



The University of the State of New York

The State Education Department

State Review Officer

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No. 10-037

Application of a STUDENT WITH A DISABILITY, by her parents, for review of a determination of a hearing officer relating to the provision of educational services by the [REDACTED] SCHOOL DISTRICT.

Appearances:

Law Offices of Michele Kule-Korgood, attorneys for petitioners, Michele Kule-Korgood, Esq., of counsel

Ingerman Smith, L.L.P., attorneys for respondent, Christopher Venator, Esq., of counsel

DECISION

Petitioners (the parents) appeal from a decision of an impartial hearing officer which determined that the educational program and services respondent's (the district's) Committee on Special Education (CSE) recommended for the student for the 2007-08 and 2008-09 school years was appropriate. The appeal must be dismissed.

At the time of the impartial hearing, the student had received a Regents diploma from Harmony Heights School (Harmony Heights), but she continued to attend Harmony Heights, pursuant to an interim pendency order dated October 1, 2009 (IHO Interim Order; Joint Ex. 1 at p. 67). Harmony Heights is a private school which has been approved by the Commissioner of Education as a school with which districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7). The student's eligibility for special education and related services as a student with an other health impairment (OHI) is not dispute in this proceeding (see 34 C.F.R. § 300.8[c][9]; 8 NYCRR 200.1[zz][10]).

The student's educational history reflects that she has received diagnoses of Asperger's syndrome; a mood disorder, not otherwise specified (NOS); an anxiety disorder; and school phobia (Tr. pp. 868-69; Dist. Ex. 2; Parent Exs. T at p. 1; Y; Joint Ex. 1 at pp. 46-47; see Tr. pp.

348, 395). She exhibits deficits in her organizational and study skills, is easily distracted, and has low self-esteem (Tr. pp. 395-96; Dist. Ex. 7 at p. 3; see Parent Ex. VV at p. 1). The hearing record reflects that the student attended district schools from kindergarten through ninth grade (Tr. pp. 605-07). She first received special education services when she was in the seventh grade (Tr. pp. 606-607). During that school year (2003-04), the student was in a general education class and received resource room services to address her organizational difficulties (id.). The student remained in a general education classroom with resource room services for both her seventh and eighth grade school years (Tr. pp. 609-10; see Parent Ex. VV at p. 1). During ninth grade (2005-06), the student moved to a collaborative classroom that included a special education teacher (Tr. pp. 613-14). In September 2006, the student started tenth grade at the district high school, but was soon placed in a therapeutic day school program at Harmony Heights (Tr. pp. 616, 624; Dist. Ex. 1 at p. 1; Parent Exs. V at p. 1; AA at p. 1; SS at p. 1). In September 2007, the student transferred from the Harmony Heights day school program into its therapeutic residential program (Parent Ex. V at p. 1). She has remained at the Harmony Heights residential program since that time (Parent Exs. P; S).

On August 6, 2006, the student's private therapist¹ completed the Vineland Adaptive Behavior Scales, Second Edition (Vineland-II) with the student's mother acting as informant (Parent Ex. BB at p. 1). The student's mother's responses on the Vineland-II resulted in standard (and percentile) scores of: 71 (3) for the adaptive behavior composite, 83 (13) for communication, 72 (3) for daily living skills, and 64 (1) for socialization (id. at pp. 3, 4-5).

A September 6, 2006 psychosocial assessment report regarding the student and conducted by the clinical director/social worker at Harmony Heights² indicated that the student was depressed, easily irritated, intolerant of others, only rarely initiated contact with others, performed poorly in school, and avoided school (Parent Ex. CC at pp. 1-2). A portion of the assessment contained a self-appraisal by the student, which revealed that she believed her own weaknesses to be in the areas of time management, tolerance for others, and organizational skills (id. at p. 2). The Harmony Heights clinical director/social worker recommended individual psychotherapy, group counseling, and family therapy (id. at p. 3).

A spring 2007 progress report by the clinical director/social worker from Harmony Heights indicated that during the time that the student was a day student at Harmony Heights, she actively participated in her weekly individual therapy session and sought additional therapy sessions when in need (Parent Ex. EE at p. 1). The clinical director/social worker described the student as having impoverished socialization skills, preferring to be alone, keeping a

¹ This person is referred to in the hearing record as the parents' autism consultant, a private consultant, a licensed social worker and as a psychotherapist (Tr. pp. 867-68; Dist. Exs. 7 at p. 6; 10 at p. 2; Parents Exs. P at p. 5; S at p. 5; T at pp. 1, 3; V at pp. 1, 2; Joint Ex. 1 at pp. 82-83). In this decision, for the purposes of consistency and clarity, this witness will be referred to as student's private therapist.

² This person is referred to in the hearing record as a Harmony Heights social worker, a Harmony Heights therapist and as the Harmony Heights Intake/Clinical Director (Tr. pp. 58, 86, 92, 96, 113, 157, 347, 266, 277, 639, 644, 657; Dist. Exs. 1 at p. 1; 2; 4 at p. 1; 20 at p. 1). In this decision, for the purposes of consistency and clarity, this witness will be referred to as the Harmony Heights clinical director/social worker.

"comfortable distance" from her peers,³ task avoidant, and reluctant to seek out school staff for assistance when needed (id. at pp. 1-2). The student was also described as a gifted artist, foreign language proficient, a prolific writer, and having a good sense of humor (id. at p. 1). The clinical director/social worker also reported that upon returning home each day from Harmony Heights, the student retreated to her room and stayed on the computer until bedtime (id.). The student was reported to struggle in the morning with independent waking, eating breakfast and finding time for appropriate grooming (id.). The clinical director/social worker further reported that the student's family relationships were "quite strained" (id. at p. 2). She opined that in order to function more independently and age appropriately, the student needed more assistance with her self-care skills and with her activities of daily living (ADL) (id.). She recommended that the student transfer from the Harmony Heights day program to the Harmony Heights residential program in order to receive more intensive therapeutic support and to help the student to reach her social, emotional and academic potentials (id.).⁴ The progress report also indicated that the family was encouraged to participate in the Harmony Heights family therapy program (id.).

On April 17 and 18, 2007, a Level II vocational evaluation of the student was performed by the Board of Cooperative Educational Services (BOCES) (Dist. Ex. 11 at p. 1). The student reported her interests to be in foreign languages and graphic arts (id. at pp. 2, 6). The student also reported that her post-high school plan was to attend college (id. at p. 6). After observing the student's behavior; evaluating her verbal and perceptive skills, coordination aptitude, and her learning style; the evaluator identified career options for the student based upon her interests and abilities (id. at pp. 1-9). The evaluator provided the student with several potential occupations from the "Dictionary of Occupational Titles" including interpreter, translator, illustrator, and graphic designer (id. at pp. 13-15). The evaluator also recommended that the student register with the "Dean of Students' Office" in order to access available support services (id. at p. 6). Additionally, the evaluator recommended a referral to the Office of Vocational and Educational Services for Individuals with Disabilities (VESID) in order for the student to access potential support services such as a vocational/occupational interest assessment and job training or placement assistance (id.).

By letter dated June 15, 2007, the student's private therapist provided recommendations to the district's director of pupil personnel services (Parent Ex. U). The private therapist reported that although the student had adjusted well to Harmony Heights, her functioning at home had not improved (id. at p. 1; see Parent Exs. ZZ; AAA; BBB). She reported that the student exhibited difficulties in the areas of self-care, noncompliance, family relationships, isolation, organization, socialization, and her ability to assume household responsibilities (Parent Ex. U at p. 1). She recommended that the student be placed in the residential program at Harmony Heights (id.).

³ The student was noted to speak with a few "select" peers at lunch and she made minimal attempts to socialize outside of school (Parent Ex. EE at pp. 1-2).

⁴ For the 2006-07 school year, the student received the following grades at Harmony Heights: 80 in English 10, 90 in global studies, 75 in math, 72 in living environment, 89 in drawing and painting, 82 in physical education, and 71 in current events (Parent Ex. BBB). The student also received an 82 on the global studies Regents examination (id.).

The private therapist also recommended job coaching, work experiences, peer mentors, an assessment of the student's interest in foreign language, and a teen support group (id. at p. 2).

A June 19, 2007 annual report by the student's autism consultant from the Genesis School for Autism (Genesis)⁵ noted that the student had made a "good transition" to Harmony Heights and was academically successful (Tr. pp. 95, 97, 165, 390; Parent Ex. WW at pp. 1-2).⁶ The autism consultant reported that the student was initially noted to be very shy and socially withdrawn, and that her teachers discovered that she did not take notes, had disorganized folders and missed assignments (Parent Ex. WW at pp. 1-2) However, as the school year progressed the student improved socially, participated more in class and in gym and socialized with other girls during school hours (id.). She was reported to have had two out-of-school meetings with schoolmates, and was observed initiating conversations and helping peers with work (id.). The student's self esteem was also reported to have improved and she was more responsive to adults and peers when they attempted to engage her in conversation (id. at p. 2). The report further described that regular parent training sessions provided at the family's home focused on strategies and problem solving for the student's social/emotional and behavioral needs (id.). In reporting on the student's home life, the consultant noted that the student's personal hygiene had improved, her mood was more positive, and she was less argumentative with her family members (id. at pp. 1-2). The consultant noted that the student continued to need improvement in her self-care and hygiene skills, in her eating and sleeping habits and routines, in maintaining her personal belongings and room, and with her diet and exercise (id. at p. 2).

On June 20, 2007, a subcommittee of the CSE convened to develop an individualized education program (IEP) for the student's 2007-08 school year (Parent Ex. P at p. 1). Attendees included the student's mother, a CSE chairperson, the student's private therapist, the student's Genesis autism consultant, an additional parent member, the clinical director/social worker from Harmony Heights, a teacher from Harmony Heights, and a district school psychologist (id. at p. 5). The clinical director/social worker from Harmony Heights and the student's teacher participated by telephone (id.). The resultant IEP indicated that the student's education was affected by her depression, distractibility, low self-esteem, anxiety, poor organizational skills and poor study skills (id. at pp. 3, 4). The CSE recommended that the student be classified as having an OHI and that she be placed in a 12-month 12:1+1 residential program at Harmony Heights, with four individual 60-minute sessions per month with an autism consultant from Genesis, two 45-minute group (5:1) counseling sessions per week with a counselor from Harmony Heights, one individual 45-minute session of counseling per week with a counselor from Harmony Heights, two individual 60-minute sessions of family counseling per month with a counselor from Genesis, and four individual 60-minute sessions of parent training per month with a

⁵ Genesis is part of a larger entity Eden II (Tr. pp. 386-87). In the hearing record there are documents from both Genesis and Eden II (Dist. Exs. 8; 15; Parent Exs. W; UU; WW). In this decision, for the purposes of consistency and clarity, all of the Genesis and Eden II documents will be referred to as being from Genesis.

⁶ The hearing record defines Genesis as a private, not-for-profit school with which the district contracts that specializes in working with students on the autism spectrum (Tr. pp. 389-90).

counselor from Genesis (*id.* at pp. 1, 18).⁷ Extended school year (ESY) services were to be provided from July 9, 2007 to August 17, 2007, and were identical to the services provided during the 10-month school year (*id.* at pp. 1-2).⁸

A Harmony Heights psychiatric evaluation report dated July 11, 2009 reflected that the student had impaired abstract thinking, poor self-esteem and negativistic thoughts (Parent Ex. SS at p. 2). The evaluation report also indicated that she had diagnoses of a recurrent major depressive disorder and Asperger's syndrome (*id.* at p. 3). The psychiatrist noted that the student would be monitored for any change in the severity of her depressive symptoms and to obtain a baseline for her depression (*id.*). The psychiatrist reported that if no significant improvement of the student's symptoms were noted, then medication management would be recommended (*id.*).

On February 5, 2008, Harmony Heights held a transition planning meeting and completed a "Transition Planning Checklist" for the student (Dist. Ex 4). Participants in the transition planning meeting included the Harmony Heights school counselor, principal, and clinical director/social worker (*id.* at p. 2). The student was noted to be planning to enter a two year college program and was working toward living independently or with family (Dist. Exs. 4 at p. 2; 6). In order to assist in transition planning, a Level I vocational assessment was performed (Dist. Ex 5 at p. 1). During the student interview portion of the vocational assessment, the student indicated that she was interested in drama, law, and foreign languages and wanted to pursue a career as a lawyer, language interpreter or as an animator (*id.* at pp. 1-2). The interviewer noted that in order to help the student achieve these long-term goals, the student should continue to receive individual and group counseling, and also continue in a structured or residential educational setting (*id.* at p. 4). The transition planning checklist also noted that Harmony Heights would provide classroom and school-based vocational activities, activities to help the student live independently, and post-secondary education planning meetings (Dist. Ex 4 at p. 3).

An April 18, 2008 report from the student's teachers at Harmony Heights indicated that the student's social objective was to "increase [her] self confidence" (Parent Ex. Z at p. 1). Some of the student's teachers indicated that she was quiet and sometimes isolated herself from the rest of the class and from her peers; that in math class the student had difficulty asking for help and staying focused on the work in class, but earned average test grades and above average quarterly grades; that in English class the student had good reading comprehension and written expression skills, but had difficulty expressing herself verbally; and that she had a significant number of absences and struggled to meet deadlines for classroom assignments (Parent Exs. Z at pp. 1-2; CCC). The same report also indicated that the student was respectful to staff and peers (Parent

⁷ The hearing record reveals that Genesis began providing consulting services to the student while she was a middle school student still attending a district school (Tr. pp. 393-94, 397). Genesis provided in-school consultation with the teachers at Harmony Heights to provide support for teachers and to suggest strategies, and also provided in-home supervision and parent training for the parents (Tr. pp. 342-43, 358, 396).

⁸ Although the family counseling component of the student's related services was provided by Genesis during the 10-month school year, the June 20, 2007 IEP reflects that these services were provided by Harmony Heights' staff during the extended school year (Parent Ex. P at pp. 1-2).

Ex. Z at pp. 1-2). The art teacher described the student as a "very talented art student," whose work was "beautifully executed and creative" (*id.* at p. 1). In addition, the teacher noted that although the student could appear sad and preoccupied with her own thoughts, she had a great sense of humor and had no difficulty communicating her needs to staff in that class (*id.*). The drama teacher described the student as "amazing in her ability to transform from a quiet student to an extremely accomplished actor and singer" (*id.*). The same teacher indicated that the student "g[ot] along very well with all her peers" (*id.*).⁹

A June 13, 2008 report from the student's Genesis autism consultant revealed that the school consultations at Harmony Heights consisted of observations, meetings with Harmony Heights staff, and staff support and training (Parent Ex. W at p. 1). Parent training and in-home supervision focused on teaching strategies to support the student's attainment of IEP goals, and behavioral strategies (*id.*). In discussing the student's eleventh grade school year (2007-08), the autism consultant noted that the student's first quarter grades ranged from 76 to 98, her second quarter grades ranged from 73 to 93, and her third quarter grades ranged from incomplete to 93 (*id.* at pp. 1-2). Socially, the student was reported to have improved; she improved her self-esteem, made friends, and participated more at the residence (*id.* at pp. 1, 2). In regard to parent training, the autism consultant reported that the student's IEP goals addressed strategies for positive behavioral changes and strategies to help with the student's social, emotional, and behavioral needs (*id.* at p. 2). At home the student's personal hygiene was reported to have improved, her mood was more positive, and she had become less argumentative with her family (*id.* at pp. 1-2). The autism consultant recommended that the student work on developing her functional skills in the area of hygiene, diet, exercise, eating and sleeping routines, and maintenance of personal belongings (*id.* at p. 2). She also recommended "person-centered planning," a life coach, VESID services, a Level 3 vocational assessment, continued school consultation, parent training and in-home supervision (*id.* at p. 3).

A June 13, 2008 report from the clinical director/social worker at Harmony Heights noted that the student remained "extremely fragile" despite her academic accomplishments (Dist. Ex. 1 at p. 1; Parent Ex. X at p. 1). The report noted that the student required additional sessions in order to "navigate" basic daily functioning and social interactions and that the student's socialization skills were extremely compromised (*id.*). She also reported that the student possessed emerging thought disturbances, mood instability, compromised sleep patterns, difficulty concentrating, and irrational or obsessive thoughts (*id.*). The clinical director/social worker further noted that the student's emotional concerns often precluded her from focusing and carrying out daily class objectives (*id.*). She indicated that the student's academic work had declined in the third quarter, she had several absences, and she failed to complete work (*id.*). In discussing her life at home, the clinical director/social worker reported that there was slight improvement in family communication, but that the student preferred to avoid verbalizing her feelings or interacting with her family while at home on weekend visits and spent an excessive

⁹ For the 2007-08 school year, the student received the following grades: 76 in math 3, 85 in English 11, 86 in U.S. history, 84 in physical education, 94 in health, 87 in environmental science, 93 in drama, 92 in draw and paint, and 84 in astronomy (Parent Ex. YY). The student also passed the English Regents examination with a score of 88 (*id.*).

amount of time on the computer avoiding family activities, outings and household responsibilities (id.). The clinical director/social worker indicated that the student was less preoccupied with her diagnosis of Asperger's syndrome and had begun to identify her strengths as an accomplished actor, artist and writer (id. at p. 2). The student also worked on improving her diet and exercise regimen to bolster her self-esteem and self-worth (id.).

A June 16, 2008 letter from the student's private therapist to the district's director of pupil personnel services reported that the student's progress was limited, particularly in her adaptive functioning skills (Parent Ex. V at p. 1). The private therapist stated that outside of Harmony Heights' supportive educational setting, the student was unable to function (id.). The private therapist recommended a reevaluation by the Fay J. Lindner Center for Autism (Lindner Center); an individual life coach; transition planning including assistance from the State Office of Mental Retardation and Developmental Disabilities (OMRDD); a teen support group; art lessons; therapeutic riding; visiting a community college with a life coach; a pre-college independent living/transition program; a senior year spread over 24 months; volunteer work; travel training; and an evaluation of the student's interest and proficiency in languages (id. at pp. 2-3).

On June 16, 2008, a CSE subcommittee convened to develop an IEP for the student's 2008-09 school year (Parent Ex. S at p. 1). Attendees included the student, the parents, the district's director of pupil personnel services who functioned as the CSE chairperson, a social worker, the student's private therapist, the autism consultant from Genesis, Harmony Heights' clinical director/social worker, a teacher from Harmony Heights, and a school psychologist (id. at pp. 5-6). The student, the clinical director/social worker from Harmony Heights and the teacher all participated by telephone (id. at p. 5). The resultant IEP reflected that the student needed to improve her organization skills, her study skills, and her attention skills (id. at pp. 3, 4). Regarding the student's post-secondary goals the IEP noted that the student had a goal of attending college to pursue a career in either graphic art or in foreign languages (id. at pp. 4, 5). The IEP indicated that Harmony Heights would provide counseling to improve the student's self-advocacy skills, emotional regulation, time management skills, and daily living skills (id. at p. 5). The IEP noted that the student would be provided with accommodations including preferential seating as needed, refocusing and redirection as needed (id. at p. 2). Recommendations for testing accommodations were that the student would be provided with extended time, a special location, explanation of directions and additional examples (id. at p. 3). The CSE recommended that the student remain in Harmony Heights' 12-month 12:1+1 residential program with four 60-minute individual sessions per month with an autism consultant from Genesis, two 45-minute group (5:1) counseling sessions per week with a counselor from Harmony Heights, one 45-minute session of individual counseling per week with a counselor from Harmony Heights, two 60-minute sessions of family counseling per month with a counselor from Genesis, one two-hour session of in-home supervision per month provided by Genesis, and one 60-minute session of parent training per month with a counselor from Genesis (id. at p. 2). ESY services were to be provided from July 7, 2008 to August 15, 2008, and were identical to the services recommended for the 10-month school year (id. at pp. 1-2). The CSE also developed 12 annual goals to address the student's study skills, social/emotional and behavior needs, and career/vocational and transition needs (id. at pp. 7-8).

On June 23, 2008, an application was made to OMRDD by the district and signed by the student's mother to obtain services for the student (Dist. Ex. 13; see Dist. Ex. 12).

By letter dated July 18, 2008, the district's director of pupil personnel services requested the Lindner Center perform a semantic language evaluation of the student (Parent Ex. XX; see Dist. Ex. 16).

An October 6, 2008 report of an assessment of the student by her private therapist described the student's functional skills and adaptive behaviors (Parent Ex. T). With the student's mother acting as informant, completion of the Vineland-II resulted in a standard (and percentile) score of 68 (2), a communication score of 69 (2), a daily living skills score of 66 (1), and a socialization score of 74 (4) (id. at pp. 1-2, 7, 8, 9). The private therapist conducting the evaluation reported that the student's time management, organization, and initiation skills were "major obstacles" that needed to be practiced (id. at p. 3). The private therapist also recommended an "extended transition plan" to prepare for the student's post-secondary education, employment and independent living; the use of shadows and buddies to encourage socialization, motivation and independence; a job coach; apprenticeships and volunteer experiences; rehearsal of self-advocacy skills; and "rehears[al]" of BOCES or community college courses to assist her transition to a post-secondary program (id.).

On October 29, 2008, the CSE convened to develop an IEP for the student's 2008-09 school year (Dist. Ex. 7). Attendees included the student, the student's mother, the district's director of pupil personnel services who functioned as the CSE chairperson, a school psychologist, a social worker, both of the student's autism consultants from Genesis, the clinical director/social worker from Harmony Heights, a teacher from Harmony Heights and the student's private therapist (id. at pp. 5-6, 12). The student, the clinical director/social worker from Harmony Heights and the Harmony Heights teacher all participated by telephone (id. at p. 6). The resultant IEP noted that the student would be provided with accommodations including preferential seating as needed, refocusing and redirection as needed (id. at p. 2). The student was also to be provided with test accommodations including extended time, a special location, explanation of directions and additional examples (id. at p. 3). The IEP noted that the student was expected to complete high school with a Regents diploma in June 2009 (id.). The IEP also noted that the student needed to improve her organizational and study skills in order to help her achieve her goal of attending college to pursue a career in either graphic art or foreign language (id. at pp. 4, 5, 6). The IEP further noted that the student's goal was to live independently (id. at p. 5). In order to assist the student's transition to post-secondary activities, the IEP recommended that the student meet with a counselor at Harmony Heights to identify and discuss her career interests and work on improving her self-advocacy skills, emotional regulation and time management skills (id.). To acquire daily living skills and community skills, the student was encouraged to participate in peer activities at the residence and to practice cleaning, self-care and time management skills at the residence (id.). The Genesis autism consultants recommended a behavior intervention specialist to work with the student on travel training, and accompanying the student into the community to give her hands-on opportunity for vocational training (id. at p. 6). The CSE also discussed the student's participation in a senior transition program and in

planned community trips (id.). The CSE further discussed making a BOCES referral for a job coach and a referral to VESID; an OMRDD referral had already been made (id.).

To assess the student's ability to learn a language other than English, the CSE made a referral to the Lindner Center (id.).¹⁰ The CSE further recommended that the student remain in a 12-month 12:1+1 residential program at Harmony Heights, with four 60-minute individual sessions per month with an autism consultant from Genesis, one four-hour individual session with a Genesis behavior specialist, two 45-minute sessions of weekly group (5:1) counseling with a counselor from Harmony Heights, one 45-minute session of individual counseling per week with a counselor from Harmony Heights, two 60-minute sessions of family counseling per month with a counselor from Genesis, one two-hour session of in-home supervision per month provided by Genesis, and one 60-minute session of parent training per month with a counselor from Genesis (id. at pp. 1-2). The recommended ESY services were the same as those contained in the prior IEP with the exception that the behavior specialist service was not recommended (id.).¹¹ The CSE kept the same 12 annual goals previously developed at the June 2008 CSE meeting (compare Parent Ex. S at pp. 7-8, with Dist. Ex. 7 at pp. 7-8).

By letter dated November 13, 2008, OMRDD advised the student that it had determined that the student had a developmental disability and was therefore eligible to apply for OMRDD services (Dist. Ex. 14). The letter provided the name and telephone number of a contact person at OMRDD, and the name of the contact person at the district's high school (id.).

By letter dated January 16, 2009, the parents advised the district's director of pupil personnel services that they believed that the October 2008 IEP contained numerous inaccuracies (see Parent Ex. C at p. 1), and identified the portions of the IEP that they believed needed to be altered or deleted (id. at pp. 1-2).

By another letter dated January 16, 2009, the parents wrote to the district's superintendent as a follow-up to a meeting that had been held on January 8, 2009 (Parent Ex. D). The parents requested that the district investigate other therapeutic schools for the student so that she could obtain transition services that were "more appropriate" than the services being provided at Harmony Heights (id.).

¹⁰ The October 2008 IEP indicated that the student was exempt from learning a language other than English (Dist. Ex. 7 at p. 3). According to the district's director of pupil personnel services, the CSE thought that foreign language was not a realistic goal for a student who had been language exempt for so long and who would be graduating in only eight months (Tr. pp. 266-68, 270). Despite this absence of foreign language study, the district agreed to assess the student's ability to learn a language other than English and made a referral to the Lindner Center (Tr. pp. 168-70; Dist. Ex. 7 at p. 6). The hearing record also reveals that the foreign language exemption was requested by the student's mother before the student was placed at Harmony Heights (Tr. pp. 167, 486, 683-84; see Tr. pp. 683-84; Joint Ex. 1 at p. 49), and the student's mother knew that Harmony Height did not have foreign language classes (Tr. p. 721; see Tr. pp. 104, 426).

¹¹ The October 2008 IEP contained a notation which indicated that the behavior intervention specialist was to use four hours per week as needed (Dist. Ex. 7 at p. 2). It is unclear from the document whether this notation was to clarify the regular school year, the ESY, or both (id.).

In early 2009, Harmony Heights prepared an "Individualized Transition Plan" for the student (Dist. Ex. 20). The student was interviewed to determine her strengths and interests and Harmony Heights developed several goals to assist the student in transitioning to post-secondary education and community living including goals to help the student explore a variety of career options; evaluate her strengths and weaknesses; explore her desire to live at home or in a group home; assist her in managing daily living skills such as self-care, housekeeping duties, meal preparation, money management, insurance coverage, and citizenship skills; apply to VESID or to other support agencies; identify education options; obtain a driver's license; self-advocate and participate in planning for her future; advocate for her own medical needs; and seek therapeutic assistance when necessary (id. at pp. 2-3, 4-5).

On February 24, 2009, at a meeting arranged by the district, the student's mother met with a VESID counselor at the district's high school to discuss VESID services and the student's eligibility for those services (Tr. pp. 667-669, 670; Dist. Exs. 17; 25; Parent Exs. HH; II; see Dist. Exs. 18; 19). The student's mother was provided with a description of the services offered and an application for VESID (Dist. Ex. 25).

By letter dated March 12, 2009 to the district director of pupil personnel, Genesis requested funding for the public transportation costs associated with the student's functional life skills training (Parent Ex. TT).

By letter dated March 16, 2009, addressed to both the district's superintendent of schools and the director of pupil personnel services, the parents requested that the district confer with the New York State Education Department to find a "more appropriate" out-of-State residential school for the student (Tr. p. 358; Parent Ex. F).

By letter dated April 6, 2009 addressed to the district's director of pupil personnel services, the parents requested that the district convene an emergency CSE meeting to find a new placement for the student (Parent Ex. G at p. 1). The parents also requested that the district confer with the Pathway School, an out-of-State approved private school, in order to evaluate the appropriateness of that school as a potential placement (id.).

By letter dated April 8, 2009, the district's director of pupil personnel services acknowledged the parents' request for an emergency CSE meeting and advised the parents that the school district would be closed from April 9, 2009 to April 20, 2009 (Parent Ex. H). She further stated that the parents' request for a residential program at the Pathway School would be discussed at the CSE meeting and advised the parents to contact her with any questions (id.).

An April 22, 2009 "Annual Review" report for the 2008-09 school year from Genesis revealed that behaviorally, the student had a good rapport with her therapist, participated in therapy and sought assistance when in crisis (Parent Ex. UU at p. 1). On occasion during the 2008-09 school year, when she was upset, the student demonstrated impulsive and destructive behavior characterized by destroying property (id.). As a consequence of this behavior she

dropped to a lower level in the residence which afforded her fewer privileges (id.)¹². Academically, the student struggled with organizing long assignments, breaking down large tasks, and allotting adequate time for each task (Parent Ex. U at p. 1; see Parent Ex. GG). However, the Genesis report indicated that academically, the student performed well particularly in art, drama, and computer technology (Parent Ex. UU at p. 1). The report also noted that socially, the student struggled with her peers at times due to her inability to understand many of the nuances of "teenage girl friendships," had difficulty maintaining conversations, and tended to isolate herself from others (id. at p. 2).

On May 11, 2009, the student and her mother met with a different VESID counselor to again discuss VESID services and the student's eligibility for those services (Tr. pp. 669-71; Parent Exs. JJ; KK). This second meeting was arranged by Harmony Heights (Tr. p. 670).

A June 2009 letter from the student's residential director at Harmony Heights noted that the student was able to meet the expectations of a "Level 3" in her residence (Dist. Ex. 23). The letter also noted that although the student was demoted to a "Level 2" in February 2009, she regained her Level 3 status the following month (Dist. Ex. 23; see Parent Ex. PP).

On June 8, 2009, the CSE convened to conduct an "exit meeting" for the student (Dist. Ex. 10). Attendees included the student, the parents, the district's director of pupil personnel services who also acted as the chairperson, a psychologist, the student's Genesis consultant, the student's private therapist, a friend of the parent, a social worker, the Harmony Heights clinical director/social worker, the executive director of Harmony Heights, the Harmony Heights principal, a Harmony Heights special education teacher, a residential director from Harmony Heights, and a "2nd School" principal (id. at pp. 1-2).¹³ The student, all members from Harmony Heights, and the "2nd School" principal participated by teleconference (id. at p. 2). At the meeting, the parents requested an "extension" of the IEP and presented a two-page document listing the alleged educational failures of the district, Harmony Heights, and Genesis as they related to the student's needs (id.; see Parent Ex. FF). The parents requested that the student be placed at the Pathway School and that a reevaluation of the student be conducted by the Lindner Center (Dist. Ex. 10 at p. 2).

The CSE reviewed an April 1, 2009 communication assessment of the student at the exit meeting, which indicated that the student did not have any barrier to learning a foreign language (Dist. Ex. 10 at p. 2). The "Post-Secondary Student Exit Summary Report" reflected that at the meeting the CSE discussed the student's participation in the "Senior Transition" class and its

¹² The hearing record reflects that in Harmony Heights' residential program, students must abide by residential rules and move up through a four level system as they meet certain goals (Tr. pp. 69-70; Dist. Ex. 23; Parent Ex. NN). Level 3 allowed the student to go home every weekend (Tr. p. 88; Dist. Ex. 23). According to the principal of Harmony Heights, the level system is designed to encourage students to work toward goals (Tr. p. 43).

¹³ The exit meeting document indicated that attendance by an additional parent member was declined (Dist. Ex. 10 at p. 2).

focus on personal finance, banking, safety, community service projects, and weekly school social outings (*id.* at p. 11). The CSE also noted that the student had acquired independent living skills such as maintaining her personal living space, laundering her clothing, maintaining personal hygiene, punctuality, and making change at a register (*id.* at p. 13). The exit summary noted that the student had a pending VESID application, and provided the name and telephone numbers of persons who could assist the student in exploring college programs and resources available through OMRDD (*id.* at pp. 11-13).

By due process complaint notice dated June 16, 2009, the parents requested an impartial hearing (Parent Ex. A at p. 4). The parents contested the district's decision to allow the student to graduate, asserting that the district had failed to coordinate and provide appropriate transition services for the student (*id.* at p. 2). Specifically, the parents asserted, among other things, that the district failed to: start transition planning for the student when she was 15; provide appropriate vocational transition goals; reevaluate the student; assist the parents with securing VESID and OMRDD services; correctly represent information on the October 2008 IEP; respond to the parents' letters; research therapeutic educational programs; provide travel training; provide drivers' education; provide peer mentors; provide a foreign language assessment; provide appropriate speech-language services; provide appropriate goals; ensure that the student's related services were provided; or implement any of the recommendations made in the Lindner Center evaluation report dated spring 2007 (*id.*).¹⁴ The parents also asserted that Harmony Heights failed, among other things, to: arrange for the student's participation in outside activities; extend the student's junior and senior years to allow for "sufficient adaptive and independent skill" development; provide transition planning; arrange and prepare the student for the Scholastic Aptitude Test (SAT); teach the student how to develop an art portfolio; provide college planning; assist with the student's applications to college; provide speech-language services; address the emotional difficulties of the student; teach the student self-care and self-management skills; or implement any of the recommendations made in the Lindner Center evaluation report dated spring 2007 (*id.* at pp. 2-3). The parents also asserted that the district-provided autism consultant from Genesis failed to: provide 40 hours of autism consultant services; provide 120 hours of a behavior specialist; provide 20 hours of in-home supervision; provide all of the required parent training; provide 14 hours of related services between July 7, 2008 and August 15, 2008; prepare a transition plan; provide travel training; provide "shadow" or "life coach" services until March 2009; or implement any of the recommendations made in the Lindner Center evaluation report dated spring 2007 (*id.* at p. 3). As relief, the parents requested that the student be provided with "necessary services through placement in a residential therapeutic program, such as the Pathway School" and provide "necessary and appropriate transition services with sufficient vocational, educational and independent living components necessary for successful outcomes" (*id.* at p. 4). They further requested that the student be provided with an "appropriate" reevaluation (*id.*).

On June 26, 2009 the student graduated from Harmony Heights with a Regents diploma (Dist. Ex. 21 at p. 1).¹⁵

¹⁴ A report from the Lindner Center dated spring 2007 is not included in the hearing record.

¹⁵ The hearing record reflects that the student received a 77 on the math A Regents examination, 78 on the earth

By letter dated June 30, 2009, the district through its attorney answered the parents' due process complaint notice (Dist. Ex. 9 at p. 1; Parent Ex. DD at p. 1). The district denied each allegation in the due process complaint notice and averred that travel training and drivers' assessments were not specifically provided, but that the district had no obligation to provide them (id.). The district also alleged that the reevaluation of the student was "ultimately offered" and that the district did not have an obligation to implement the private autism center's recommendations (id.). The district also asserted that the student was no longer eligible for services rendered by the district because she had earned a high school diploma (id.). In addition, it asserted that the district had not failed to provide "legally sufficient transitional services" such that compensatory services would be warranted (id.).

By e-mail dated July 1, 2009, Genesis advised the parents that the district agreed to continue the student's in-home parent training services in order to make up for missed hours (Parent Exs. J; MM).

On July 9, 2009, the student participated in a psychological assessment performed by the Lindner Center (Dist Ex. 24 at p. 1). The resultant assessment report noted that the student received a communication assessment in March 2009, which determined that she had the skills to learn and apply the core areas of foreign language (id.). Administration of the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV) resulted in the following composite (and percentile) scores: 110 (75) in verbal comprehension, 123 (94) in perceptual reasoning, 114 (82) in working memory, 94 (34) in processing speed, and a full scale score of 114 (82) (id. at p. 3). The report noted that the student's greatest strength was her ability to perceive, analyze, synthesize and manipulate visual patterns and stimuli and that her greatest weakness was in her processing speed ability (id. at p. 5). The Lindner Center team of evaluators recommended testing accommodations for the student including extended time, use of a calculator, testing in a separate location with minimal distractions, and clarifying directions when necessary (id.). The evaluators also recommended that the student work closely with academic advisors to assist with course scheduling and in accessing appropriate services; that she be provided with a copy of class notes for each lecture; that her teachers check with her to ensure that she understood lessons and assignments; and that her teachers utilize repetition, prompting and visual cues (id. at p. 6).

On September 10 and 11, 2009, the student's private therapist conducted a reassessment of the student's adaptive behaviors (Parent Ex. AA). With the student's mother again acting as informant, completion of the Vineland-II resulted in a standard (and percentile) adaptive composite score of 63 (1), a communication score of 68 (2), a daily living skills score of 62 (1), and a socialization score of 65 (1). (id. at pp. 1-2, 7, 8, 9). In describing the student's communication deficits, the therapist noted that the student needed frequent prompting to explain ideas or experiences, and spoke too softly and in monotone (id. at pp. 1-2). In describing the student's daily living skills, the therapist noted that the student's self-care, appearance and diet

science Regents examination, 82 on the global studies Regents examination, 88 on the English Regents examination and 98 on the U.S. history Regents (Dist. Ex. 21 at p. 3).

had improved; however, she was unable to independently take medications, rarely prepared food, never used tools or household products, failed to put away personal possessions and clothing, failed to wash dishes or clear a table completely, and failed to clean (*id.* at p. 3). In describing the student's socialization deficits, the private therapist reported that the student was very slow to process verbal exchanges, did not initiate small talk, and had few social contacts while living at home (*id.*). The private therapist indicated that recommendations previously made by her in October 2008 continued to be necessary and appropriate for the student including "an extended transition plan to prepare [the student] for post secondary education, employment and independent living" (*id.* at p. 4). The private therapist opined in the report that the student required a residential program designed to teach the student independence and to generalize adaptive skills "in a more open campus, in an independent living component and in community-based vocational and pre-college experiences" (*id.*). In addition, the therapist recommended an "evidence based assessment" of the student's executive functions; use of coaches, shadows, and mentors; and regular volunteer experiences and apprenticeships (*id.*). The social worker further recommended "appropriate school support to ensure actual linkage" to the services of OMRDD and a post-secondary independent living program; a psychiatric assessment; and individual and group speech-language therapy to develop her pragmatic language skills (*id.* at p. 5). The private therapist also indicated in the report her belief that the district's June 2009 post-secondary student exit summary report, which stated that the student's social/emotional skills were generally age appropriate except for a moderate delay with peers, was "a gross misstatement" (*id.*).

On September 14, 2009, a pendency hearing was conducted in order to determine the student's placement during the pendency of the proceedings (*see* Joint Ex. 1).¹⁶ At the pendency hearing, the impartial hearing officer ordered that the student receive secondary level instruction comprised of two hours per day of tutoring at a neutral site (IHO Interim Order at p. 3; Joint Ex. 1 at p. 167). In an interim decision dated October 1, 2009, the impartial hearing officer denied the parents' request for a change of placement during the pendency of the proceedings to the Pathway School¹⁷ and concluded that the terms of the student's then current IEP, dated October 29, 2008, including her placement at Harmony Heights, was her pendency placement (IHO Interim Order at pp. 7-8).

On October 5, 2009, the student returned to Harmony Heights pursuant to the impartial hearing officer's pendency determination (Parent Ex. AA at p. 1).

¹⁶ For statutory and regulatory provisions pertaining to a student's educational placement during administrative or judicial proceedings, *see* 20 U.S.C. § 1415(j); Educ. Law § 4404(4)(a); 34 C.F.R. § 300.518; 8 NYCRR 200.5(m).

¹⁷ Initially the parents sought to have the student attend the Pathway School, but as the impartial hearing continued, they altered their requested relief and instead sought a change of placement to a private out-of-State college internship program (Tr. pp 183, 719-20; Parent Exs. A at p. 4; L; M; FFF; GGG; HHH; III). In this appeal, the parents seek two years of compensatory education at the private out-of-State college internship program (Pet. ¶¶ 84-97).

The impartial hearing began on December 11, 2009, and concluded on February 1, 2010, after four days of proceedings (Tr. pp. 1, 240, 543, 860, 1043).¹⁸ On March 22, 2010, the impartial hearing officer rendered his decision (IHO Decision at p. 37). He determined that the student had not received services pursuant to pendency for approximately eight weeks (*id.* at p. 33). In order to remedy this violation, the impartial hearing officer granted the student 8 weeks of compensatory education consisting of the Genesis autism consultant services, which should include community experiences, individual and group counseling, family counseling, and parent training (*id.* at pp. 33-34). The impartial hearing officer also found that the hearing record did not support the parents' assertion that the district failed to develop and implement a proper transition plan (*id.* at p. 35). He found that the hearing record revealed that the district, Harmony Heights, the parents, the student's private therapist, and the independent consultants all contributed to the development of the student's 2008-09 IEP (*id.* at pp. 34-35). He also found that the evidence in the hearing record revealed detailed post-secondary education goals, a coordinated set of transition activities, measurable goals, and career/vocational transitions (*id.* at p. 35). The impartial hearing officer also disagreed with the parents' assertion that the transition activities were not implemented in a timely manner (*id.*). He determined that parents' actions prevented the district, Harmony Heights staff, and the autism consultant from Genesis from successfully implementing the transition services (*id.*). The impartial hearing officer found that suggestions to follow up with VESID, OMRDD, a community college, and Single Point of Access¹⁹ were all "stalled" by the parents (*id.*). The impartial hearing officer also found that the parents' assertion that the district failed to implement the transition activities needed to ensure a successful transition from school to adulthood had been rendered moot because the district provided assurances at the impartial hearing that any missing services would be made up (*id.*). The impartial hearing officer also disagreed with the parents' assertion that the district failed to conduct a timely reevaluation of the student prior to her graduation because he found that the student's evaluations, assessments, and reports were discussed and reflected in the goals and transition activities developed at the CSE meetings held on June 2008 and on October 2009 (*id.* at pp. 35-36). Ultimately, the impartial hearing officer found that the student was not denied a free appropriate public education (FAPE) and that any deficiencies in the delivery of services to the student did not rise to the level of a gross violation of the Individuals with Disabilities Education Act (IDEA) (*id.* at pp. 36-37). Therefore, he denied the parents' request for compensatory education and reimbursement for any future private placement (*id.* at p. 37).

The parents appeal, and assert through their counsel, that the impartial hearing officer failed to address the district's: (1) failure to conduct a triennial evaluation in a timely manner; (2) failure to conduct a sufficient evaluation that assessed the student's executive, organizational, social, and psychiatric needs and included a classroom observation; and (3) failure to evaluate and consider the evaluation before the student graduated. The parents also contend that the impartial hearing officer erroneously found that the 2007-08 IEP provided the student with a FAPE. The parents assert that the 2007-08 IEP lacked appropriate and measurable goals and

¹⁸ The hearing record reflects that the parents were represented by counsel at the impartial hearing (IHO Decision at p. 1).

¹⁹ Single Point of Access is a housing agency (Tr. pp. 69, 364).

accurate present levels of performance. The parents also assert that the 2008-09 IEP failed to provide the student with a FAPE because, among other things, the IEP provided no college planning, travel training, driver's education, no SAT planning and preparation, and it contained significant errors. The parents also assert that the impartial hearing officer erred in finding that the district provided an appropriate transition plan. The parents assert that the district's program left the student in need of, among other things: (1) job coaching; (2) adaptive living skills training; (3) assistance with OMRDD and VESID; (4) autism consultant services; (5) travel training; (6) art portfolio preparation; and (7) SAT preparation and assistance. The parents also assert that impartial hearing officer's award of eight weeks of compensatory education was insufficient to compensate the student for her educational deprivation during the pendency period and for her failure to complete her IEP goals prior to graduation. The parents contend that the student lost three months of services and suffered a regression during this period. The parents also assert that the impartial hearing officer erred in failing to address the 2007-08 school year, used an erroneous "no educational benefit" standard, inappropriately placed the burden of proof on the parents, and made factual errors in his decision. As relief, the parents request a finding that the district failed to provide the student with a FAPE, and that the district be ordered to provide the student with two years of compensatory education at a private out-of-State college internship program.

In its answer, the district asserts that the impartial hearing officer correctly found that the student was not denied a FAPE, and therefore properly denied the parents' claim for compensatory education and reimbursement. The district also asserts that it is no longer obligated to provide the student with special education and/or related services because she graduated with a Regents diploma in June 2009. The district asserts that the parents are not entitled to compensatory education because they failed to prove a gross violation of the IDEA. The district contends that it provided appropriate transition services and lists the services that were provided to the student during both the 2007-08 and the 2008-09 school years.

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see generally Forest Grove v. T.A., 129 S. Ct. 2484, 2491 [2009]; Bd. of Educ. v. Rowley, 458 U.S. 176, 206-07 [1982]).

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 (A.C. v. Bd. of Educ., 553 F.3d 165, 172 [2d Cir. 2009]; 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]; 8 NYCRR 200.5[j][4][ii]; E.H. v. Bd. of Educ., 2008 WL 3930028, at *7 [N.D.N.Y. Aug. 21, 2008]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007] aff'd, 2008 WL 3852180 [2d Cir. Aug. 19, 2008]).

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 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 P. v. Newington Bd. of Educ., 546 F.3d 111, 118-19 [2d Cir. 2008]; 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). The student's recommended program must also be provided in the least restrictive environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 C.F.R. §§ 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see Newington, 546 F.3d at 114; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132; E.G. v. City Sch. Dist. of New Rochelle, 606 F. Supp. 2d 384, 388 [S.D.N.Y. 2009]; Patskin v. Bd. of Educ., 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]). Also, a FAPE must be available to an eligible student "who needs special education and related services, even though the [student] has not failed or been retained in a course or grade, and is advancing from grade to grade" (34 C.F.R. § 300.101[c][1]; 8 NYCRR 200.4[c][5]).

An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs (34 C.F.R. § 300.320[a][1]; 8 NYCRR 200.4[d][2][i]; Tarlowe v. Dep't of Educ., 2008 WL 2736027, at *6 [S.D.N.Y. July 3, 2008]), establishes annual goals related to those needs (34 C.F.R. § 300.320[a][2]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (34 C.F.R. § 300.320[a][4]; 8 NYCRR 200.4[d][2][v]; see 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). Subsequent to its development, an IEP must be properly implemented (8 NYCRR 200.4[e][7]; Application of a Child with a Disability, Appeal No. 08-087).

A board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents, if the services offered by the board of education were inadequate or inappropriate, the services selected by the parents were appropriate, and equitable considerations support the parents' claim (Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 [1993]; Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369-70 [1985]). In Burlington, the Court found that Congress intended retroactive reimbursement to parents by school officials as an available remedy in a proper case under the IDEA (471 U.S. at 370-71; Gagliardo, 489 F.3d at 111; Cerra, 427 F.3d at 192). "Reimbursement merely requires [a district] to belatedly pay expenses that it should have paid all along and would have borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 C.F.R. § 300.148).

Compensatory education is an equitable remedy that is tailored to meet the unique circumstances of each case (Wenger v. Canastota, 979 F. Supp. 147 [N.D.N.Y. 1997]). Compensatory education may be awarded to a student with a disability who no longer meets the eligibility criteria for receiving instruction under the IDEA (see 20 U.S.C. §§ 1401[3], 1412[a][1][B]; Educ. Law §§ 3202[1], 4401[1], 4402[5]). In New York State, a student who is otherwise eligible as a student with a disability, may continue to obtain services under the IDEA until he or she receives either a local or Regents high school diploma (34 C.F.R. § 300.102[a][3][i]; 8 NYCRR 100.5[b][7][iii]; Application of the Bd. of Educ., Appeal No. 05-084; Application of the Bd. of Educ., Appeal No. 05-037), or until the conclusion of the school year in which he or she turns age 21 (Educ. Law §§ 3202[1], 4401[1], 4402[5]; 8 NYCRR 100.9[e], 200.1[zz]; see 34 C.F.R. § 300.102[a][1], [a][3][ii]; Application of a Child with a Disability, Appeal No. 04-100). Within the Second Circuit, compensatory education has been awarded to students who are ineligible by reason of age or graduation 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 (see Somoza v. New York City Dep't of Educ., 538 F.3d 106, 109 n.2, 113 n.6 [2d Cir. 2008]; Mrs. C. v. Wheaton, 916 F.2d 69 [2d Cir. 1990]; Burr v. Ambach, 863 F.2d 1071 [2d Cir. 1988]; Cosgrove v. Bd. of Educ., 175 F. Supp. 2d 375, 387 [N.D.N.Y. 2001]; Application of a Child with a Disability, Appeal No. 03-078 [awarding two years of instruction after expiration of IDEA eligibility as compensatory education]).

Compensatory education relief may also be awarded to a student with a disability who remains eligible for instruction under the IDEA (see 20 U.S.C. §§ 1401[3], 1412[a][1][B]; Educ. Law §§ 3202[1], 4401[1], 4402[5]). Within the Second Circuit, compensatory education relief in the form of supplemental special education or related services has been awarded to such students if there has been a denial of a FAPE (see Newington, 546 F.3d at 123 [stating that "[t]he IDEA allows a hearing officer to fashion an appropriate remedy, and . . . compensatory education is an available option under the Act to make up for denial of a [FAPE]"]; Student X. v. New York City Dep't of Educ., 2008 WL 4890440, at *23 [E.D.N.Y. Oct. 30, 2008] [finding that compensatory education may be awarded to students under the age of twenty-one]). Likewise, State Review Officers have awarded compensatory "additional services" 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 (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]; Application of a Student with a Disability, Appeal No. 09-111 [adding summer reading instruction to an additional services award]; Application of the Bd. of Educ., Appeal No. 09-054 [awarding additional instructional services to remedy a deprivation of instruction]; Application of a Student with a Disability, Appeal No. 09-044 [awarding "make-up" counseling services to remedy the deprivation of such services]; Application of a Student with a Disability, Appeal No. 09-035 [awarding 1:1 reading instruction as compensation for a deprivation of a FAPE]; Application of a Student with a Disability, Appeal No. 08-072 [awarding after school and summer reading instruction as compensatory services to remedy a denial of a FAPE]; Application of the Bd. of Educ., Appeal No. 08-060 [upholding additional services awards of physical therapy and speech-language therapy]; Application of a Student with a Disability, Appeal No. 08-035 [awarding ten months of home instruction services as compensatory services];²⁰ Application of the Bd. of Educ., Appeal No. 06-074; Application of a Child with a Disability, Appeal No. 05-041; Application of a Child with a Disability, Appeal No. 04-054).

Graduation and receipt of a high school diploma are generally considered to be evidence of educational benefit (Pascoe v. Washington Cent. Sch. Dist., 1998 WL 684583 [S.D.N.Y. 1998]; Application of a Student with a Disability, Appeal No. 09-145; Application of the Bd. of Educ., Appeal No. 05-037; see also Bd. of Educ. v. Rowley, 458 U.S. 176, 207 n.28 [1982]; Walczak, 142 F.3d at 130 [noting that "the attainment of passing grades and regular advancement from grade to grade are generally accepted indicators of satisfactory progress" under the IDEA]), the receipt of which terminates a student's entitlement to a FAPE (34 C.F.R. § 300.122[a][3][i]; 8 NYCRR 100.5[b][7][iii]). It would be a rare case for a student who graduates with a Regents or local high school diploma to qualify for an award of compensatory education (see, e.g., J.B. v. Killingly Bd. of Educ., 990 F. Supp. 57 [D. Conn. 1997][where student apparently graduated and received diploma prior to the district establishing the appropriate graduation requirements, court decided student had established a prima facie case of likelihood of success on the merits on a possible award of continued compensatory education]; Application of a Student with a Disability, Appeal No. 09-056; Application of a Child with a Disability, Appeal No. 05-089; Application of the Bd. of Educ., Appeal No. 05-037).

The New York State Legislature amended the Education Law to place the burden of production and persuasion upon the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of production and persuasion 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

²⁰ Application of a Student with a Disability, Appeal No. 08-035 was upheld by Bd. of Educ. of the Hicksville Union Free Sch. Dist. v. Schafer, Index No. 18986/2008 (Nassau Co. Sup. Ct. March 24, 2009).

commenced on or after October 14, 2007 (see Application of the Bd. of Educ., Appeal No. 08-016).

Initially, I note that neither party has appealed the impartial hearing officer's October 1, 2009 pendency order (IHO Interim Order at p. 2). Therefore, that determination of the impartial hearing officer is final and binding on the parties (34 C.F.R. § 300.514[a]; 8 NYCRR 200.5[j][5]; see Application of a Student with a Disability, Appeal No. 09-129; Application of a Student with a Disability, Appeal No. 09-095; Application of a Student with a Disability, Appeal No. 09-079; Application of the Bd. of Educ., Appeal No. 09-057; Application of a Student with a Disability, Appeal No. 09-013; Application of a Student with a Disability, Appeal No. 08-073; Application of a Student with a Disability, Appeal No. 08-046; Application of the Dep't. of Educ., Appeal No. 08-025; Application of a Student with a Disability, Appeal No. 08-013; Application of a Child with a Disability, Appeal No. 07-050; Application of a Child with a Disability, Appeal No. 07-026; Application of a Child Suspected of Having a Disability, Appeal No. 06-092; Application of a Child with a Disability, Appeal No. 06-085; Application of a Child with a Disability, Appeal No. 04-024; Application of a Child with a Disability, Appeal No. 03-108; Application of a Child with a Disability, Appeal No. 02-100).

Turning to the merits of the appeal, I will first address the parents' assertion that the district's 2009 evaluation was untimely, did not include a classroom observation, and was insufficient and did not occur until July 2009 (Pet. ¶¶ 18, 20, 24). Here the record reflects that a triennial evaluation²¹ of the student was conducted in March 2006 (Tr. pp. 189-90, 627-28; Parent Ex. S at p. 6). In addition, a district is required to, prior to graduation, provide such student with a summary of the student's academic achievement and functional performance, along with recommendations on how to assist the student in meeting his or her postsecondary goals (8 NYCRR 200.4[c][4]). The hearing record reveals that: (1) the Genesis consultants' report, Harmony Heights' reports, and the report of the April 1, 2009 communication assessment, all three of which were reviewed at the district's June 25, 2009 exit meeting; (2) the July 2009 Lindner Center psychological assessment; and (3) the significant transitional services and planning, as described more fully below, provided an adequate evaluative summary of the student's academic and functional performance and provided significant assistance to help the student meet her postsecondary goals (Tr. pp. 342, 347, 358; Dist. Ex. 10 at pp. 2; 11; 12; 13; 22; 23; see 8 NYCRR 200.4[c][4]). Under the circumstances of this case, I do not find that the district's failure to conduct a triennial evaluation of the student by March 31, 2009 (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]; 8 NYCRR 200.5[j][4][ii]) such that a FAPE was denied because of procedural infirmities, nor do I find that the timing of the evaluation by the district substantively denied the student a FAPE (Tr. pp. 37-40, 47, 53-54, 107-08, 145, 362, 416-17, 752-53; Dist. Exs. 4; 21, 22; 23; Joint Ex. 1 at p. 67). Additionally, the hearing record reveals that the parents were active participants in the CSE process and as such were not denied the right to participate in their daughter's educational and

²¹ See 8 NYCRR 200.4(b)(2).

transitional planning (Dist. Exs. 10; 13; 17; Parent Exs. C; F; G; H; I; P; S; U; V; FF; LL; NN; OO; PP; QQ).

The hearing record also does not support the parents' contention that the alleged absence of a classroom observation resulted in a denial of a FAPE. Genesis had conducted numerous classroom observations of the student throughout the 2008-09 school year and reported its findings to the CSE at the June 25, 2009 exit meeting (Tr. pp. 342, 347, 358; Dist. Ex. 10 at p. 2; see Tr. pp. 438-44; Dist. Ex. 15 at pp. 3, 6, 11, 15, 26 [Genesis monthly service and session summaries]). At the exit meeting, participants from Harmony Heights also reported on several aspects of the student's classroom performance including: academics, absences, effort, ability to ask for help, attention to task, and behavior (Dist. Ex. 10 at p. 2). As stated above, the Genesis consultants' session summaries, the Harmony Heights' reports, the report of the April 1, 2009 communication assessment, and the July 2009 Lindner Center psychological assessment all provided an adequate evaluative summary of the student's academic and functional performance (Tr. pp. 342, 347, 358; Dist. Ex. 10 at pp. 2; 11; 12; 13; 22; 23).

I now turn to the parents' assertion that the district failed to provide an adequate transition plan and transition services to the student.

Under the IDEA, to the extent appropriate for each individual student, an IEP must focus on providing instruction and experiences that enable the student to prepare for later post-school activities, including postsecondary education, employment, and independent living (20 U.S.C. § 1401[34]; see Educ. Law § 4401[9]; 34 C.F.R. § 300.43; 8 NYCRR 200.1[fff]). Accordingly, pursuant to federal law and regulations, an IEP for a student who is at least 16 years of age must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills (20 U.S.C. § 1414[d][1][A][viii]; 34 C.F.R. § 300.320[b]). It must also include the transition services needed to assist the student in reaching those goals (id.). Taking into account these requirements, "[i]t is up to each child's IEP Team to determine the transition services that are needed to meet the unique transition needs of the child" (Transition Services, 71 Fed. Reg. 46668 [Aug. 14, 2006]; see *Lessard v. Wilton-Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18 [1st Cir. 2008]; *Virginia S. v. Dept. of Educ.*, 2007 WL 80814 at * 10 [D. Hawaii, Jan. 8 2007]). Additionally, federal regulations do not require the CSE to include information under one component of a student's IEP that is already contained in another component of the IEP (34 C.F.R. § 300.320[d][2]).

Under State regulations, beginning when the student is age 15, an IEP must include a statement of the student's needs taking into account the student's preferences and interests as they relate to transition from school to post-school activities including postsecondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living, or community participation (8 NYCRR 200.1[fff], 200.4[d][2][ix]). For such students, the IEP is also required to include appropriate measurable postsecondary goals based upon appropriate transition assessments; a statement of the transition service needs of the student; needed activities to facilitate the student's movement from school to post-school activities, including instruction, related services, community experiences, the development of

employment and other post-school adult living objectives; as well as a statement of the responsibilities of the school district and, when applicable, participating agencies for the provision of such transition services (8 NYCRR 200.4[d][2][ix]; Application of the Dep't. of Educ., Appeal No. 08-080).

The hearing record reveals that at the June 2007 CSE meeting, the CSE developed a set of transition activities designed to identify the student's areas of interest and indicated that the student would be provided with an opportunity to explore different career choices (Parent Ex. P at p. 5).²² On February 5, 2008, Harmony Heights convened a transition meeting at which time an amended transition planning checklist was prepared for the student (Tr. pp. 47-48; Dist. Ex. 4).²³ At that time, the school's guidance counselor performed a Level I assessment to ascertain the student's interests, and her educational and vocational skills (Dist. Ex 5 at pp. 1-3). To assist the student with her plan to attend a two-year college and live independently or with family (Dist. Ex. 6), it was determined that Harmony Heights would provide individual and group counseling, classroom and school-based vocational activities, activities to help the student live independently, and post-secondary education planning meetings (Dist. Ex. 4 at p. 3). By the end of her junior year (2007-08) at Harmony Heights, the student had indicated that she intended to pursue a college education and a career in the area of graphic arts or foreign languages (Parent Ex. S at p. 5). The district recommended provision of counseling to improve the student's self-advocacy skills, emotional regulation, time management skills, and daily living skills with the ultimate goal of assisting the student in attaining her goal of working in the graphic arts or foreign language field (*id.*). The student's private therapist offered many recommendations for transition planning including assistance from agencies such as VESID and OMRDD, travel training, and an evaluation of the student's proficiency for foreign language (*id.* at p. 6). In June of her junior year, an eligibility application was completed for the student to OMRDD by the district's high school psychologist (Tr. pp. 160, 202, 467-688; Dist. Ex. 13).²⁴ At the June 2008 CSE meeting, "career/vocational/transition" goals were devised for the student (Parent Ex. S at p. 8; see Dist. Ex. 7 at p. 8).

During her senior year (2008-09), at the October 2008 CSE meeting, there was significant discussion about the student's transition needs as well as about the services that would be sought for her (Dist. Ex. 7 at pp. 5-6, 8). On February 6, 2009, Harmony Heights held a transition planning meeting and devised an individualized transition plan (ITP) with goals and objectives for the student (Dist. Ex. 20). The student was interviewed to ascertain her needs,

²² In April 2007 BOCES conducted a Level II vocational evaluation and identified career options based upon the student's interests and abilities (Dist. Ex. 11 at pp. 1-9, 13-15).

²³ According to the principal of Harmony Heights, this transition meeting was scheduled to occur in fall 2007, but the private therapist had informed the principal that the student's mother did not want to have the transition meeting because she intended to take the student out of Harmony Heights (Tr. pp. 51-52).

²⁴ The hearing record reveals that there was a delay in the processing of the OMRDD eligibility application (Tr. pp. 629-30). The student was determined to be eligible for its services by OMRDD on November 10, 2008 (Dist. Ex. 14). Despite this determination, the hearing record reflects the parents believed that OMRDD services were not appropriate for the student (Parent Ex. C at p. 2).

interests, and preferences (*id.* at pp. 4-5). During the interview, the student revealed that she intended to go to college, but that in order to prepare for this she needed to control her anxiety, improve her socializing skills, her art skills, and study topics that did not interest her (*id.*). She also revealed that she had obtained experience working in the kitchen at her residence, and had learned how to write a résumé (*id.* at p. 4). The student interview also indicated that the student was able to ride a public bus and intended to obtain a driver's license (*id.* at p. 5). The ITP further indicated that the student was able to independently manage in the following daily living skill areas: self-care, housekeeping skills, meal preparation, money management, insurance coverage, and citizenship skills (*id.* at p. 2). At the February 6, 2009 transition planning meeting and throughout the student's senior year at Harmony Heights, the transition team discussed OMRDD services, VESID services, the SAT, and the student applying to colleges such as a local community college²⁵ and a private college (Tr. pp. 53-54, 107-08, 145, 751, 753). During the 2008-09 school year, the student chose course electives that focused on her artistic and dramatic interests and abilities (Tr. pp. 40-42; Dist. Ex. 21 at p. 3). The hearing record reflects that both the district and Harmony Heights referred the student to VESID during the 2008-09 school year and that the student's mother attended two meetings with VESID counselors (Tr. pp. 168, 248, 670, 746-49, 755-56; Parent Exs. HH; II; KK; JJ). The student also attended one of these meetings, at which time VESID offered to conduct a free three week vocational assessment of the student (Tr. p. 755).²⁶

The Harmony Heights residential program also provided transition services to assist the student in developing life skills (Tr. pp. 37-38).²⁷ At Harmony Heights, the student was responsible for cleaning her room and doing her laundry, and she also helped out in the residence's kitchen (Tr. pp. 43-44; Dist. Ex. 23). While in the residential program, the student participated in community travel trips where the student went shopping and was exposed to making purchases (Tr. pp. 46, 416-17; Dist. Ex. 23). During her senior year (2008-09) at the Harmony Heights residential program the student participated in two additional components related to transition, a senior transition class and a senior transition group (Dist. Ex. 22). The senior transition class addressed daily living skills such as personal hygiene, household chores, finance and banking, personal safety, and social interactions with local businesses (Tr. pp. 37-39, 43, 65; Dist. Exs. 22; 23). The student participated in a house meeting weekly with the other

²⁵ According to testimony from the principal of Harmony Heights, during the student's senior year, the student's mother asked school officials not to assist the student with applying to the community college because she wanted to investigate other programs (Tr. pp. 57-58).

²⁶ According to the student's mother, she told VESID to "hold off" on this assessment (Tr. pp. 758-59). She had previously indicated her belief that VESID was "not adequate or appropriate and would not be successful" (Parent Ex. C at p. 2). At the impartial hearing, the student's mother testified that after the student graduated in June 2009, she never contacted VESID or OMRDD to obtain services for her daughter (Tr. p. 765). According to testimony from the principal at Harmony Heights, the student's mother also failed to fill out a housing application with Single Point of Access because she did not want her daughter in "group living" (Tr. p. 148).

²⁷ The student's Genesis consultant testified that at the start of the 2007-08 school year, the student transferred from the Harmony Heights day program to its residential program because the CSE thought that it would help the student with social skills, her absenteeism, to be independent, and because the residential program allowed for more therapy (Tr. pp. 458-59).

senior girls, at which time the students chose and planned their activities for the week (Tr. pp. 45-46). The student's senior transition class participated in community service and fundraising projects such as food and toy drives, a child development project to teach responsibility, and conducted a research project to encourage independence and socialization through the use of community resources (Tr. p. 94; Dist. Ex. 22). The hearing record reflects that the senior transition group addressed the college application process, the SAT, college visits, financial aid, VESID services, career exploration, and interest inventories (Tr. pp. 38-39; Dist. Ex. 22). The senior transition group also provided a venue for the students to voice their feelings regarding graduation and other transitional events that took place during the school year (Dist. Ex. 22).

The hearing record reflects that Genesis also provided transition services to the student in the form of counseling services and behavior intervention specialist services at Harmony Heights and at the residence (Tr. pp. 62-63, 479; Dist. Ex. 7 at pp. 2, 4, 5; Parent Ex. P at pp. 2, 4, 6). These services focused on the student's daily living skills, travel training, and in helping her to navigate in the community (Tr. pp. 63, 81, 164, 246-47, 351, 360, 415; Dist. Ex. 7 at p. 6; Parent Exs. W at p. 3; UU at p. 1).^{28, 29} During the 2008-09 school year and continuing during the pendency of these proceedings, the Genesis autism consultants worked with the student on person-centered planning, assessed the student's vocational interests, and made community trips with the student to provide her training in retail environment, restaurant training, banking, budgeting and money skills, and travel skills (Dist. Ex. 15 at pp. 3, 4, 7, 8, 9, 10, 13, 16, 18-20, 22-25). The Genesis autism consultants also provided information to the student and the parents about driver's education, the SAT, programs provided at the community college and through VESID, and housing opportunities available through Single Point of Access (Tr. pp. 362-65).

The hearing record also reveals that the student made significant progress in her academic and social/emotional and developmental goals (Tr. pp. 67-68, 323-24, 357; Dist. Exs. 1 at p. 2; 21 at p. 3; 23; Parent Ex. X at p. 2). Academically, the student earned 28.5 high school credits and graduated with a Regents diploma (Tr. p. 67; Dist. Ex. 21 at p. 3). Socially, according to the principal of Harmony Heights, the student progressed from being a noncommunicative person who "s[a]t on the floor, rol[led] up in a ball and cr[ie]d," to an accomplished actor and artist (Tr. p. 67).³⁰ A "Quarterly Clinical Report" prepared by the Harmony Heights' social worker also revealed the student's progress (Parent Ex. OO). The report indicated that by the fourth quarter of the 2008-09 school year, the student was consistently coping with feelings productively, refraining from self-destructive behavior,

²⁸ In addition to the school consultation, the Genesis autism consultants provided in-home supervision and parent training services (Tr. pp. 341-42). During school consultations, the Genesis consultant observed the student in class, talked to the student's teachers, and suggested strategies as necessary (Tr. pp. 342-43).

²⁹ Due to Genesis staffing difficulties, and parent-consultant scheduling difficulties, the parent training, behavioral specialist, and travel training components of Genesis consulting services did not start until spring 2009 (Tr. pp. 282, 351, 359, 361; Parent Ex. TT). Genesis provided make up counseling sessions after the student graduated from Harmony Heights (Tr. pp. 80, 183-84, 190-91, 332-333, 768).

³⁰ One of the student's Genesis consultants also testified that before the student went to Harmony Heights she spoke little, was ill-prepared in class, was withdrawn, and didn't socialize. (Tr. p. 397).

utilizing support systems, following through with medical recommendations, and respecting others (*id.*). The report also noted that the student was often able to acquire insight into her emotional difficulties, set and work toward realistic goals for improvement, and be supportive and helpful to others (*id.*). The student also progressed developmentally (Parent Ex. PP). A quarterly "Adjustment to Residence" report from Harmony Heights noted that by the fourth quarter of the 2008-09 school year, the student was satisfactorily progressing in the areas of personal hygiene and grooming skills; maintaining her room; participating in recreational activities and community trips; demonstrating table manners, positive peer interaction and positive adult interaction; helping others in their adjustment to the residence; and meeting the expectations of her residential level and abiding by the residential rules (Tr. pp. 356-57; Parent Ex. PP). Both the quarterly clinical report and the quarterly adjustment to residence report noted that the student was satisfactorily progressing toward her social objective of learning her strengths (Parent Exs. OO; PP).

The hearing record reveals that the student's 2007-08 and 2008-09 IEPs included measurable post-secondary goals for the student related to her desire to "pursue a college education in the area of graphic art or foreign language," "pursue competitive employment opportunities after graduation in the area of graphic art or foreign language," and "live independently" (Dist. Ex. 7 at pp. 5-6; Parent Exs. P at pp. 3-5; S at pp. 4-6). The IEPs further identified the transition activities that were to be provided to assist the student in reaching those goals, including the opportunity to meet with a counselor to identify and discuss areas of interest; counseling services to improve her self advocacy skills, emotional regulation, and time management skills; opportunity to explore different career choices; opportunity to identify and discuss community recreation and leisure programs; and practicing daily living skills at the residential program including cleaning, self-care, and time management (Dist. Ex. 7 at pp. 5-6; Parent Exs. P at pp. 3-5; S at pp. 4-6). The IEPs included statements of the student's academic and social/ emotional needs as they related to her transition from school to post-secondary education and independent living and the annual goals contained in the 2007-08 and 2008-09 IEPs demonstrate the requisite correlation and connection to the student's identified post-secondary goals and transition services (Dist. Ex. 7 at pp. 3-6, 7-11; Parent Exs. P at pp. 3-4; S at pp. 3-8). For example, the IEP included four goals related to the student's study skills including her need to be appropriately prepared for and on time to class, handing assignments in on time, and independently seeking out assistance from teachers, six goals related to the student's social/emotional and behavioral needs including identifying and implementing strategies to deal with her anxiety and fostering positive relationships with peers, and two goals related to situational assessments to explore the student's different vocational careers of interest and the student's identification of her interests and abilities as related to her future career goals (Dist. Ex. 7 at pp. 7-8). The parents, the private therapist, the Genesis autism consultants, and the Harmony Heights staff were all significantly involved in the formulation of those IEPs (*see* IHO Decision at pp. 34-35; Dist. Exs. 4; 5; 6; 7 at pp. 5-6; 14; 20; Parent Exs. C; P at p. 5; S at pp. 5-6; V; W; X; AA; FF). As indicated above, the student's 2007-08 and 2008-09 IEPs included post-secondary goals for the student to attend college, pursue a career in the graphic arts or in foreign language, and live independently (Dist. Ex. 7 at pp. 5-6; Parent Exs. P at pp. 3-5; S at pp. 4-6). To reach these goals, the student's ability to learn a language other than English was evaluated; her Harmony Heights and Genesis counselors helped to develop her independent

living skills; she was provided with information about college programs, financial aid, and the SAT; she was provided with information about housing opportunities; and the district kept the student on track to graduate with a Regents diploma (Tr. pp. 37-39, 43, 53-54, 65, 107-08, 145, 751; Dist. Exs. 4; 7 at pp. 5-8; 22; 23; Parent Ex. S at p. 6). The student also had numerous programs and services related to post-secondary options made available to her, including referrals to VESID and OMRDD (Tr. pp. 53-54, 107-08, 145, 168, 248, 670, 747, 751; Parent Exs. HH; II; KK; JJ). The hearing record also reveals that the student made significant social and developmental progress in the district's 2007-08 and 2008-09 programs at Harmony Heights (Tr. pp. 67-68, 180-81, 323-24, 357; Dist. Exs. 1 at p. 2; 23; Parent Ex. X at p. 2; Joint Ex. 1 at pp. 66-67). As already discussed, she graduated with a Regents diploma and made progress socially and emotionally (Tr. pp. 39-40, 323-24, 357, 397, 616; Dist. Ex. 2 at p. 3; Joint Ex. 1 at pp. 66-67).

Based on the forgoing evidence, I find that the district offered the student a coordinated set of transition services and activities that focused on improving her academic and functional achievements, and also took into account the student's interests, preferences and strengths, and developed a transition plan that focused on helping the student in reaching her post-secondary educational, vocational/career, and adult living objectives (Tr. pp. 37-39, 43, 47, 53-54, 63, 65, 80, 88, 107-08, 145, 183-84, 190-91, 246-47, 282, 332-33, 351, 359-60, 415-17, 467-68, 751-53, 768; Dist. Exs. 4; 5; 13; 15; 22; 23; Parent Exs. P at p. 5; S at pp. 5-6, 8; W at p. 3; HH; II; KK; JJ; UU; see 8 NYCRR 200.1[fff]). As such, I find that the district's transition services provided during the 2007-08 and 2008-089 school years were adequate and as such, I agree with the impartial hearing officer's determination that the district offered the student a FAPE (IHO Decision at p. 37; see Lessard v. Wilton-Lyndeborough Coop. Sch. Dist., 518 F. 3d 18, 27-28, 29-30 [1st Cir. 2008]; see also Karl v. Bd. of Educ. of Geneseo Cent. Sch. Dist., 736 F.2d 873, 877 [2d Cir. 1984]).³¹ Based on this hearing record, there was neither a denial of a FAPE nor a gross violation of a FAPE arising out of the offered transition services and activities. Under the circumstances of this case, I find that the student is not entitled to a compensatory education award that would provide her with special education services and programs beyond her period of entitlement (see IHO Decision at pp. 33-37; Garro, 23 F.3d at 737; Mrs. C., 916 F.2d at 75; Burr, 863 F.2d at 1078; Application of a Student with a Disability, 09-145; Application of the Dep't. of Educ., Appeal No. 08-080; Application of a Child with a Disability, Appeal No. 07-128; Application of a Child with a Disability, Appeal No. 05-089; Application of a Child with a Disability, Appeal No. 05-084; Application of the Bd. of Educ., Appeal No. 05-037; Application of a Child with a Disability, Appeal No. 05-018; Application of a Child Suspected of Having a Disability, Appeal No. 03-094; see also 34 C.F.R. § 300.102[a][3]). I note that the expiration of the student's statutory entitlement to a FAPE does not leave her without the opportunity to obtain further assistance or resources as an adult with a developmental disability. The hearing record reflects that she may seek and obtain services from VESID, OMRDD, and other agencies, that she had previously pursued such services and further that both the district and Harmony Heights

³¹ I also agree with the impartial hearing officer's determination that any delay in the implementation of the student's services caused by the unavailability of the student, the parents, or by the Genesis consultants has been rendered moot by the district's offer at the impartial hearing to provide make up services extending past the student's graduation (IHO Decision at p. 35; see Tr. pp 185, 336; Dist. Ex. 10 at p. 2).

had assisted with her transition to those services (see Somoza, 538 F. 3d at p. 116 [noting that despite the expiration of a student's statutory entitlement to FAPE, the student was still able to pursue services from VESID and OMRDD]).

Lastly, I turn to the parents' assertion that the impartial hearing officer's award of eight weeks of compensatory education was insufficient to compensate the student for the student's missed services during pendency.

A review of the impartial hearing officer's September 14, 2009 interim order that provided secondary level instruction of two hours per day of tutoring to the student, along with his unappealed October 1, 2009 pendency decision determining that the October 2008 IEP was the last agreed upon IEP; and considering that the student returned to Harmony Heights on October 5, 2009 to receive services pursuant to pendency, that the typical length of the district's extended summer program was six weeks, as well as the district's assurances that the student's missed sessions with the Genesis autism consultants would be made up, I find there is no need to modify the impartial hearing officer's determination that the student receive eight weeks of compensatory education for the district's procedural violation of inappropriately changing the student's placement after the parents had invoked pendency (IHO Interim Order at pp. 3, 7-8; IHO Decision at pp. 33-35; see Dist. Ex. 7 at p. 2; Parent Exs. P at p. 2; AA at p. 1; Joint Ex. 1 at p. 167; see also 8 NYCRR 200.1[h]; Cronin v. Bd. of Educ. of East Ramapo, 689 F. Supp. 197, 203 [S.D.N. Y. 1988]).

Having found that the district offered the student a FAPE, I need not reach the issue of whether the parents' proposed placement at the college internship program is appropriate and the necessary inquiry is at an end (Mrs. C. v. Voluntown, 226 F.3d 60, 66 [2d Cir. 2000]; Walczak, 142 F.3d at 134; Application of a Child with a Disability, Appeal No. 05-038; Application of a Child with a Disability, Appeal No. 03-058).

I have examined the parties' remaining contentions and find that it is unnecessary for me to address them in light of the determinations made herein.

THE APPEAL IS DISMISSED.

**Dated: Albany, New York
June 1, 2010**



**PAUL F. KELLY
STATE REVIEW OFFICER**