SAMPLE LEGAL CONCLUSIONS

The Individuals with Disabilities Education Act (IDEA)[2] and the related case law[3] have established a multi-step analysis for tuition reimbursement. The basic steps include (1) whether the district's proposed IEP was appropriate, (2) whether the parents' unilateral placement was appropriate, and (3) the equities, including whether the parent provided the requisite timely notice.

In this case, given the District's admission that its proposed IEP did not meet the IDEA standards for appropriateness, the issues concern the second and third steps. Dividing and re-sequencing the equities step into its chronological and conceptual subparts, the threshold issue is whether the Parent provided the requisite notice.

Timely Notice

Specifically, the legislation requires the Parent to "inform the IEP Team that they were rejecting the [proposed] placement . . ., including stating their concerns and their intent to enroll their child in a private school at public expense."[4] The proof is preponderant in this case that the Parent sufficiently informed the District that they rejected the proposed placement.[5]

However, assuming arguendo that the Parents concerns about the proposed placement and their threat amounted to the requisite intent for unilateral enrollment, the evidence is preponderant that the Parent did not convey to the District that the placement was intended to be at public expense. First, the middle school principal's testimony was persuasive that the Parent's words did not extend to this elevated level of threat, while the Parent's "must have" recollection was self-serving without support.[6] Second, parents who are dissatisfied with public school programs have the right to disenroll their child in favor of private placement at their own expense. The statutory requirement for the parents to specifically inform a district that the placement is intended to be at public expense provides the opportunity for the district to resolve the situation prior to the child's removal, which is the obvious purpose of this timely notice requirement.[7] The parents' statement must be reasonably clear,[8] which is not

---

[2] 20 U.S.C. § 1412(a)(10)(C) (2012); 34 C.F.R. § 300.148 (2013).

[3] E.g., Forest Grove Sch. Dist. v. T.A., 557 U.S. 230 (2009); Florence Cnty. Sch. Dist. Four v. Carter, 510 U.S. 7 (1993); Sch. Comm. of Burlington v. Dep't of Educ. of Massachusetts, 471 U.S. 359 (1985).

[4] 20 U.S.C. §§ 1412(a)(10)(C)(iii)(I)(aa). Neither the evidence nor the arguments in this case raised the alternative for the requisite timely notice, which concerns written notice at least 10 business days before the child's removal. *Id.* § 1412(a)(10)(C)(iii)(I)(bb).

[5] See factual finding (FF) #3.

[6] See *supra* note 1 and accompanying text.

[7] E.g., W.M. v. Lakeland Cent. Sch. Dist., 783 F. Supp. 2d 497, 506 (S.D.N.Y. 2011) ("The statutory framework contemplates that the School District will be given an

what happened here. Thus, the answer to the first issue is this case is No, the Parent did not provide the IDEA-prescribed notice for tuition reimbursement.

Upon the lack of the specified notice, the IDEA authorizes reduction or denial of tuition reimbursement as a discretionary not mandatory matter.[9] The applicable case law illustrates the wide breadth of this discretion.[10] In this case, given that timely notice is part of the overall equities applicable in tuition reimbursement cases,[11] I shall address the second issue prior to my final determination.[12]

Unilateral Placement

The Second Circuit has made clear that the applicable standard for the appropriateness of the unilateral placement is the substantive standard under the Supreme Court's landmark decision in *Board of Education v. Rowley*[13]—whether it is reasonably calculated to enable the child to obtain educational benefit.[14] More specifically, the Second Circuit has held that "[a] unilateral private placement is only appropriate if it provides 'education instruction *specifically* designed to meet the *unique* needs of a handicapped child.'"[15] In contrast, the procedural requirements of the IDEA, including the approval status of the school and the certification of its teachers, are not material factors in determining whether a parent's unilateral placement is appropriate.[16] In addition, the IDEA

---

opportunity to develop a FAPE within the District's own schools—thus saving the cost of reimbursement—but here the plaintiffs' initially inadequate notice made this more difficult").

[8] *See id.*

[9] 20 U.S.C. § 1412(a)(10)(C)(iii): "The cost of reimbursement … may be reduced or denied …."

[10] *Compare* S.W. v. New York City Dep't of Educ., 646 F. Supp. 2d 346 (S.D.N.Y. 2009); A.H. v. New York City Dep't of Educ., 652 F. Supp. 2d 297 (E.D.N.Y. 2009), *aff'd on other grounds*, 394 F. App'x 718 (2d Cir. 2010) (strict), *with* R.E. v. New York City Dep't of Educ., 785 F. Supp. 2d 28 (S.D.N.Y. 2011), *rev'd on other grounds*, 694 F.3d 167 (2d Cir. 2012), *cert. denied*, 133 S. Ct. 2802 (2013); M.M. v. New York City Dep't of Educ., ___ F. Supp. 2d ___ (S.D.N.Y. 2014); C.U. v. New York City Dep't of Educ., ___ F. Supp. 2d ___ (S.D.N.Y. 2014) (not strict).

[11] The IDEA not only provides reimbursement as part of the adjudicator's broad equitable authority (*id.* § 1415(i)(2)(C)(iii)) but also specifies—in accordance with *Burlington* and *Carter*—a broader balancing of the equities for this remedy (*id.* § 1412(a)(10)(C)(iii)(III)).

[12] This approach also has the advantage of judicial economy. Specifically, if this decision is appealed and the answer to the first issue is reversed, the reversing authority—whether at the review officer or judicial level—need not remand for an initial determination of the second, interrelated issue.

[13] 458 U.S. 176 (1982).

[14] E.g., Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105 (2d Cir. 2007).

[15] *Id.* at 115 (citing the *Rowley* quotation in Frank G. v. Bd. of Educ., 459 F.3d 356, 365 (2d Cir. 2006)).

[16] E.g., *Florence Cnty. Sch. Dist. v. Carter*, 510 U.S. at 14.

preference for the least restrictive environment (LRE) is a pertinent but not primary consideration.[17]

Applying the totality of factors in this case, the conclusion is rather clear that Exemplary meets the relevant test for the Student. Its program provided specially designed instruction to meet the Student's unique needs.[18] Moreover, although not essential, the Student evidenced notable progress in these particular areas of need.[19] These primary factors in this case outweighed the LRE consideration.[20]

Overall Application

Finally, inasmuch as the parties have stipulated that the Parent's conduct, other than the timely notice issue, was not unreasonable in terms of the final equities step,[21] my considered conclusion is to follow the case law approach of equitable reduction rather than absolute denial of reimbursement.[22] Given at least that one of the purposes of this requirement is to cause the District to put a priority of addressing the perceived deficiencies of the IEP and that the Parent in this case provided no notice rather than slightly delayed notice,[23] reimbursement is reduced by 50% for the first year at Exemplary.[24]

---

[17] E.g., C.L. v. Scarsdale Union Free Sch. Dist., 744 F.3d 826, 836-37 (2d Cir. 2014) (citing M.S. v. Bd. of Educ., 231 F.3d 96, 105 (2d Cir. 2000)).

[18] See FF #10.

[19] See FF #11.

[20] For a similar analysis, see, e.g., C.L. v. Scarsdale Union Free Sch. Dist., 744 F.3d 826 (2d Cir. 2014); V.S. v. Dep't of Educ., __ F. Supp. 2d __ (S.D.N.Y. 2014); M.M. v. Dep't of Educ., __ F. Supp. 2d __ (S.D.N.Y. 2014).

[21] 20 U.S.C. § 1412(a)(10)(C)(iii)(III).

[22] E.g., W.M. v. Lakeland Cent. Sch. Dist., 783 F. Supp. 2d 497 (S.D.N.Y. 2011); G.B. v. Tuxedo Union Free Sch. Dist., 751 F. Supp. 2d 552 (S.D.N.Y. 2010).

[23] For these two considerations, see, e.g., C.U. v. New York City Dep't of Educ., __ F. Supp. 2d __, __ (S.D.N.Y. 2014). Although the parent effectively provided notice by filing for the hearing a few months later, it was too late to avoid the typical effect of enrollment, which is—absent any evidence to the contrary—for the analytical unit of a year both from the perspective of the enrollment contract and instructional continuity.

[24] This approach affords the District the opportunity to re-convene the CSE and formulate a procedurally and substantively appropriate IEP for the coming second year.