



The University of the State of New York

The State Education Department State Review Officer

No. 07-107

Application of a CHILD WITH A DISABILITY, by her 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:

Skyer, Castro, Foley & Gersten, attorney for petitioners, Sonia Mendez-Castro, Esq., of counsel

Hon. Michael A. Cardozo, Corporation Counsel, attorney for respondent, Daniel J. Schneider, Esq., of counsel

DECISION

Petitioners appeal from the decision of an impartial hearing officer which denied their request to be reimbursed for their daughter's tuition costs at the Adelphi School (Adelphi) for the 2006-07 school year. The appeal must be dismissed.

As a preliminary matter, petitioners attached to their petition a February 2004 neuropsychological evaluation report, which they request be accepted as additional documentary evidence for review on appeal. Generally, documentary evidence not presented at a hearing may be considered in an appeal from an impartial hearing officer's decision only if such additional evidence could not have been offered at the time of the hearing and the evidence is necessary in order to render a decision (see, e.g., Application of the Bd. of Educ., Appeal No. 06-044; Application of the Bd. of Educ., Appeal No. 06-040; Application of a Child with a Disability, Appeal No. 05-080; Application of a Child with a Disability, Appeal No. 05-068; Application of the Bd. of Educ., Appeal No. 04-068). I note that the 2004 evaluation report was available at the time of the impartial hearing, and accordingly, could have been offered into evidence at the impartial hearing. Therefore, I decline to accept the 2004 evaluation report as additional evidence as it was available at the time of the impartial hearing and it is not necessary in order to render a decision in this case.

At the commencement of the impartial hearing in July 2007, the student attended Adelphi in an 8:1 regular education classroom, participated in Adelphi's "Project Succeed"¹ program, and received special education teacher support services (SETSS) and related services of speech-language therapy and occupational therapy (OT) through respondent's providers in accordance with the recommendations set forth in her 2006-07 individualized education program (IEP) (Tr. pp. 9, 125, 134, 137-38; Parent Ex. B at pp. 1, 17, 19). The Commissioner of Education has not approved Adelphi as a school with which school districts may contract to instruct students with disabilities (8 NYCRR 200.1[d], 200.7). The student's eligibility for special education programs and services and classification as a student with a speech or language impairment are not in dispute in this proceeding (Tr. p. 7; see 8 NYCRR 200.1[zz][11]).

Petitioners' daughter initially received services, including speech-language therapy, through early intervention (Tr. pp. 27-28). At age three, she was classified as a student with a disability (id.). The student attended respondent's district from kindergarten through third grade. The student's mother reported that for the first couple of years, the student attended small classes with 12-13 students, two teachers, and an aide (Tr. p. 29). In third grade, the student was placed in a regular education classroom using a collaborative team teaching (CTT) approach (see Tr. pp. 29-30, 32). After third grade, petitioners unilaterally placed their daughter at Adelphi, where she has remained through the present time (Tr. pp. 9, 29-30, 32-33).

In 2006, in preparation for the student's annual review, respondent obtained progress reports from the student's speech-language therapist, occupational therapist, and current teachers at Adelphi (Parent Ex. F; see Tr. p. 97). The March 1, 2006 progress report from the student's speech-language therapist revealed that she demonstrated emerging expressive and receptive language skills (Parent Ex. F at p. 3). The report further indicated emerging skills in the student's ability to answer a variety of question forms, describe similarities and differences, and sequence pictures to tell a story (id.). The evaluator commented that the student did not yet demonstrate "consistent independence in following her speech schedule" and that she required "reminders and follow-ups" to regularly attend therapy (id.). Overall, the evaluator opined that the student demonstrated some progress when prompted in all areas, and that she required prompts "to remain on topic in both verbal expression and in writing" (id.). Lastly, the evaluator noted that the student processed information slowly and benefited from "increased time to provide correct answers" (id.). She recommended that the student continue speech-language therapy as mandated and continue to work on her established goals (id. at p. 4).

The student's occupational therapist prepared a progress report, dated March 1, 2006, which described the student as "cooperative and motivated during therapy sessions" (Parent Ex. F at p. 5). The therapist noted that she attended "well to the task at hand" and worked "well independently" (id.). The therapist observed that the student could "follow multiple step instructions" (id.). The student continued to work to improve her "overall motor control, strength and endurance" but "[h]igher level coordination/motor planning tasks" remained challenging for her (id.). The student's therapy primarily focused on improving her cursive

¹ According to the testimony of the "Project Succeed" program coordinator, the student's participation in "Project Succeed" included a study skills course, 1:1 meetings with the "Project Succeed" teacher, extra tutoring for exams or projects, and outlines (Tr. pp. 134-35).

writing, with an emphasis on letter formations, sizing alignment, pressure and spacing (id.). In addition, the therapist noted that the student continued to work to improve her visual-perceptual skills and that she demonstrated continued improvement with respect to her in-hand manipulation skills (id. at p. 6). With respect to the student's goals and objectives, the progress report noted emerging skills in her ability to accurately copy an age-appropriate form from a paper in front of her using a pencil, and that she could complete a 24-piece interlocking puzzle (id. at p. 5). The therapist observed that, if done slowly, the student could independently tie her own shoe while wearing it on her foot (id.). The progress report also indicated emerging skills in the student's ability to use a dynamic tripod grasp when writing with a pencil, as well as her ability to copy a five to six line paragraph using correct letter formation, sizing and spacing (id.). The therapist recommended continued OT to work on improving the student's balance, coordination, endurance, graphomotor skills, fine motor skills, and visual perceptual skills (id. at p. 6).

A May 10, 2006 progress report from the student's current teachers at Adelphi revealed "good" progress in English, history, science, math, art, music, and library class; and "average" progress in creative writing and Spanish (Parent Ex. F at pp. 1-2). Her English teacher described the student as a "very sweet young lady" who "trie[d] her best in class and work[ed] to her full potential" (id. at p. 1). She indicated that the student performed well on spelling tests and could prepare for class without too many reminders (id.). The student's creative writing teacher noted that the student had "great ideas" and could create an essay with help (id.). Her creative writing teacher also commented that the student needed to list her ideas in simple sentences and then piece them together (id.). The student's history teacher commented that the student "complete[d] all of her homework" and was "prepared for class" (id.). She indicated that, when asked, the student could answer questions; however, her history teacher wanted her to participate more in class (id.). The student's science teacher reported that she "work[ed] well in groups and in science lab" and that she did a "great job with her science fair project" (id.). The student's math teacher observed that she could "copy notes a little quicker this term" and that although she was focused, the student needed help when it was time to complete problems (id. at p. 2).

The student's teacher who instructed her in English, creative writing, library, history, science, and math, estimated in the progress report that the student performed at the third grade level in both reading proficiency (decoding and reading comprehension) and math proficiency (calculations and word problems) (Dist. Ex. F at p. 8). In decoding, the student could "sound out words" she did not understand; in reading comprehension, the student could "take information and answer questions based on it" but needed "teacher help with explanation" (id.). Regarding the student's calculations, the teacher reported that she performed "much better with her multiplication" and that she was learning "how to use it in her calculations" (id.). The student could solve one-step word problems, but demonstrated difficulty with two-step word problems (id.). The student could, however, solve two-step word problems with assistance (id.).

The same Adelphi teacher also commented in the progress report on the student's abilities in communication arts (receptive language skills, expressive language skills and writing skills), peer interactions, adult interactions, homework, and class participation (Parent Ex. F at p. 8). Addressing the student's receptive language skills, the teacher indicated that the student could understand tasks given to her in the classroom (id.). With regard to her expressive language

skills, the teacher noted that the student needed two to three repetitions to understand or to advise the teacher "what she will be doing" (id.). Regarding the student's writing skills, the teacher indicated that the student's handwriting needed improvement (id.). The teacher reported positive peer and adult interactions, that the student always completed her homework, and that she wanted to see the student participate more in class discussions (id.).

On May 19, 2006, respondent's Committee on Special Education (CSE) convened to conduct the student's annual review and to prepare the student's 2006-07 IEP (Parent Ex. B at p. 1). The following individuals attended the CSE meeting: the student's mother and father; respondent's district representative, school psychologist, school social worker, and special education teacher; the student's then-current regular education teacher at Adelphi; and Adelphi's special education coordinator (id. at p. 2). The Adelphi participants attended the CSE meeting via telephone (id.).

Under the present levels of performance, the CSE described the student as a student with a speech or language impairment who currently attended Adelphi in an "integrated" classroom with participation in "Project Succeed," and who received weekly speech-language therapy and OT (Parent Ex. B at p. 3). The IEP indicated that based upon reports by the student's current teachers, she performed well in school and made a "great deal of improvement" receiving grades of "A" or "B" in most of her classes (id.). At that time, the student's teachers estimated that she read between the third and fourth grade levels, with a fourth grade instructional level; that she had weak writing skills within the low third grade level; and that her math skills were between the third and fourth grade levels, with a similar instructional level (id.). In addition, the IEP noted the student was easily distracted and required redirection, which could be adequately performed by the classroom teacher (id.). The IEP also summarized the results from the student's most recent evaluation in March 2004 (id.).

With respect to academic management needs, the CSE recommended the following: "redirection and refocusing as needed; preferential seating to maximize attention and concentration; simplify task instructions; multi-sensory aides to be incorporated into language loaded assignments; frequent repetition, review and rephrasing; allow for additional time to complete in-class assignments and exams; frequent encouragement, feedback and praise" (Parent Ex. B at pp. 3-4).

Under the student's social/ emotional performance, the IEP indicated that the student was very social and interacted well with peers and adults (Parent Ex. B at p. 5). The IEP described the student's behavior as age appropriate, and that the student's teacher could provide adequate behavioral support (id.).

Based upon the information obtained, the CSE recommended a regular education inclusion classroom (13:1) using a CTT approach with the additional support of SETSS five periods per week in an 8:1 setting (Parent Ex. B at pp. 1, 17-18). The CSE continued to recommend weekly speech-language therapy and OT (id. at pp. 1, 18). The CSE developed annual goals and short-term objectives to address the student's identified areas of need in math, reading/decoding, reading comprehension, writing, organization, attention, handwriting, visual-motor perceptual skills, expressive language skills, and receptive language skills (id. at pp. 7-16).

In addition, the CSE recommended testing modifications and accommodations, as well as modified criteria for promotion (*id.* at pp. 17, 19). The IEP indicated that the CSE considered, but rejected, the following program and/or service recommendations: a regular education setting without SETSS; a 12:1 special class; and a 12:1:1 special class in a specialized school (*id.* at p. 18).

Petitioners received a Notice of Recommended Deferred Placement, dated May 22, 2006, which indicated that they should receive a Final Notice of Recommendation (FNR) notifying them of a "specific site" for their daughter based upon the CSE's recommendations "on or before August 15, 2006" (Parent Ex. C). Petitioners signed the Notice on May 25, 2006, noting their consent to defer the program as recommended (*id.*). In mid-June 2006, petitioners received the student's finalized 2006-07 IEP, reviewed it, and determined that the IEP was consistent with the program recommendations described at the May 19, 2006 CSE meeting (Tr. pp. 68-69). By FNR dated July 7, 2006, which petitioners assert they received on July 20, 2006, respondent offered their daughter a placement at a specific public school site (Parent Ex. D at pp. 1-2; *see* Tr. pp. 44-46, 58-59). The FNR requested a response from petitioners regarding the site on or before July 21, 2006 (Parent Ex. D at p. 1). Petitioners hand-delivered their response to a regional office on July 21, 2006, indicating in a writing that they "agree[d] with the program, but d[id] not agree with the placement" (*id.* at p. 2; *see* Tr. p. 48). On July 21, 2006, petitioners notified respondent that their daughter would attend Adelphi beginning on September 5, 2006, and requested provision of the student's related services in accordance with her IEP (Parent Ex. E).

By due process complaint notice dated August 23, 2006, petitioners requested an impartial hearing alleging that respondent failed to offer their daughter a free appropriate public education (FAPE)² on both procedural and substantive grounds (Parent Ex. A at p. 1). Petitioners sought tuition reimbursement for their unilateral placement at Adelphi for the 2006-07 school year (*id.*). Petitioners alleged that respondent's 2006-07 IEP inappropriately recommended a regular education inclusion classroom using the CTT approach and SETSS services, that the CSE recommended a "significant change" in the student's program without a complete language and/or psychoeducational evaluation, that the CSE lacked an additional parent member,³ and that petitioners received the FNR in an untimely manner, which precluded them from visiting the "actual program" recommended as a placement (*id.* at pp. 1-2).

By letter dated May 30, 2007, petitioners requested that their August 23, 2006 request for an impartial hearing be "reopened" due to failed attempts to settle the dispute during the past

² The term "free appropriate public education" means special education and related services that--
(A) have been provided at public expense, under public supervision and direction, and without charge;
(B) meet the standards of the State educational agency;
(C) include an appropriate preschool, elementary school, or secondary school education in the State involved;
and
(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.
(20 U.S.C. § 1401[9]).

³ Although not required by the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1414 [d][1][B]; *see* 34 C.F.R. § 300.344), New York State law requires the presence of an additional parent member on the committee that formulates a student's IEP (Educ. Law § 4402[1][b][1][a]; 8 NYCRR 200.3[a][1][viii]).

months (Parent Ex. A at p. 4). Petitioners' May 30, 2007 letter set forth allegations identical to the allegations contained in their August 23, 2006 letter requesting an impartial hearing (compare Parent Ex. A at pp. 1-2, with Parent Ex. A at pp. 4-6).

The impartial hearing commenced on July 17, 2007, and concluded after the second day of testimony on July 19, 2007 (Tr. pp. 1, 116). Both parties presented witnesses and documentary evidence (Tr. pp. 1-199; Parent Exs. A-H; Dist. Ex. 1). The student's father testified that at the May 19, 2006 CSE meeting, the Adelphi participants provided information about the student's progress in reading and spelling, her need for redirection, and her needs with respect to reading comprehension (Tr. pp. 33-36, 50-51). He also testified that the CSE did not review any reports, he did not understand the CSE's recommendation for SETSS, and he did not participate in the development of the student's annual goals (Tr. pp. 35, 37-40). The student's father further testified that he questioned the CSE about the CTT recommendation because of his concerns about his daughter's previous experience in a CTT classroom in third grade (Tr. pp. 41-42).

Upon cross-examination, the student's father acknowledged that both he and his wife had attended the May 19, 2006 CSE meeting and that the discussion had focused on his daughter's progress, how she was doing in her current program, and the recommendations from the CSE (Tr. pp. 50-51). He noted that the Adelphi participants discussed his daughter's progress in math and reading; that her decoding ability had improved, but that she still needed to work on her reading comprehension skills (Tr. p. 51). In addition, the CSE discussed the student's needs in organization and attention (Tr. p. 52). The student's father agreed that the CSE asked petitioners' for their perception of their daughter's progress, that they had the opportunity to discuss the student's strengths and weaknesses, that they had an opportunity to discuss her speech-language and socialization needs, and that they had the opportunity to address any questions or concerns about their daughter's performance (Tr. pp. 53-56).

The student's father further testified that although they had concerns about the program recommended by the CSE at the time of the May 2006 CSE meeting and they did not fully understand the SETSS component, neither he nor his wife contacted anyone to discuss their concerns (Tr. pp. 56-58, 68-70, 75-76). The student's father also testified that the finalized IEP, which petitioners received in mid-June, accurately described his daughter, her needs, the CSE's verbal discussions, and the CSE's program recommendations (Tr. pp. 68-71).

By decision dated August 6, 2007, the impartial hearing officer denied petitioners' request for reimbursement for the costs of their daughter's tuition at Adelphi for the 2006-07 school year (IHO Decision at p. 12). The impartial hearing officer determined that petitioners did not meet their burden to establish that respondent failed to offer the student a FAPE for the 2006-07 school year, and further concluded that petitioners also did not meet their burden to establish that Adelphi appropriately met the student's special education needs (id. at pp. 4, 7, 9, 12).

In her decision, the impartial hearing officer first addressed petitioners' contention that the May 19, 2006 CSE was defective because it lacked an additional parent member (IHO Decision at pp. 3-4). The impartial hearing officer noted that according to the Regulations of the

Commissioner, an impartial hearing officer "may find that a student did not receive a FAPE only if the procedural inadequacies impeded the student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE, or caused a deprivation of educational benefits" (id. at p. 3; see 8 NYCRR 200.5[j][4][ii]). In this case, the impartial hearing officer noted that although respondent did not dispute this contention and petitioners did not waive the presence of the additional parent member at the CSE meeting, the hearing record contained no other evidence to conclude that the failure to include an additional parent member in the May 19, 2006 CSE meeting impeded the student's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process, or caused a deprivation of education benefits (IHO Decision at pp. 3-4). Moreover, the impartial hearing officer indicated that during testimony, the student's father presented himself as "articulate and intelligent," that the student's mother had served as an additional parent member on CSE reviews, that their involvement in their daughter's educational program demonstrated that they were "inquisitive and informed," and that they were given the opportunity to ask questions as the CSE meeting (id. at p. 4). Upon consideration of the foregoing, the impartial hearing officer concluded that the lack of an additional parent member at the May 19, 2006 CSE meeting did not invalidate the student's 2006-07 IEP, and did not rise to the level of a denial of a FAPE (id.; see Bd. of Educ. v. R.R., 2006 WL 1441375, at *5 [S.D.N.Y. May 24, 2006]; Bd. of Educ. v. Mills, 2005 WL 1618765, at *5 [S.D.N.Y. July 11, 2005]; Application of a Child with a Disability, Appeal No. 07-060; Application of the Bd. of Educ., Appeal No. 05-058).

The impartial hearing officer then addressed petitioners' contentions regarding the substantive challenges to the student's 2006-07 IEP (IHO Decision at pp. 4-9). In her decision, the impartial hearing officer noted that petitioners raised two main issues: the CSE recommended a significant program change without a proper evaluation; and the CSE's recommended program was not appropriate due to class size and/or functional peer group (id.). The impartial hearing officer determined that although the hearing record contained little evidence on the issue of whether the CSE failed to adequately evaluate the student prior to making a recommendation for the 2006-07 school year, the evidence submitted did not support petitioners' claim (id. at p. 5). The impartial hearing officer further noted that the evidence submitted did not support petitioners' claim that respondent's CSE "made a significant change in the [student's] placement" (id.). In addition, the impartial hearing officer indicated that neither party asserted that the student's "disabilities or needs failed to be understood," that according to the Regulations of the Commissioner complete evaluations are "generally not required more frequently than every three years," and that the CSE appropriately relied upon information provided by the student's then-current teacher and special education coordinator from Adelphi, as well as current progress reports from the student's speech-language therapist, occupational therapist, and teachers at Adelphi (id. at pp. 5-7).

With respect to the CSE's recommendation that the student attend a regular education inclusion classroom (13:1) using the CTT approach with the additional support of SETSS five periods per week, the impartial hearing officer determined that petitioners' challenges to the CSE's recommendation, which focused on inappropriate class size and functional grouping, were not supported by the hearing record (IHO Decision at pp. 7-9). The impartial hearing officer concluded that the hearing record contained little, if any, evidence that the regular education

inclusion classroom using a CTT approach was too large for the student or that "any issue regarding the academic or maintenance needs of the other students in the class" existed (*id.* at p. 7). In addition, a review of respondent's class profile for the classroom in question demonstrated that the student would have been placed with students of similar reading and math levels, similar ages, and similar classifications (*id.* at p. 9). The impartial hearing officer also noted that the hearing record was devoid of any specifics about how the recommended program or classroom or site was not appropriate to meet the student's needs (*id.* at p. 9). Thus, the impartial hearing officer concluded that petitioners failed to meet their burden to establish that respondent's recommended program was not appropriate (*id.*).

The impartial hearing officer briefly discussed the student's then-current program at Adelphi (IHO Decision at pp. 9-12). In short, the impartial hearing officer raised a concern that the student was not making sufficient progress at Adelphi and further, that the hearing record contained no evidence to demonstrate that Adelphi provided the student with "the necessary assistance that would allow her to compensate for her disabilities and allow her to progress in the basic subjects she need[ed] to learn: reading, mathematics and writing" (*id.* at pp. 11-12). She concluded that petitioners failed to sustain their burden to establish the appropriateness of their daughter's unilateral placement at Adelphi for the 2006-07 school year (*id.* at p. 12).

On appeal, petitioners assert that the impartial hearing officer erred in her decision for the following reasons: respondent failed to meet its burden of proof to establish that it offered the student a FAPE for the 2006-07 school year because respondent submitted no evidence at the hearing; the impartial hearing officer failed to consider that the class profile and the CSE's proposed placement did not offer a suitable and functional peer group for instructional and social/emotional purposes; the CSE's district representative failed to provide sufficient information to petitioners regarding the proposed placement; the impartial hearing officer disregarded the testimony of petitioners' witnesses; the CSE meeting failed to contain an additional parent member; and the impartial hearing officer erred in her determination regarding the appropriateness of the Adelphi program.

In its answer, respondent asserts that the impartial hearing officer's decision should be upheld in its entirety and that petitioners' appeal should be dismissed.

The central purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) is to ensure that students with disabilities have available to them a free appropriate public education (FAPE) (20 U.S.C. § 1400[d][1][A]; see Schaffer v. West, 546 U.S. 49, 51 [2005]; Bd. of Educ. v. Rowley, 458 U.S. 176, 179-81, 200-01 [1982]; Frank G. v. Bd. of Educ., 459 F.3d 356, 371 [2d Cir. 2006]). A FAPE includes special education and related services designed to meet the student's unique needs, provided in conformity with a written IEP (20 U.S.C. § 1401[9][D]; 34 C.F.R. § 300.17[d];⁴ see 20 U.S.C. § 1414[d]; 34 C.F.R. § 300.320).

⁴ The Code of Federal Regulations (34 C.F.R. Parts 300 and 301) has been amended to implement changes made to the IDEA, as amended by the Individuals with Disabilities Education Improvement Act of 2004. The amended regulations became effective October 13, 2006. For convenience, citations in this decision refer to the regulations as amended because the regulations have been reorganized and renumbered.

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; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). While school districts are required to comply with all IDEA procedures, not all procedural errors render an IEP legally inadequate under the IDEA (Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]; Perricelli v. Carmel Cent. Sch. Dist., 2007 WL 465211, at *10 [S.D.N.Y. Feb. 9, 2007]). Under the IDEA, if a procedural violation is 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 child, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 C.F.R. § 300.513[a][2]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007]).

The IDEA directs that, in general, an impartial hearing officer's decision must be made on substantive grounds based on a determination of whether the child 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 v. Florida Union Free Sch. Dist., 142 F.3d 119, 130 [2d Cir. 1998]; see Rowley, 458 U.S. at 189). 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 Perricelli, 2007 WL 465211, at *15). 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 Rowley, 458 U.S. at 192).

An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs, establishes annual goals related to those needs, and provides for the use of appropriate special education services (Application of the Dep't of Educ., Appeal No. 07-018; Application of a Child with a Disability, Appeal No. 06-059; Application of the Dep't of Educ., Appeal No. 06-029; Application of a Child with a Disability, Appeal No. 04-046; Application of a Child with a Disability, Appeal No. 02-014; Application of a Child with a Disability, Appeal No. 01-095; Application of a Child Suspected of Having a Disability, Appeal No. 93-9).

The burden of persuasion in an administrative hearing challenging an IEP is on the party seeking relief (see Schaffer, 546 U.S. at 59-62 [finding it improper under the IDEA to assume that every IEP is invalid until the school district demonstrates that it is not]).

After carefully reviewing the entire hearing record, I find that the impartial hearing officer, in a reasonable and well-supported decision, correctly determined that petitioners did not meet their burden to establish that respondent failed to offer their daughter a FAPE for the 2006-07 school year and therefore, were not entitled to reimbursement for the costs of their daughter's tuition at Adelphi for the 2006-07 school year (IHO Decision at pp. 2-9). I also concur with the impartial hearing officer's determination that Adelphi was not an appropriate placement to meet the student's special education needs, and therefore, petitioners were also not entitled to reimbursement of tuition on this basis (id. at pp. 9-12). The impartial hearing officer applied the proper legal analysis in determining whether the student was offered a FAPE, whether the lack of an additional parent member at the May 19, 2006 CSE meeting invalidated the IEP or constituted a denial of a FAPE, and whether petitioners met their burden to establish the appropriateness of the unilateral placement at Adelphi (id. at pp. 3-12). In addition, the impartial hearing officer properly placed the burden on petitioners to establish that respondent failed to offer the student a FAPE in accordance with Schaffer v. Weast (id. at pp. 2-12; Schaffer, 546 U.S. at 59-62). The decision shows that the impartial hearing officer carefully considered and weighed all of the testimony and exhibits, including petitioners' witnesses, documentary evidence, and respondent's class profile (id. at pp. 1-12). The hearing record amply supports the impartial hearing officer's conclusion that the student's IEP offered her special education programs and services appropriate to meet her special education needs and was designed to confer educational benefit. In short, based upon my review of the entire hearing record, I find that the hearing was conducted in a manner consistent with the requirements of due process and that there is no need to modify the findings of fact or conclusions of law as determined by the impartial hearing officer (34 C.F.R. § 300.514[b][2]; Educ. Law § 4404[2]). I, therefore, adopt the findings of fact and conclusions of law of the impartial hearing officer (see Application of a Child with a Disability, Appeal No. 07-112; Application of a Child with a Disability, Appeal No. 07-065; Application of a Child with a Disability, Appeal No. 07-054; Application of a Child with a Disability, Appeal No. 05-095; Application of the Bd. of Educ., Appeal No. 03-085; Application of a Child with a Disability, Appeal No. 02-096).

I have reviewed and considered petitioners' remaining contentions and find them to be without merit.

THE APPEAL IS DISMISSED.

**Dated: Albany, New York
November 5, 2007**

**PAUL F. KELLY
STATE REVIEW OFFICER**