fact and determinations.

[Identify IEP if in record, otherwise merely describe the child – diagnosis, classification, abilities, and needs.]

*Burden*

School districts have the burden of proof, including the burden of persuasion and burden of production, in IDEA due process hearings, except that a parent or person in parental relationship seeking tuition reimbursement for a unilateral parental placement has the burden of persuasion and burden of production on the appropriateness of such placement (NYS Educ. Law § 4404(1)(c)).

*Prong I*

The IDEA provides that children with disabilities are entitled to a Free Appropriate Public Education ("FAPE") (20 U.S.C. § 1400 (d)(1)(A). A FAPE consists of specialized education and related services designed to meet a student’s unique needs, provided in conformity with a comprehensive written Individualized Education Program (“IEP”) (34 C.F.R. § 300.13). A school district has offered a student a FAPE when (a) the board of education complies with the procedural requirements set forth in the IDEA; and (b) the IEP is developed through the IDEA's procedures and is reasonably calculated to enable the student to receive educational benefits *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206-07 (1982). In order to meet its substantive FAPE obligations, a district must offer a student an IEP that is “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S.Ct. 988, 999 (2017).

As to Prong I of the *Burlington/Carter* standard, the DOE failed to meet its burden, at hearing. [Rather, the DOE Representative indicated on the record that it conceded Prong I, presenting no witnesses or other evidence. ([DATE] transcript)]. Therefore, I am constrained to find that the DOE failed to offer the Student FAPE for the [DATE] school year. Moreover, a review of the record herein establishes that the weight of the evidence supports the conclusion that the DOE failed to offer the Student an educational program reasonably calculated to offer FAPE for the [DATE] school year.

[OR – WHEN THE IEP IS OFFERED BUT NO WITNESSES

As to Prong I of the *Burlington/Carter* standard, the DOE failed to meet its burden. While the DOE submitted {DOCUMENT} into the record, a review of same offers no explanation as to how the CSE made its recommendation, how the IEP appropriately describes the Student, or whether the IEP is meaningfully calculated to confer educational benefit. In short, the DOE declined to “offer a cogent and responsive explanation for their decisions” in creating that IEP, and it is “through the IEP that “[t]he ‘free appropriate public education’ required by the Act is tailored to the unique needs of” a particular child”. *Endrew F.*, 137 S.Ct. at 1002. Therefore, I find that the DOE failed to offer the Student FAPE for the [DATE] school year. ]

*Prong II*

A private school placement must be "proper under the Act." *Florence County Sch. Dist.*

*Four v. Carter*, 510 U.S. 7, 12, 15 (1993); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985). This means that the private school must offer an educational program which met the student's special education needs. See *Gagliardo v. Arlington Cent. Sch. Dist.*, 489 F.3d 105, 112, 115 (2d Cir. 2007); *Walczak v. Fla. Union Free Sch. Dist.*, 142 F.3d 119, 129 (2d Cir. 1998). 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)" Subject to certain limited exceptions, 'the same considerations and criteria that apply in determining whether the [s]chool [d]istrict's placement is appropriate should be considered in determining the appropriateness of the parents' placement.'" *Gagliardo*, 489 F.3d at 112, quoting *Frank G. v. Bd. of Educ. of Hyde Park*, 459 F.3d 356, 364 (2d Cir. 2006)

Parents need not show that the placement provides every special service necessary to maximize the student's potential. *Frank G.*, 459 F.3d at 364-65. When determining whether a unilateral placement is appropriate, "[u]ltimately, the issue turns on" whether the placement is "reasonably calculated to enable the child to receive educational benefits." *Frank G.*, 459 F.3d at 364; see *Gagliardo*, 489 F.3d at 115. 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).

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).

[Private School Description – what do they do, how do they do it for the Student?]

I find that Parent has met their burden in proving that the private program offered an educational program which met Student’s need under Prong II of the *Burlington/Carter* standard. [Evidence of Progress if offered and cite to record]

In reviewing [summarize remaining evidence, if any], the weight of the evidence establishes that Student’s individual special education needs were addressed by the private school and that the instruction offered was "reasonably calculated to enable the child to receive educational benefits." *Frank G.*, 459 F.3d at 364. I note that the DOE offered no arguments concerning the appropriateness of Parent’s unilateral placement, nor challenging the equities in this action. I further note that the DOE did not cross-examine any of Parent’s witnesses, nor objected to any document accepted into the record. Under these circumstances, I find that the Parent’s witnesses are credible.

*Equities*

Even if a parent establishes a right to reimbursement under the IDEA, "courts retain discretion to reduce the amount of a reimbursement award if the equities so warrant." *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 246-47, 129 S. Ct. 2484, 174 L. Ed. 2d 168 (2009) In making that equitable determination, a hearing officer may consider many factors, including, inter alia, whether a parent’s unilateral withdrawal of her child from the public school was justified, whether the parent provided the Department with adequate notice of the withdrawal, whether the amount of private-school tuition was reasonable, whether the parent should have availed herself of need-based scholarships or other financial aid from the private school, and whether there was any fraud or collusion in generating (or inflating) the tuition to be charged to the Department, or whether the arrangement with the school was fraudulent or collusive in any other respect. *E.M. v. New York City Dep't of Educ.*, 758 F.3d 442, 461 (2d Cir. 2014).

Here, Parent provided the necessary Ten-Days’ Notice of their concerns with the DOE’s offer of FAPE for the Student for the [DATE] school year. Therein, Parent detailed specific concerns. [EXHIBIT]. Parent furthermore, gave the DOE notice of their intention to unilaterally place the Student at the Private School. *Id*. No evidence was submitted at hearing describing the DOE’s response to the Ten-Day Letter.

[{PROSPECTIVE TUITION FUNDING} By way of relief, Parent seeks reimbursement for their private school tuition costs and to have the balance of unpaid tuition sent directly to the Private School. Direct tuition funding is relief encompassed by the equitable remedial powers inherent in IDEA. See e.g. *Mr. and Mrs. A. v. New York City Dep't of Educ.*, 769 F. Supp. 2d 403, 406 (S.D.N.Y. 2011)(parents may seek direct funding in the instance in which, “due to a lack of financial resources, [parents of a student with a disability] have not made tuition payments but are legally obligated to do so”) Having reviewed [EVIDENCE], I find that the unilateral tuition costs far exceed the Parent’ income. [EXHIBIT]. Equity demands that the DOE fund Student’s Private School tuition in this instance.

I find no issue with the reasonableness of the costs, including tuition, associated with the Private School. See [EXHIBIT]. Student attended the Private School during the years at issue. [EXHIBIT]. [Furthermore, I find that the Private School developed a described a comprehensive remote learning plan for periods of time in-person instruction would be suspended during the COVID-19 pandemic.] [EXHIBIT] Moreover, I find that the weight of the evidence establishes that Parent cooperated with the DOE and its CSE’s efforts to develop an IEP and recommend a program and placement for the [DATE] school year. [EXHIBIT] Overall and after considering the record at hearing, I find that the equities support Parent’s claim for tuition reimbursement [and direct funding].

## ORDER

NOW, THEREFORE, IN LIGHT OF THE ABOVE FINDINGS OF FACT, IT IS HEREBY **ORDERED THAT**:

(1) Parent’s claim for tuition reimbursement for the Student’s unilateral placement [, as well as direct tuition funding,] at the Private School is GRANTED for the [DATE] school year as follows:

1. The District shall reimburse the Parent in the amount of [$$$$] [*merge with paragraph above if pure reimbursement*]
2. [The District shall directly fund the balance of the Student’s tuition at the Private School in an amount not to exceed [$$$$$];

(2) The District shall reimburse the Parent for the cost of tuition at the Private School as described above within [##] days of submission of proof of payment. [; and,]

[(3) The District shall pay to the Private School the remainder of any tuition funds, totaling [$$$$$] dollars within [##] days of submission of a signed, notarized bill encompassing tuition costs owed by the Parent to the Private School for the Student’s attendance at the Private School for the [DATE] school year.]

**SO ORDERED.**

DATED: Enter date.

Impartial Hearing Officer

## NOTICE OF RIGHT TO APPEAL

Within 40 days of the date of this decision, the parent and/or the Public-School District has a right to appeal the decision to a State Review Officer (SRO) of the New York State Education Department under section 4404 of the Education Law and the Individuals with Disabilities Education Act.

If either party plans to appeal the decision, a notice of intention to seek review shall be personally served upon the opposing party no later than 25 days after the date of the decision sought to be reviewed.

An appealing party’s request for review shall be personally served upon the opposing party within 40 days from the date of the decision sought to be reviewed. An appealing party shall file the notice of intention to seek review, notice of request for review, request for review, and proof of service with the Office of State Review of the State Education Department within two days after service of the request for review is complete. The rules of procedure for appeals before an SRO are found in Part 279 of the Regulations of the Commissioner of Education. A copy of the rules in Part 279 and model forms are available at <http://www.sro.nysed.gov>.

## APPENDIX A – REDACTION IDENTIFICATION PAGE

| **Term Used In FOFD** | **Redacted Information** |
| --- | --- |
| Student |  |
| Parent/Guardian |  |
| Parent Attorney/Representative |  |
| District Attorney/Representative |  |
| School |  |
| District |  |
| [Fill in] |  |
| [Fill in] |  |
| [Fill in] |  |
| [Fill in] |  |

**Submit this page to the parent and doe only.**

**Do not submit this page to nysed.**

## APPENDIX B – DOCUMENTATION ENTERED INTO THE RECORD

### PARENT EXHIBITS

|  |  |  |  |
| --- | --- | --- | --- |
| **Exhibit** | **Document** | **Date** | **Pages** |
|  | Enter information. Press tab key. | Enter information. Press tab key. | Enter # of pages. Press tab key. |

### DOE EXHIBITS

|  |  |  |  |
| --- | --- | --- | --- |
| **Exhibit** | **Document** | **Date** | **Pages** |
|  | Enter information. Press tab key. | Enter information. Press tab key. | Enter # of pages. Press tab key. |

### IHO EXHIBITS

|  |  |  |  |
| --- | --- | --- | --- |
| **Exhibit** | **Document** | **Date** | **Pages** |
|  | Enter information. Press tab key. | Enter information. Press tab key. | Enter # of pages. Press tab key. |

1. Personally identifiable information is attached as Appendix A, “Redaction Identification Page,” to this decision and must be removed prior to public distribution. [↑](#footnote-ref-1)
2. A more detailed list of the admitted exhibits is attached as Appendix B, “Documentation Entered Into the Record,” to this decision. [↑](#footnote-ref-2)