



# The University of the State of New York

## The State Education Department State Review Officer

No. 08-036

**Application of a STUDENT WITH A DISABILITY, by her parent, for review of a determination of a hearing officer relating to the provision of educational services by the [REDACTED] Department of Education**

### **Appearances:**

Hon. Michael A. Cardozo, Corporation Counsel, attorney for respondent, G. Christopher Harriss, Esq., of counsel

### **DECISION**

Petitioner (the parent) appeals from a decision of an impartial hearing officer which determined that the educational program respondent's (the district's) Committee on Special Education (CSE) had recommended for her daughter for the 2007-08 school year was appropriate. The parent further appeals the impartial hearing officer's decision to the extent that the impartial hearing officer declined to award additional services as a remedy for the denial of a free appropriate public education (FAPE) to the student for the 2006-07 school year. The appeal must be dismissed.

At the outset, I must address a number of procedural matters. First, the district alleges in its answer that the parent failed to serve the district with a proper "notice with petition" as required by 8 NYCRR 279.3, and requests that the petition be rejected. A review of the parent's petition filed with the Office of State Review reveals that a notice with petition dated April 14, 2008 was included. In addition, the parent has submitted an affidavit of service indicating that the notice with petition, petition, and affidavit of verification were personally served upon the district by a person who is not a party to this appeal (Parent Aff. of Service dated April 21, 2008). In light of the foregoing, I find that the hearing record does not afford a sufficient basis to dismiss the petition on the ground that the district was allegedly not served with a notice with petition.

Next, the district requests that I reject the petition because the parent failed to cite to the hearing record. State regulations require that assertions in a petition be supported with references to the hearing record, that identify "the page number in the hearing decision and

transcript, the exhibit number or letter and, if the exhibit consists of multiple pages, the exhibit page number" (8 NYCRR 279.8[b]). Although the district asserts that the parent's failure to cite to the hearing record in her petition has precluded the district from effectively formulating a responsive answer, I note that the district submitted an answer responding to the parent's allegations and asserting affirmative defenses. In the exercise of my discretion, I will accept the petition.

Lastly, by letter dated May 22, 2008, the district requests that I reject the first reply submitted by the parent because it was not verified in accordance with 8 NYCRR 279.7. All pleadings must be verified (8 NYCRR 279.7; Application of a Student with a Disability, Appeal No. 08-039). On May 29, 2008, the parent submitted an amended verified reply, correcting the defect; therefore, I will accept the parent's amended verified reply (see Application of a Student with a Disability, Appeal No. 08-022; Application of a Child with a Disability, Appeal No. 05-045; Application of a Child with a Disability, Appeal No. 02-011).

The district also contends that I should reject the parent's reply to the extent that it fails to solely respond to procedural defenses raised in the answer. Pursuant to State regulations, a reply is limited to any procedural defenses interposed by a respondent or to any additional documentary evidence served with the answer (Application of a Child with a Disability, Appeal No. 06-046; 8 NYCRR 279.6). In this case, the district did not serve any additional evidence with its answer. Accordingly, I will accept and consider the amended reply only to the extent that it responded to procedural defenses interposed by the district (Application of a Student with a Disability, Appeal No. 08-031; Application of a Student with a Disability, Appeal No. 08-028; Application of a Student Suspected of Having a Disability, Appeal No. 08-002; 8 NYCRR 279.6).

At the time of the impartial hearing in September 2007, the student was enrolled in the third grade in the School for Language and Communication Development (SLCD) (Tr. pp. 12, 19, 716). SLCD has been approved by the Commissioner of Education as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7; Tr. p. 700). The student exhibits severe expressive and receptive language delays as well as deficits in reading, math and writing (Tr. pp. 50, 397, 402; Parent Ex. D at p. 4). Her eligibility for special education services and classification as a student with a speech or language impairment are not in dispute in this appeal (see 34 C.F.R. § 300.8[c][11]; 8 NYCRR 200.1[zz][11]; Tr. pp. 9, 12, 19).

The student began receiving special education services as an infant until age three through the New York State Early Intervention Program (EIP) (Tr. p. 225; Parent Exs. E at p. 1; G at p. 1). She subsequently entered a center based preschool special education program at the Herbert G. Birch School for Exceptional Children (Birch), a New York State approved non-public school, where she received two 30-minute sessions of speech-language therapy per week in addition to occupational therapy (OT) and physical therapy (PT) (Tr. pp. 198-99; Parent Ex. G at p. 1).<sup>1</sup>

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<sup>1</sup> The hearing record does not indicate the frequency or duration of the OT or PT that the student was receiving while attending Birch.

When she aged out of preschool, the student was placed in a collaborative team teaching (CTT) kindergarten program with a health paraprofessional for assistance with toileting (Parent Ex. G at p. 1). She was also receiving two 30-minute sessions of speech-language therapy per week in a group of three as well as two individual sessions of OT per week (Parent Ex. P at p 1). Pursuant to the parent's request, the student underwent a comprehensive psychoeducational evaluation on December 13, 2004, due to academic and language delays and behavioral concerns (*id.*). The psychoeducational evaluation report stated that reports from the student's teachers estimated that her reading skills were at a beginning preschool level, and that she could identify letters and make connections to corresponding sounds with consistency, but that the student had difficulty attending to a lesson or story, which impeded her comprehension skills (*id.*). The student could write an uppercase "A," but needed 1:1 supervision to trace the other letters of the alphabet (*id.*). Her math computation skills were estimated to be at a beginning preschool level, and the student's teacher noted that the student could not identify the numbers one to five, nor did she demonstrate the cognitive abilities or language skills needed to solve word problems (*id.*). The student was unable to complete her homework because it was too difficult for her (*id.*). The evaluation report further indicated that the student's teacher believed that the CTT placement was not appropriate for the student and the parent also wanted her daughter placed in a smaller setting (*id.*).

The evaluator reported that despite her willing participation, the student was distracted during the testing session, and she exhibited a poor attention span and limited eye contact (Parent Ex. P at p. 2). Administration of the Wechsler Preschool and Primary Scale of Intelligence - Third Edition (WPPSI- 3) yielded a performance index score (and percentile) of 73 (4) in the borderline range, a verbal index score of 67 (1), a processing speed index score of 49 (<0.1), and a full scale IQ score of 65 (1), all in the extremely low range (*id.* at pp. 1-2). Selected subtests of the Wechsler Individual Achievement Test- Second Edition (WIAT-II) were administered to gain insight into the student's reading, writing, and mathematical skills and current level of functioning in comparison to other students her age (*id.* at pp. 1, 5). The student achieved a standard score (SS) (and percentile) of 102 (55) on the word reading subtest; a SS of 78 (7) on the numerical operations subtest; a SS of 72 (3) on the math reasoning subtest; a SS of 93 (32) on the spelling subtest; and a SS of 73 (4) on the listening comprehension subtest (*id.* at pp. 4-6).

Overall, the evaluator indicated that the student's skills were generally consistent with her potential which was in the extremely low range, although higher skills were noted in the performance area where tasks did not rely heavily on language (Parent Ex. P at p. 6). The evaluator reported that as a result of limited language and auditory processing, the student exhibited a poor attention span, distractibility and impulsivity and that she engaged in immature play (*id.*). The student also reportedly had difficulty interacting appropriately with adults and exhibited aggressive behavior (*id.* at p. 1). The evaluator recommended a smaller educational setting with additional adult support in a "language rich" environment to address the student's learning, emotional and physical needs, and a continuation of related services (*id.*).

Following the December 2004 psychoeducational evaluation, in January 2005 the district transferred the student to a 12:1+1 program at a different district school (Tr. p. 181; Parent Ex. G).

The district's CSE convened on May 20, 2005 for an annual review of the student's program (Parent Ex. A). The parent was in attendance, as was the district representative, the

district's school psychologist, social worker and special education teacher (id. at p. 2). The CSE determined that the student continued to be eligible for special education services as a student with a speech or language impairment (id. at p. 1). For the 2005-06 school year, the CSE proposed placement of the student in a 12:1+1 classroom with adaptive physical education (id.). The resultant individualized education plan (IEP) provided for door to door bussing with a matron (id.). Related service recommendations included a 1:1 paraprofessional for assistance with toileting, two individual 30-minute sessions of OT per week to be delivered in a separate location, two individual 30-minute sessions of PT per week to be delivered in a separate location and two 30-minute sessions of speech-language therapy in a group of three to be delivered in a separate location (id. at p. 17). Testing modifications included extended time on tests (2x) (id.). The academic performance and learning characteristics section of the May 2005 IEP reflected scores from the December 2004 WIPPSI-3 and WIAT-II and indicated that with respect to the student's present levels of performance, her cognitive functioning was determined to be within the extremely low range (id. at p. 3). The May 2005 IEP stated that poor attention, impulsivity and language processing hindered the student's performance and that her academic skills were at the early preschool level (id.). The CSE concluded that the student's behavior did not seriously interfere with instruction and could be addressed by the special education classroom teacher, and recommended modeling of positive social interaction and age appropriate play skills (id. at p. 4). Annual goals and short-term objectives were developed that related to the student's needs in math, reading, speech, fine motor skills, adaptive physical education and social skills (id. at pp. 7-13).

A September 2005 report from the student's classroom teacher described her as a "good student, who does a lot of work in school and at home" (Parent Ex. L at p. 3). The teacher further noted that with respect to reading, her overall performance indicated that she was "approaching grade level standards" (id. at p. 2). The teacher also noted that the student's ability to write, listen and speak were "far below grade level standards" (id.). The teacher rated the student's math skills as "approaching grade level standards," and her skills in science and social studies as "far below grade level standards" (id. at pp. 2, 3). The teacher determined that the student was "approaching grade level standards" in physical education, technology, library and music (id.). With respect to the student's personal and social growth, the teacher noted that the student always demonstrated effort and completed her homework, and that she respected class and school rules (id.). The teacher also indicated that the student usually worked and played cooperatively with others, and that she moved easily from one activity to another (id.).

In or about September 2005, the parent obtained private individual tutoring in English, math and reading for her daughter on a weekly basis (Tr. pp. 646, 670).<sup>2</sup>

On May 21, 2006, the district conducted a psychoeducational evaluation of the student per the parent's request (Parent Ex. J). The evaluator characterized the student as "friendly, outgoing, active, playful and very distractible" and further commented that the aforementioned behaviors made the testing difficult to complete (id. at p. 2). According to the evaluator, these behaviors became more prominent when the student became fatigued (id.). She further observed that much of the student's behavior made her appear significantly younger than her stated age (id.). The evaluator opined that many of the student's behaviors were out of the student's control,

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<sup>2</sup> The hearing record is unclear as to the exact date that the parent obtained individual tutoring for her daughter. The parent testified that the tutoring commenced in January 2006, in contrast to the tutor's testimony that the tutoring commenced in September 2005 (Tr. pp. 184-85, 670).

as she was minimally responsive to limits and redirection (id.). The evaluator observed evidence of the student's poor impulse control, and further found that although the student could make eye contact, she did not sustain it during the interactions (id.). The student's verbalizations during the evaluation consisted of repetitions of last words that she gave as responses, singing or nonsensical utterances (id.). When asked to provide biographical data, the student knew her age and grade, but could not recall her date of birth, address or telephone number, and her responses were scattered and tangential (id.). The evaluator also commented that the student was inconsistently cooperative, did not sit still during the testing, was inconsistently responsive to directives and visual cues, and seemed to be self-guided in many instances, requiring maximal redirection (id.). The evaluator stated that although repetition or clarification of directives was helpful for the student, it compromised the test standards (id.). Her scores were also compromised because the student seemed to hear or respond to the last word (id.). Administration of a test identified in the hearing record as the Bender Visual-Motor Gestalt Test yielded scores indicative of difficulties in visual-motor integration (id. at p. 3). Administration of subtests of the Woodcock-Johnson Test of Achievement- Third Edition (WJ-III) indicated that the student's academic skills and her ability to apply those skills were within the low range when compared to others at her grade level (id.). Specifically, the student achieved a broad reading cluster SS (and percentile) of 78 (7); a broad math cluster SS of 64 (1); a math calculation SS of 69 (2); an academics skills SS of 71 (3); and an academic applications SS of 72 (3), indicating "far below" grade level skills for reading, writing and math (id. at pp. 3-6). Results obtained from completion of the parent rating scale of the Behavior Assessment System for Children, Second Edition (BASC-2) identified the student's difficulties with adaptability, social skills, leadership and functional communication, and were suggestive of difficulties in attention, performing basic tasks at home and in her community, adjusting to changes in routines, shifting from one task to another and sharing possessions with peers (id. at pp. 4-5). Recommendations for future academic programming included related services progress updates, a structured environment with small group instruction, preferential seating, counseling, multisensory presentation of new material, and a medical consultation with the student's parents regarding the student's attention and adaptive functioning (id. at p. 5).

The student's June 2006 final report card indicated that the student was meeting grade level standards in reading, arts, library and music (Parent Ex. L at pp. 2-3). Her report card further revealed that she was approaching grade level standards in listening and speaking, mathematics, science, social studies and physical education (id.). The student's teacher described the student as "dedicated, who has the ability to memorize and comprehend new material" (id. at p. 4). The teacher requested that the parent help the student with her homework and that she work on attention with the student (id.). She also asked the parent to stay in touch with her regarding her daughter's progress and "new" problems that the parent noticed at home (id.). Her teacher also stated that the student always demonstrated effort and completed her homework, that she always respected class and school rules, that she usually worked and played cooperatively with others, and that she moved easily from one activity to another (id. at p. 3).

On June 26, 2006, the CSE met for an annual review of the student's program per the parent's request (Tr. p. 290; Parent Ex. C). The parent, the district representative, the district's school psychologist, and the student's special education teacher attended the June 2006 meeting (Parent Ex. C at p. 2). The June 2006 CSE recommended that the student again be classified as a student with a speech or language impairment (id. at p. 1). For the 2006-07 school year, the CSE recommended that the student be placed in a 12:1+1 classroom in a community school with

adaptive physical education and door to door bussing with a matron (id.). Related services recommendations consisted of two weekly 30-minute sessions of speech-language therapy in a group of three, two weekly 30-minute sessions of 1:1 OT, and two weekly 1:1 30-minute sessions of PT (id. at p. 12). The results of the May 2006 administration of the WJ-III were reported in the June 2006 IEP (id. at p. 3). The academic performance and learning characteristics portion of the June 2006 IEP indicated that with respect to the student's present levels of performance, she demonstrated great difficulty in attending and following directives and that her cognitive and academic functioning fell within the extremely low range (id.). The resultant IEP also noted that the student was stronger in reading areas than in math and in writing, and that although she had acquired a sight word vocabulary, she did not appear to be able to decode (id.). According to the June 2006 IEP, the student's reading comprehension skills appeared to be one grade level below expectation (id.). While the student could identify letters and write her name, she did not write complete words to finish simple sentences or when a spelling task was presented (id.). The June 2006 IEP also stated that excessive inattention and distractibility may have compromised the student's highest potential (id.). With regard to math, the June 2006 IEP noted significant delays, and noted that although the student was aware of the "plus" sign, she could not consistently complete arithmetic tasks, nor could she follow the directives when word problems were presented to her (id.). Academic management needs included a great deal of refocusing and redirection to complete basic tasks, breaking tasks into small, manageable components, and speech-language therapy (id.).

In the social/emotional performance domain, the June 2006 IEP characterized the student as "friendly and seemingly outgoing," and "impulsive . . . self-guided and immature" (Parent Ex. C at p. 4). The June 2006 IEP further stated that the student required firm limits and consistent reminders of boundaries and expected behaviors, as she was highly distractible (id.). Goals and short-term objectives were developed with respect to the student's behavioral needs, math skills, reading comprehension, writing, gross motor skills, and speech-language skills (id. at pp. 6-9). The parent later testified during the impartial hearing that at the June 2006 CSE meeting she requested that her daughter be placed in a different school, because she did not think that the student was making progress in the district's placement (Tr. p. 215). The parent further testified that she advised the CSE that if the student failed to make progress by the next school year, she would remove her from the district placement (Tr. p. 216).

In March 2007, the parent advised the student's special education teacher that in light of her daughter's failure to progress, she planned to enroll her in SLCD (Tr. p. 257). In May 2007, SLCD staff conducted an observation of the student (Tr. p. 260).<sup>3</sup>

On June 21, 2007, the CSE convened for an annual review of the student's program (Parent Ex. B). The parent, her advocate, the district representative, and the student's special education teacher were in attendance (id. at p. 2). For the 2007-08 school year, the CSE recommended "no change" to the student's program and a draft copy of the IEP generated as result of the June 2007 CSE meeting was provided to the parent and her advocate (Tr. p. 269; Parent Ex. B at p. 2). The parent later testified during the impartial hearing that she did not raise any questions during the June 2007 CSE meeting because she intended to enroll her daughter in private school (Tr. p. 264). Although at the time of the June 2007 CSE meeting the student had been approved to be in the SLCD program, the parent did not suggest SLCD as a possible

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<sup>3</sup> The hearing record does not indicate in what setting the student was observed by SLCD staff.

placement, nor did she advise the June 2007 CSE that the student had been approved to be in the SLCD program (Tr. p. 265). The day after the June 21, 2007 CSE meeting, the CSE followed up with the parent by telephone about the proposed June 2007 IEP (Parent Ex. B at p. 2).

By due process complaint notice dated July 10, 2007, through her advocate, the student's parents requested an impartial hearing (IHO Exhibit V). The parents alleged that the district failed to offer their daughter a FAPE for the 2006-07 and 2007-08 school years because the IEPs for both school years were "substantively and procedurally fatally defective" which resulted in a loss of educational opportunity for the student and "seriously infringed on the parents' ability to monitor and propose corrective action in the development of a new IEP" (*id.* at pp. 1-2).<sup>4</sup> Specifically, with regard to the 2006-07 school year, the parents claimed that the district failed to offer an appropriate program and placement for the student which effectively addressed her special education needs (*id.* at p. 2). With regard to the 2007-08 school year, the parents alleged that the IEP for that school year failed to incorporate critical evaluation recommendations for the student which resulted in a loss of educational opportunity (*id.*). As relief, the parents requested that the district provide them with a "Nickerson letter,"<sup>5</sup> additional services in the form of 400 hours of 1:1 private tutoring through EBL Coaching<sup>6</sup> for a two year period, and an order for an "assisted"<sup>7</sup> technology evaluation (*id.*). Shortly after the parents filed their due process complaint notice, a resolution session took place and the district conducted a reevaluation of the student.<sup>8</sup>

On July 25, 2007, the district's speech-language pathologist conducted an evaluation of the student per the parent's request (Parent Ex. E). Administration of the Test for Auditory Comprehension of Language - 3 (TACL-3) yielded a TACL-3 quotient equivalent to <1 percentile (*id.* at p. 3). Administration of the Clinical Evaluation of Language Fundamentals- 4 (CELF-4) yielded a core language score of 46 (<0.1 percentile) and an expressive language index of 51 (0.1 percentile) (*id.*). The evaluator described the student as a verbal and interactive communicator who presented with severe receptive language delays characterized by difficulty following directions, limited receptive vocabulary, and limited comprehension of grammatical morphemes, expanded phrases and sentences (*id.* at pp. 2-3). The evaluator further noted that the student presented with a severe expressive language delay characterized by limited expressive vocabulary, immature pragmatic skills and limited language structure (*id.* at p. 3). The student

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<sup>4</sup> The parents' due process complaint notice fails to specify the dates of the IEPs at issue.

<sup>5</sup> A "Nickerson letter" is a letter from the New York City Department of Education (DOE) to a parent authorizing the parent to immediately place the student in an appropriate special education program in any State approved private school, at no cost to the parent (see Jose P. v. Ambach, No. 79 Civ. 270 [E.D.N.Y. Jan. 5, 1982]). The remedy of a "Nickerson letter" is intended to address the situation in which a student has not been evaluated or placed in a timely manner (see Application of a Student with a Disability, Appeal No. 08-030).

<sup>6</sup> The hearing record describes EBL Coaching as a program which offers "1:1 individualized home tutoring, strategy coaches, homework helpers, intensive summer programs, and student workbook materials [as well as] multi-sensory instruction in reading, writing, reading comprehension, mathematics, organization, and study skills" (Parent Ex. O).

<sup>7</sup> The parent's advocate made a request for an "assisted" technology evaluation; however, based on a review of the hearing record, it appears that he was requesting an assistive technology evaluation.

<sup>8</sup> The exact date that the resolution session took place is not set forth in the hearing record (see Tr. p. 275).

cooperated with testing procedures and became distracted by extraneous details as the complexity of information presented to her increased (id. at p. 2).

The district's social worker also completed a social history update of the student on July 25, 2007 (Parent Ex. G). The social worker remarked that the social history update was being performed as part of an impartial hearing that was commenced during the previous week (id. at pp. 1, 3). According to the social worker, the parent obtained private tutoring for the student which the parent believed had improved her daughter's academic functioning (id. at p. 1). The social worker also noted that the parent reported that the student required individualized attention to complete assignments because of focusing difficulties, and that without close supervision, the student would draw instead of work on her assignments (id. at pp. 1-2). The student's behavior in school was described by the parent as "excellent," but she added that her daughter could be a follower (id. at p. 2). The parent reported that she believed that the student needed a school that focused more on her language impairment (id.).

The social worker also stated that according to the parent, the student was delayed in all areas of development, and that the student's self-help skills were still developing (Parent Ex. G at p. 2). Regarding the student's family and home behaviors, the social worker reported that the parent reported that the student did not exhibit any serious behavior problems at home; however, she had yet to develop appropriate social boundaries (id.). The social worker stated that the student's language skills were not well developed and therefore, she required close supervision and exhibited communication difficulties (id.). The social worker indicated that she discussed the parent's due process rights with her, and the parent indicated that she was aware of her rights (id.).

The Vineland-II Adaptive Behavior Scales, Second Edition (Vineland – II) was also administered by the district on July 25, 2007 to assess the student's activities of daily living (Parent Ex. H). Through parent interview, results of the Vineland-II revealed that the student's adaptive functioning in communication (SS 75) (5th percentile), daily living skills (SS 78) (7th percentile) and socialization (SS 76) (5th percentile) were moderately low for her age group (id. at pp. 2, 5, 6). Overall, the student's adaptive behavior composite (SS 75) (5th percentile) was in the moderately low range (id. at pp. 5-6).

The district's school psychologist conducted a psychoeducational evaluation of the student on July 25, 2007 (Parent Ex. F). Although the evaluator indicated that the student's receptive and expressive language skills were not adequate for testing purposes, administration of the Wechsler Intelligence Scale for Children- IV (WISC- IV) yielded a verbal comprehension index composite score of 65 (1st percentile), a perceptual reasoning index composite score of 59 (0.3 percentile), a working memory index composite score of 62 (1st percentile), a processing speed index composite score of 75 (5th percentile), and a full scale IQ composite score of 57 (0.2 percentile) (id. at pp. 2, 7). Administration of the Wechsler Individual Achievement Test- II (WIAT- II) yielded standard (and percentile) scores of 86 (18) in word reading, 68 (2) in reading comprehension, 82 (12) in numerical operations, 62 (1) in math reasoning, and 84 (14) in spelling (id. at pp. 3, 6-7). The evaluator determined that the student's cognitive functioning fell within the extremely low range and characterized the student as an "immature ... youngster who needs to be refocused at times" (id.). The evaluator stated that the student's handwriting was adequate, but that her academic skills were below grade level and recommended that the student may benefit from a small class setting to address her academic needs (id. at p. 5).

The CSE reconvened on August 16, 2007 for a requested review of the student's program (Parent Ex. D). The parent, her advocate, the district's school psychologist, the district's special education teacher and an additional parent member attended the August 2007 CSE meeting (id. at p. 2). The August 2007 CSE reviewed the July 2007 evaluation results (Tr. p. 275). The parent and her advocate advised the CSE that they had identified a State-approved school for the student at SLCD and proposed that school as a placement for the student (Tr. pp. 259, 275). The parent further informed the CSE that there was an opening for her daughter at SLCD (Tr. p. 259). The August 2007 CSE deferred placement of the student to the district's central based support team (CBST) to locate an appropriate State-approved private school (Tr. pp. 275, 537; Parent Ex. D at p. 2).

On September 11, 2007, the student was privately evaluated at EBL Coaching to determine her academic areas of strength, weakness and specific instructional needs (Parent Ex. I). The evaluator administered the Wide Range Achievement Test (WRAT), the Test of Written Language Expression (TOWL) and the Qualitative Reading Inventory (id.). The evaluator determined that the student "tested on an upper kindergarten level for math, a low first grade level for spelling, an upper first grade level for reading, and a mid-kindergarten level for written language, all well below the expected levels for her grade" (id.). The evaluator opined that the student was in critical need of specific multisensory 1:1 instruction in decoding and encoding, particularly using the Orton-Gillingham approach, which the evaluator described as a multisensory teaching technique (Tr. pp. 140, 168-69; Parent Ex. I). The evaluator proposed that the student receive ten hours of tutoring per week for one year (Tr. p. 138).

On September 11, 2007, the CSE reconvened and recommended that the student be placed at SLCD (Tr. p. 808; IHO Ex. III at p. 6).<sup>9</sup> On September 17, 2007, the student began attending a 6:1+1 special class at SLCD at the district's expense (Tr. pp. 269, 691).

By letter dated September 27, 2007, the student's parents amended their due process complaint notice by deleting their request for a Nickerson letter, and modifying their request for "compensatory education" to "additional services" (Parent Ex. M). Otherwise, the amended due process complaint notice was virtually identical to the parents' original request for an impartial hearing (compare IHO Ex. V, with Parent Ex. M).

An impartial hearing convened on September 28, 2007 and concluded after six days of testimony (IHO Decision at pp. 1-2).

By motion dated November 30, 2007, the parent through her advocate, requested that the impartial hearing officer recuse herself (IHO Ex. I). Specifically, the parent argued, among other things, that the impartial hearing officer explicitly made representations on the record that effectively barred the parent from additional appearances at the impartial hearing (id. at p. 3). On December 3, 2007, the impartial hearing officer denied the parent's motion, explaining that "the record speaks for itself" (Tr. p. 529).

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<sup>9</sup> The IEP generated as a result of the September 2007 CSE meeting is not included in the hearing record. I remind the impartial hearing officer to include all relevant IEPs in the hearing record.

By decision dated March 18, 2008, the impartial hearing officer concluded that the parent's claim that she was precluded from participating in the impartial hearing was meritless (IHO Decision at p. 8). Although the parent asserted in her motion for recusal that the impartial hearing officer was biased, the impartial hearing officer determined that she was able to impartially render a decision (*id.*). With respect to the parent's challenges to the June 2006 IEP and the August 2007 IEP, the impartial hearing officer found that the district failed to offer the student a FAPE during the 2006-07 school year, but that the student received a FAPE during the 2007-08 school year (*id.* at pp. 10, 13).

The impartial hearing officer determined that due to procedural irregularities surrounding the creation of the June 2006 IEP, the district failed to offer the student a FAPE during the 2006-07 school year; however, she denied the parent's request for additional services in the form of 400 hours of 1:1 tutoring from EBL Coaching (IHO Decision at p. 18). The impartial hearing officer found that the student's deficits resulting from the district's failure to offer a FAPE were difficult to quantify, and further that the parent failed to establish that EBL Coaching would appropriately remedy the denial of a FAPE (*id.* at pp. 13, 15, 18). The impartial hearing officer also found that the evidence showed that the student had made progress, albeit modest, during the 2006-07 school year (*id.* at p. 15). Accordingly, the impartial hearing officer denied the parent's request for additional services (*id.* at p. 18). However, she ordered the CSE to consider during the student's next annual review whether the student would benefit from participation in the internet-based reading program at SLCD (*id.*). She also ordered the district to conduct an assistive technology evaluation of the student (*id.* at pp. 18-19).<sup>10</sup>

Regarding the 2007-08 school year, the impartial hearing officer concluded that no procedural inadequacies surrounded the development of the August 2007 IEP, further finding that the parent was accompanied to the August 2007 CSE meeting by her advocate and an additional parent member (IHO Decision at p. 11). She explained that it was "noteworthy that substantial ambiguities with regard to the CSE's expectations for the student [were] not present with regard to [the August 2007] IEP" (*id.* at pp. 11-12). The impartial hearing officer opined that pursuant to the August 2007 IEP, the district offered the student a very "language enriched program" (*id.* at p. 12). She noted that the proposed program was also consistent with the recommendations made by the district's speech-language therapist and psychologist (*id.*).

The parent appeals the impartial hearing officer's decision to the extent that the impartial hearing officer denied her request for additional services at EBL Coaching as a remedy for the denial of a FAPE during the 2006-07 school year. She further appeals the impartial hearing officer's determination that the student received a FAPE during the 2007-08 school year. The parent further argues that the impartial hearing officer demonstrated bias against her during the impartial hearing. With respect to the August 2007 IEP, she alleges: (1) that the August 2007 CSE was improperly constituted; (2) that the goals listed in the IEP were vague, generic and not individually tailored to address the student's educational needs and deficits; (3) that the goals and

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<sup>10</sup> Neither party has appealed the impartial hearing officer's order that the district's CSE consider whether the student would benefit from taking part in the internet-based reading program at SLCD or that the district perform an assistive technology evaluation. An impartial hearing officer's decision is final and binding upon the parties unless appealed to a State Review Officer (34 C.F.R. § 300.514[a]; 8 NYCRR 200.5[k]). Therefore, those parts of the decision are final and binding and I do not review them (Application of a Child with a Disability, Appeal No. 07-070).

objectives were not sufficiently detailed to provide clear direction to the student's teachers; and (4) that the August 2007 IEP failed to indicate how and when progress would be measured. Regarding her claim for additional services in the form of 1:1 intensive tutoring, the parent contends that the impartial hearing officer "overstated" the amount of progress that the student made during the 2006-07 school year. Furthermore, the parent maintains that the tutoring that she is requesting directly addresses the student's academic deficits and special education needs while providing her with specific academic support and a teaching methodology that has proven to be effective with the student.

The district submitted an answer requesting that the impartial hearing officer's March 2008 decision be affirmed in all respects, that the petition be dismissed with prejudice and further arguing that the impartial hearing officer did not demonstrate bias against the parent.

A 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 FAPE (20 U.S.C. § 1400[d][1][A]; see Schaffer v. Weast, 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]; see 20 U.S.C. § 1414[d]; 34 C.F.R. § 300.320).<sup>11</sup>

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 student, 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 student received a FAPE (20 U.S.C. § 1415[f][3][E][i]). A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that

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<sup>11</sup> 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]).

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 v. Weast, 546 U.S. 49 [2005] [finding it improper under the IDEA to assume that every IEP is invalid until the school district demonstrates that it is not]).<sup>12</sup>

Initially, I will address the parent's claim that the impartial hearing officer demonstrated bias based on an off the record conversation that the parent maintains effectively precluded her from appearing at the impartial hearing subsequent to the date on which the parent testified. She further alleges that the impartial hearing officer exhibited bias because the impartial hearing officer misrepresented and misstated questions posed by the parent's advocate. As detailed below, the parent's assertion has no merit. An impartial hearing officer must be fair and impartial and must avoid even the appearance of impropriety or prejudice (see Application of a Child with a Disability, Appeal No. 06-039), and must render a decision based on the hearing record (see Application of a Child with a Disability, Appeal No. 00-063; Application of a Child Suspected of Having a Disability, Appeal No. 00-036; Application of a Child with a Disability, Appeal No. 98-55). A hearing officer, like a judge, must be patient, dignified and courteous in dealings with litigants and others with whom the hearing officer interacts in an official capacity and must perform all duties without bias or prejudice against or in favor of any person, and shall

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<sup>12</sup> On August 15, 2007, New York State amended its Education Law to place the burden of proof upon the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement would continue to have the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c], as amended by Ch. 583 of the Laws of 2007). The amended law took effect for impartial hearings commenced on or after October 14, 2007. In this case, the amended law does not apply because the impartial hearing was commenced before the effective date of the amendment (Application of the Dep't of Educ., Appeal No. 08-018).

not, by words or conduct, manifest bias or prejudice, according each party the right to be heard (Application of a Child with a Disability, Appeal No. 07-090; Application of a Child with a Disability, Appeal No. 04-046; Application of a Child Suspected of Having a Disability, Appeal No. 01-021; see 8 NYCRR 200.1[x]; see also 22 NYCRR 100.3[B]).

Turning to the parent's allegation that the impartial hearing officer impermissibly barred her from appearing at future impartial hearing dates, as set forth in greater detail below, with respect to this incident, the hearing record does not indicate that the impartial hearing officer demonstrated bias. Pursuant to an off the record conversation that took place on October 15, 2007 regarding the possible adjournment of the impartial hearing, the impartial hearing officer advised the parent that in the event that she appeared at future impartial hearing dates after the parent definitively represented that was unable to do so due to job constraints, the impartial hearing officer would be forced to "raise questions concerning [the parent's] veracity" (IHO Decision at p. 8; see Tr. pp. 224-25). The parent's advocate had an opportunity to object during the hearing; however, the hearing record does not reflect that he did so. On November 30, 2007, the parent's advocate submitted a motion seeking recusal of the impartial hearing officer (IHO Ex. I). However, two additional impartial hearing dates had taken place between the initial off the record conversation and the motion to recuse (Tr. dated October 29, 2007 and November 1, 2007; pp. 281-524). The parent's advocate had appeared at both of those hearing dates without the parent and had made no objection to the parent's non-attendance at the hearing (Tr. pp. 279, 390). The hearing record reflects that the parent was able to testify and that parent's advocate was able to present and question all witnesses (Tr. pp. 180-277). Therefore, there is no showing the parent's due process rights were infringed by the impartial hearing officer's determination. Although the impartial hearing officer should have ensured that the conversation regarding the parent's attendance at future hearing dates took place on the record because it involved the scheduling of witness testimony and the parent's due process rights, under the circumstances presented herein, I find that the impartial hearing officer's determination was not a demonstration of bias.

Next, the parent cites a number of instances in which she contends that the impartial hearing officer misrepresented questions posed by her advocate as another example of bias. The hearing record does not support her assertion. Pursuant to State regulations, an impartial hearing officer has the authority to ask questions of counsel or witnesses for the purposes of clarification or completeness of the record (8 NYCRR 200.5[j][3][vii]). In the instant case, the hearing record reveals a number of instances where the impartial hearing officer asked clarifying questions during times when both the parent's advocate and the district's representative were questioning witnesses (see, e.g., Tr. pp. 108, 113, 116, 154, 157-58, 165-66). A review of the hearing record indicates that the impartial hearing officer's questions were posed in an effort to aid the parent's advocate and district representative, as well as to facilitate the witnesses' understanding of the questions asked. What the hearing record fails to show is how the impartial hearing officer fed responses to the witnesses or how she helped them answer questions, as alleged by the parent. Based on the hearing record before me, the impartial hearing officer did not demonstrate bias by interposing clarifying questions throughout the course of the impartial hearing.

Having determined that the impartial hearing officer did not demonstrate bias against the parent, I now turn to the parent's procedural and substantive arguments that the remedy sought for the denial of a FAPE for the 2006-07 school year is appropriate and that student was denied a FAPE for the 2007-08 school year.

With respect to the 2006-07 school year, neither party has appealed the impartial hearing officer's conclusion that the district failed to offer the student a FAPE during that school year as a result of procedural deficiencies surrounding the development of the June 2006 IEP. An impartial hearing officer's decision is final and binding upon the parties unless appealed to a State Review Officer (34 C.F.R. § 300.514[a]; 8 NYCRR 200.5[k]). Consequently, the impartial hearing officer's determination as to the appropriateness of that program is final and binding (Application of the Bd. Of Educ., Appeal No. 07-120; Application of a Child with a Disability, Appeal No. 07-026). As such, I will only address whether the parent's request for additional services is warranted to remedy the denial of a FAPE for the 2006-07 school year.

The parent also asserts that the impartial hearing officer erred by declining to award additional services to the student in form of 400 hours of 1:1 tutoring provided by EBL Coaching to remedy the denial of a FAPE for the 2006-07 school year. The impartial hearing officer determined that the district failed to offer the student a FAPE due to procedural irregularities surrounding the development of the June 2006 IEP; however, she also found that the student had made modest progress while enrolled in the district's 12:1+1 program (IHO Decision at pp. 8-10, 15; Parent Ex. C). As noted below, the impartial hearing officer properly concluded that the parent failed to establish the student's entitlement to an award of additional services inasmuch as she did not identify the specific deprivation of a FAPE that warranted a remedy nor did the parent identify an appropriate remedy to address the deprivation of a FAPE for the 2006-07 school year (IHO Decision at pp. 13, 18). The impartial hearing officer further found that pursuant to the parent's request, the district provided the student with a language enriched program during the 2007-08 school year specifically tailored to address her daughter's speech-language needs.

Compensatory education is instruction provided to a student after he or she is no longer eligible because of age or graduation to receive instruction. It may be awarded if there has been a gross violation of the IDEA resulting in the denial of, or exclusion from, educational services for a substantial period of time (Mrs. C. v. Wheaton, 916 F.2d 69 [2d Cir. 1990]; Burr v. Ambach, 863 F.2d 1071 [2d Cir. 1988]). Compensatory education is an equitable remedy that is tailored to meet the circumstances of the case (Wenger v. Canastota, 979 F. Supp. 147 [N.D.N.Y. 1997]). Here, the deprivation of instruction can be remedied through the provision of "additional services" before the student becomes ineligible for instruction (Application of a Child with a Disability, Appeal No. 04-054; Application of the Bd. of Educ., Appeal No. 04-016; Application of the Bd. of Educ., Appeal No. 03-075; Application of a Child with a Disability, Appeal No. 01-094). While compensatory education is a remedy that is available to students who are no longer eligible for instruction, additional services have been awarded to students who remain eligible to attend school and have been denied appropriate services, if such deprivation of instruction could be remedied through the provision of additional services before the student becomes ineligible for instruction by reason of age or graduation (Application of a Child with a Disability, Appeal No. 05-041; Application of a Child with a Disability, Appeal No. 04-054; Application of the Bd. of Educ., Appeal No. 02-047; see also Bd. of Educ. v. Munoz, 16 A.D.3d 1142 [4th Dep't 2005] [finding it proper for a State Review Officer to order a school district to provide "make-up services" to a student upon the school district's failure to provide those educational services to the student during home instruction]). In general, the award of additional educational services for a student who is still eligible for instruction requires a finding that the student has been

denied a FAPE (Application of the Bd. of Educ., Appeal No. 04-085; Application of the Bd. of Educ., Appeal No. 02-047).

Turning first to the impartial hearing officer's conclusion that the student's deficits that arose from the district's failure to offer her a FAPE during the 2006-07 school year were difficult to determine and quantify, a review of the hearing record supports a finding that the parent failed to demonstrate what deficits arose as a result of the deprivation of a FAPE during the 2006-07 school year (IHO Decision at pp. 13, 15). The district's psychologist who participated in the August 2007 CSE testified that the student's language delays have impacted all of her functioning, her attention span, her ability to concentrate and her frustration level (Tr. p. 598). He further stated that her full scale IQ score underestimated her real abilities (Tr. p. 547). The district's psychologist also opined he would be able to better understand the student's capacity to learn and to progress after she has had the opportunity to benefit from a full-time speech-language program because her speech-language deficits were a primary issue (see Tr. pp. 548, 589). He also indicated that "we won't be able to really know anything until she's had good enough speech and language work" (Tr. p. 548).

Although the parent maintains that the impartial hearing officer erred by "overstating" the amount of progress that the student achieved, as described below, the hearing record offers no support for her assertion. Testimony by the student's special education classroom teacher indicated that the student displayed some progress in both reading and math (Tr. pp. 316, 358). The student's present performance levels included in the June 2006 IEP developed by the CSE for the 2006-07 school year described her as having acquired a sight word vocabulary, but that she did not appear to decode; she did not write complete words or sentences when a spelling task was presented; and in math, although she was aware of the plus sign, she could not consistently complete arithmetic tasks (Parent Ex. C at p. 3). Regarding a math skills goal included in the June 2006 IEP that stated that the student will improve her math skills on her grade level by May 2007, the student's special education classroom teacher reported at the time of the impartial hearing that she had assessed and observed the student's achievement of the short term objective that indicated that the student will count by rote to 50 without external prompts in three out of five instances (Tr. pp. 316-17, 373; Parent Ex. C at p. 6). The student also displayed the ability to count sets of objects (up to 12) using one to one correspondence, with 80 percent accuracy (Tr. p. 316; Parent Ex. C at p. 6). Although she did not achieve the third math short-term objective that involved the student's ability to use a number line to "add on/take away" amounts in sets presented with 80 percent accuracy, the teacher's testimony reflected that the student could do addition tasks, but if the addition and subtraction problems were mixed up, she required explanation and extra help (id.). In addition, the student was adding one-digit numbers and learning how to add two-digit numbers (Tr. pp. 317-18).

The student's present performance description included in the June 2007 IEP indicated that she was able to name the days of the week in order and recognize them by sight (Parent Ex. B at p. 3). She was able to read most of the sight words on the second grade level, and was able to read body part words (id.). The student was learning to make letter/sound connections, and with assistance to maintain her attention to task, she was able to copy sentences when looking at a model and write family words and other words with short vowel sounds (id.).

The student's present performance description included in the August 2007 IEP indicated that the student was able to identify beginning and ending sounds, as well as able to match sound

to symbol (Parent Ex. D at p. 3). In addition, according to the August 2007 IEP, the student was able to recognize a few words from a grade appropriate list (id.). In reading comprehension, the student was able to recognize stated detail (id.). Regarding math, the student was able to add/subtract basic facts and use a calendar to compare and order events (id.). The student was also able to write the alphabet in lower case letters (id.).

In consideration of the student's foregoing attainment of reading, writing, and math skills, the impartial hearing officer properly determined that the student made modest progress during the 2006-07 school year. Likewise, the impartial hearing officer also correctly found that a review of the testimony by the student's private tutor further reveals that the student made progress during the 2006-07 school year (Tr. pp. 647, 652-55, 671), and that it was unlikely that the progress the tutor reported was solely attributable to the one hour per week, excluding summers, of tutoring that she provided, even with homework assistance by the parent (IHO Decision at p. 15; Tr. pp. 241-42, 670-71).

Next, I will consider the appropriateness of the remedy proposed by the parent. Although the parent asserts that EBL Coaching directly addresses the student's academic deficits and offers a teaching methodology that has been proven to be effective with her, the impartial hearing officer also correctly concluded that the parent failed to establish the appropriateness of the proposed remedy. As noted by the impartial hearing officer, while the hearing record indicates that EBL Coaching would provide the student with an unspecified amount of homework assistance, it is unclear how the proposed services would be delivered (Tr. pp. 253-54). The parent stated that she did not know the teaching methodology that EBL Coaching would use but she believed that they would reinforce whatever her daughter was learning at SLCD (IHO Decision at p. 15; Tr. pp. 253-54). Regarding homework assistance, the psychologist from SLCD testified that the student's homework is always completed and she further described her as "an organized student ... who wants to work" (Tr. pp. 724, 748). Reports from the student's classroom teacher from the 2005-06 school year also indicated that the student's homework was always complete (Parent Ex. L at pp. 3-4). Under the circumstances, the hearing record offers no indication that the student requires homework assistance as would be provided to her by EBL Coaching.

The hearing record also indicates that adding the services proposed by the parent would be premature (Tr. p. 607). The district's psychologist stated that until the student's speech-language problems were addressed and "brought up to a level that these specialists can have an [effect], then it's a waste of time" (id.). The district's psychologist opined that in light of the student's speech-language delays, if the tutoring provided by EBL Coaching were to be delivered by a speech-language therapist, then the student could benefit from the tutoring (Tr. pp. 609-10). However, a review of the hearing record does not reveal that EBL Coaching would deliver services to the student via a speech-language therapist.

Moreover, as found by the impartial hearing officer, the hearing record reflects that the addition of the proposed services in the form of ten hours of intensive 1:1 tutoring a week could potentially overwhelm the student. The hearing record reveals that the student attends SLCD during the hours of 8:30 a.m. to 3:00 p.m. (Tr. p. 249). The psychologist from SLCD described the curriculum there as a rigorous, 12-month program (Tr. pp. 717, 735). The student's special education teacher from the 2006-07 school year testified that the student becomes overwhelmed in school and that she tires easily (Tr. pp. 381-82, 385). Additionally, the psychologist from

SLCD stated that providing the student with additional tutoring after spending an entire day in school could be emotionally harmful to her and that she could be pushed too far (Tr. p. 747). Given that the hearing record demonstrates that the student does not require homework assistance, that adding extra tutoring is premature until her speech-language deficits have been addressed and that the proposed services could overwhelm the student, the parent has failed to establish that EBL Coaching would serve as an appropriate remedy to correct the deprivation of a FAPE for the 2006-07 school year.

Turning next to the parent's claims with respect to the 2007-08 school year, the parent first asserts that the August 16, 2007 CSE was improperly constituted due to the absence of the student's related service providers particularly that of a speech-language therapist, which resulted in a denial of a FAPE because it significantly impeded the parent's participation in the formulation of the IEP. As detailed below, I do not find the parent's argument to be persuasive. The August 2007 IEP was developed after two CSE meetings, the first one taking place in June 2007, and the parent attended both meetings accompanied by an advocate and an additional parent member (Parent Exs. B at p. 2; D at p. 2). Testimony by the parent revealed that she regularly communicated with the student's speech-language pathologist via a communication book during the 2006-07 school year (Tr. p. 223). She also indicated that she met with the speech-language pathologist during at least two parent teacher conferences and stated that the speech-language pathologist told her that she saw some progress in the student's work (Tr. p. 224). According to the parent, she did not raise any questions or concerns about the June 2007 IEP because "[she] knew the path [she] was going to take" (Tr. pp. 263-64; Dist. Ex. B at p. 2). She also did not tell the CSE at that time about her desire for the student to attend SLCD or that the student had already been observed by SLCD prior to the June 2007 CSE meeting and had been approved for admission if the district's CSE decided to place the student there (Tr. pp. 265-66). In addition, the district's speech-language pathologist who conducted the student's July 2007 speech-language evaluation reported that she spoke with the parent after the evaluation and informed the parent of her impressions of the student and her need for speech-language therapy (Tr. pp. 410-11).

The results of the district's July 2007 speech-language evaluation were available during the August 2007 CSE meeting, at which time the parent and her advocate could have requested the participation of a speech-language provider but failed to do so (Tr. pp. 557-58). Regardless of the speech-language pathologist's absence at the August 2007 CSE meeting, the parent testified that during the meeting she suggested SLCD as a potential placement for her daughter and further advised the August 2007 CSE that there was an available opening (Tr. pp. 259, 275). Given the aforementioned set of circumstances, the hearing record reflects a pattern of meaningful parent participation in the development of the student's August 2007 IEP (see Perricelli, 2007 WL 465211, at \*14-15 [finding no denial of a meaningful opportunity to participate when the student's mother was in "frequent contact" with teachers and school officials, "active[ly] participat[ed]" at her daughter's CSE meetings, and questioned the CSE about documents that she did not understand]). Accordingly, the parent has failed to demonstrate that the absence of the student's related service providers, particularly that of a speech-language pathologist, from the August 2007 CSE meeting 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 to the student, or caused a deprivation of educational benefits (see 20 U.S.C. § 1415[f][3][E][ii]; 34 C.F.R. § 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]).

I now turn to the parent's assertion that the goals contained in the August 2007 IEP were vague, generic and not individually tailored to address the student's educational needs and that they lacked sufficient detail to provide clear direction to her teachers. As set forth in greater detail below, the hearing record fails to support the parent's argument. An IEP must include measurable annual goals, including academic and functional goals, designed to meet the student's needs arising from his or her disability to enable the student to be involved in and progress in the general curriculum, and meeting the student's other educational needs arising from the disability (20 U.S.C. § 1414[d][1][A][ii]; 34 C.F.R. § 300.320[a][2][i]); see 8 NYCRR 200.4[d][2][iii]). In addition, an IEP must describe how the student's progress towards the annual goals will be measured and when periodic reports on the student's progress toward meeting the annual goals will be provided (20 U.S.C. § 1414[d][1][A][iii]; 34 C.F.R. § 300.329[a][3]; 8 NYCRR 200.4[d][2][iii][b],[c]; Application of a Child with a Disability, Appeal No. 07-053).

To address the student's identified needs, the August 2007 IEP contained annual goals and short-term objectives in reading, mathematics, receptive, expressive and pragmatic language, social coping, handling of classroom tools and materials, functional attention, visual motor, visual perceptive and organizational skills, and gross motor, balance and coordination needs (Parent Ex. D at pp. 7-17). The August 2007 IEP had seven language goals with a total of 24 measurable short-term objectives or benchmarks; four math goals with a total of 12 measurable short-term objectives or benchmarks; two reading goals with nine measurable short-term objectives or benchmarks; one social coping goal with two measurable short-term objectives or benchmarks; three gross motor, balance and coordination goals with a total of eight measurable short-term objectives or benchmarks; and one goal each for handling of classroom tools and materials, functional attention, visual motor, visual perceptive and organizational skills with a total of seven measurable short-term objectives or benchmarks (id.). The corresponding short-term objectives further clarified the goals (id.). Each short-term objective specified a skill the student needed to demonstrate, and included percentage or ratio of accuracy required, as well as expected target dates (id.). For example, the goal to develop math computation skills and math concepts at a first grade level by June 2008 had corresponding objectives that indicated that the student will add the value of coins with 70 percent accuracy by November 2007, that the student will solve one-digit addition problems using manipulative items and "count up" skills with 70 percent accuracy by February 2008, and that the student will subtract one-digit numbers using manipulatives with adult assistance four out of five times by May 2008 (id. at p. 16). The goal to address the student's ability to comprehend spoken language had corresponding short-term objectives that indicated that the student will identify picture representation of interrogative sentences, declarative sentences, and negative sentence construction, each with 80 percent accuracy (id. at p. 10). While the majority of annual goals on the August 2007 IEP should have included information about the level of performance expected to be reached by the student during the 2007-08 school year, a review of the August 2007 IEP reveals that the short-term objectives were specific and provided sufficient information to measure the student's performance and demonstrated the requisite alignment with the student's identified needs. The August 2007 IEP indicated that progress specific to goals and objectives would be reported three times per year (id. at pp. 7-17). The August 2007 IEP included progress report card formats that contain an explanation of the coding system used to report progress regarding annual goals, short-term objectives, method of measurement, report of progress, progress toward the annual goal and if applicable, the reason for not meeting the annual goal, as well as space for comments (id. at pp. 7-9, 12-13). Testimony by the student's 2006-07 classroom teacher and the district's speech-language pathologist who evaluated the student described the progress report card

formats and indicated that they were more individualized and specific to the student's IEP goals and objectives than the school report card issued to both general education and special education students (Tr. pp. 309-10, 359, 436-38). Under the circumstances presented herein, the hearing record shows that the annual goals and short-term objectives as written provide sufficient specificity to enable the student's teachers and the parent to understand the CSE's expectations with respect to each goal and what the student would be working on over the course of the school year (see W.S. v. Rye City Sch. Dist., 454 F. Supp. 2d 134, 147 [S.D.N.Y. 2006]; Application of the Dep't of Educ., Appeal No. 08-034; Application of a Child with a Disability, Appeal No. 07-117; Application of a Child with a Disability, Appeal No. 06-102).

As indicated above, the hearing record demonstrates that the August 2007 IEP accurately reflected the results of evaluations to identify the student's needs. Moreover, the goals and short-term objectives contained in the August 2007 IEP were appropriate and related to the student's needs. In light of the foregoing, the parent's claim that her daughter was not offered a FAPE for the 2007-08 school year is unpersuasive.

I have considered the parties' remaining contentions and find that I need not reach them in light of my determinations.

**THE APPEAL IS DISMISSED.**

**Dated: Albany, New York  
June 30, 2008**

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**PAUL F. KELLY  
STATE REVIEW OFFICER**