



The University of the State of New York

The State Education Department State Review Officer

No. 08-109

Application of a STUDENT WITH A DISABILITY, by his parent, for review of a determination of a hearing officer relating to the provision of educational services by the New York City Department of Education

Appearances:

Mayerson & Associates, attorneys for petitioner, Gary S. Mayerson, Esq., of counsel

Michael Best, Special Assistant Corporation Counsel, attorney for respondent, Tracy Siligmueller, Esq., of counsel

DECISION

Petitioner (the parent) appeals from the decision of an impartial hearing officer which denied her request to be reimbursed for her son's tuition costs at the McCarton School (McCarton) for the 2007-08 school year. The appeal must be dismissed.

At the time of the impartial hearing, the student was attending McCarton in a 3:3 Applied Behavioral Analysis (ABA) classroom setting and received five 60-minute sessions per week of speech-language therapy in a 1:1 setting and five 45-minute sessions per week of occupational therapy (OT) in a 1:1 setting (see Tr. pp. 30-31; Parent Exs. E-M; CC). The Commissioner of Education has not approved McCarton as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7). The student's eligibility for special education programs and services as a preschool student with a disability is not in dispute in this appeal (8 NYCRR 200.1[mm]).

In December 2005, the student underwent a psychological evaluation, a speech-language evaluation, and an OT evaluation through Early Intervention (EI) services due to his parent's concerns regarding his spoken language and language functioning (Parent Ex. V at pp. 1, 3, 7, 11). At that time, the student attended nursery school two afternoons per week accompanied by either

his parent or grandmother (*id.* at pp. 4, 7).¹ According to the evaluation reports, the student began receiving two sessions per week of privately provided speech-language therapy in April 2005 (*id.*). In addition, the speech-language therapy report noted that the student had been evaluated in September 2005 and qualified for speech-language therapy services, which the parent declined in order to continue "private therapy" (*id.* at p. 7). As a result of the EI evaluations, the student was found eligible to receive EI services, and the evaluators recommended speech-language therapy, OT, ABA services, and for the student to continue attending a preschool program to address "all aspects" of his "functioning" (*id.* at pp. 2, 6, 9-10, 13-14).

In May 2006, the student's then-current school district convened its Committee on Preschool Special Education (CPSE) to conduct an initial referral (Parent Ex. U at pp. 1, 4). The CPSE noted that the student presented with "significant delays across all areas including language, socialization, behavior and motor skills" (*id.* at p. 4). Because the student would age-out of EI services in September 2006 and become eligible for services through the CPSE, the CPSE "encouraged" the parent to "explore special class instruction as an option" (*id.*). The parent, however, opted to continue her son's attendance at nursery school with a special education itinerant teacher (SEIT) and related services (*id.*).²

During the 2006-07 school year, the parent obtained a comprehensive evaluation of her son at the McCarton Center in October and November 2006 to determine his "current developmental status" in order to "better define his therapeutic needs" (Parent Ex. T at p. 1). The October evaluation report noted that at that time, the student received weekly speech-language therapy, OT, ABA services, and that he attended a "typical nursery school" for 2.5-hours per day, five days per week, with the assistance of a full-time SEIT (*id.*). The evaluators indicated that the student exhibited a series of behaviors characteristic of a Pervasive Developmental Disorder (PDD), including "very impaired social skills, play skills and language skills, unresponsiveness to name, lack of reciprocity and joint attention, self stimulating behaviors with small objects in his hands and touching his face and mouth" (*id.* at pp. 7-8). The student received four diagnoses, including "Pervasive Developmental Disorder—Not Otherwise Specified [(PDD-NOS)]/Autism Spectrum," verbal apraxia, auditory processing disorder, and fine motor/graphomotor delays (*id.* at p. 8). In the November speech-language evaluation report from the McCarton Center, the evaluator referred to the October evaluation and indicated that the student currently received weekly speech-language therapy, ABA services, and OT at the McCarton Center (Parent Ex. S at p. 1).³

¹ The student initially began attending nursery school—his first preschool experience—in September 2005 (Parent Ex. V at p. 4).

² The CPSE found the student eligible to receive services as a preschool student with a disability and recommended 21 hours per week of 1:1 special education itinerant teacher (SEIT) services (school and home/community), 1:1 OT, 1:1 physical therapy (PT), 1:1 speech-language therapy, 1:1 speech-language therapy consultation, and 1:1 PT consultation (Parent Ex. U at pp. 1-2). A PT evaluation was conducted in June 2006 through EI services (Parent Ex. V at pp. 15-18).

³ The November evaluation report also noted that the student received weekly PT since September 2006 and that the student had received ABA services since January 2005 (Parent Ex. S at p. 1). A March 2007 educational annual review report prepared by the student's SEIT teacher noted that since November 2006, the student attended nursery school five afternoons per week where he received 10 hours per week of ABA services and one 45-minute

On June 6, 2007, the student's then-current school district convened a CPSE meeting to conduct the student's annual review (Parent Ex. P at p. 1). The CPSE found the student eligible for extended school year (ESY) services for summer 2007 and recommended weekly 1:1 SEIT services, 1:1 OT, 1:1 speech-language therapy, 1:1 PT, and 1:1 consultation services for speech-language therapy, OT, and PT for both summer 2007 and for the 2007-08 school year (id. at pp. 1-5).⁴ The preschool individualized education program (IEP) noted that pursuant to a conversation with the parent, the student would "attend the McCarton School full day" (id. at p. 5).

The parent received an enrollment contract, dated July 9, 2007, from McCarton notifying her of her son's enrollment at McCarton for the 2007-08 school year (Parent Ex. AA at p. 1).

By letter dated August 14, 2007, the parent wrote to a chairperson of respondent's (the district's) Committee on Special Education (CSE) advising that she and her son recently relocated within the district (Parent Ex. N). In the letter, the parent indicated that her son had a disability and required special services and further, that she enclosed copies of his "most recent" IEP and evaluations in her possession (id.). The parent noted her "consent to any additional evaluations" and requested that the district implement the related services in the student's IEP on a "temporary basis" (id.). The parent also requested an "IEP meeting" (id.).

On August 22, 2007, the student's grandfather executed the enrollment contract from McCarton for the 2007-08 school year (Parent Ex. AA at p. 3; see Tr. pp. 409-10). The enrollment contract indicated that if the parent cancelled the contract on or before September 4, 2007, the parent would not be "liable for any further payments" (Parent Ex. AA at p. 2).

By initial notice of referral dated September 4, 2007, the district's CPSE administrator acknowledged receipt of the parent's referral and explained the evaluation process (Dist. Ex. 2; see Tr. pp. 273-74). The notice indicated that the CPSE required written consent to conduct the evaluations, that the parent must select an approved preschool evaluation site from the list of evaluation sites included in the notice, and that the parent must contact the evaluation site to schedule an appointment (Dist. Ex. 2; see Dist. Ex. 3). The notice advised that the parent must bring the enclosed "Consent for Initial Preschool Evaluation (C-1P)" to the evaluation site selected (id.). Finally, the notice indicated that the CPSE would contact the parent if, within 15 days from the date of the notice, the CPSE had not received a response to the notice (Dist. Ex. 2).

On September 4, 2007, the student began attending McCarton for a full day where he received ABA services, speech-language therapy and OT (Tr. p. 101; see Dist. Ex. 5 at p. 1; Parent Ex. CC).

session per week of OT (Parent Ex. R at pp. 1, 4). The SEIT's report further noted that the student also attended the McCarton Center five mornings per week where he received ABA services, two additional OT sessions per week, and five additional 45-minute sessions per week of speech-language therapy (id. at p. 1). A May 2007 OT evaluation report indicated that the student received OT services both at home and at his preschool, and in addition, attended a sensory gym two times per week (Parent Ex. Q at p. 1).

⁴ The hearing record indicates that the student received OT services in his home during summer 2007 (Parent Ex. O at pp. 1-3).

After not receiving a response to the initial notice of referral from the parent within 15 days, the CPSE administrator contacted her (see Tr. pp. 275-78). The CPSE administrator learned that the parent had signed the consent for evaluations and that the student would be evaluated at the Association for Help with Retarded Children (AHRC) (Tr. pp. 102, 278; see Dist. Exs. 3-9; 11). The consent for initial evaluation submitted into evidence at the impartial hearing indicated that the parent signed the consent document on September 25, 2007 (Dist. Ex. 3; see Dist. Exs. 4-9). The CPSE administrator testified at the impartial hearing that she contacted AHRC and received the consent document from AHRC (Tr. p. 310).

On September 25 and 26, 2007, AHRC completed a social history and conducted a psychological evaluation, a speech-language evaluation, and an OT evaluation (Dist. Exs. 4-9; 11). The social history—as reported by the parent—indicated that the student had "a lot of sensory issues," he tended to "seek a lot of oral stimulation" by putting things in his mouth, and he required "constant supervision" (Dist. Ex. 5 at p. 2). Since receiving ABA services, the parent noted improvements in her son's ability to make eye contact and to point to "what he wants" (id.). The social worker who prepared the report described the student as "difficult to engage" and that he exhibited "difficulty sitting for activities" (id.). According to the report, the student demonstrated "some babbling," inconsistently responded to his name, did not follow commands, could not point to body parts, was not toilet trained, undressed himself, inconsistently cooperated with being dressed, and chewed his clothes (id. at p. 3). The student drank from a bottle and could drink from a training cup with a straw (id.). The social worker reported that the student was "beginning to feed himself with a spoon" and was described as a "messy eater" (id.). The social history noted that the student was "in constant motion," vocalized "meaningless noises," and displayed some self-stimulating "hand movements" (id.). In school, the student had "difficulty with transitions" (id.). The social history indicated that when frustrated, the student would attempt to bite, that he could be "aggressive" with "teachers and children," that he would "lash out without any obvious provocation," and that he played roughly with adults and children seemingly unaware of his own strength (id.). In addition, the student inappropriately played with toys and "love[d] swimming" (id.). In summary, the social worker described the student as exhibiting "significant speech and communication delays which impede his overall performance" (id. at pp. 4-5).

The AHRC psychological evaluation included play observation, a parent interview, administration of the Vineland Adaptive Behavior Scales-Second Edition (Vineland-II), and an attempted administration of the Bayley Scales of Infant Development-Second Edition (BSID-II) (Dist. Ex. 6 at pp. 1-2).⁵ Overall, the student's scores placed him in the "deficient range of intellectual functioning" and "approximately" within the age equivalent of six months (id. at pp. 2-3). The student's verbal skills reached "the [eight] months ceiling," while his non-verbal skills reached "somewhat lower" levels (id. at p. 3). Administration of the Vineland-II yielded scores for communication skills, daily living skills, and socialization skills in the deficient range; and motor skills in the borderline range (id. at pp. 2-3). In addition, the psychologist reported that the student had limited relational skills, noting that he could be "socially indiscriminate" and did not

⁵ The standardized tests were identified in the psychological evaluation report as the "Vineland-II Scales of Adaptive Functioning," and the "Bayley Scale of Infant Development (BSID-II)—Attempted" (Dist. Ex. 6 at p. 1).

"have a reliable source of boundary awareness" (id. at p. 4). The psychologist also noted that the student's sensory difficulties interfered with his activities of daily living and described the student as "evasive, self-stimulating, and self-directed" (id.). In her report, the psychologist opined that the student was "not ready" for exposure to "other children in a typical setting" due to the student's "agitated, at times, aggressive responses," which included biting, pulling hair, and kicking others "unpredictably" (id.). In summary, the psychologist noted that the student "seem[ed] to benefit most in a one-to-one teacher to student setting that [was] highly structured and individualized" (id.).

At the AHRC speech-language evaluation, the speech-language pathologist attempted to administer the Preschool Language Scale-Fourth Edition (PLS-4) to assess the student's receptive and expressive language, but due to the student's inability to "maintain attention and focus on numerous pictures for extended periods of time," the speech-language pathologist based the PLS-4 test results upon parental report and clinical observations (Dist. Ex. 7 at pp. 1-2). Overall, the student exhibited a "severe receptive and expressive language delay" (id. at pp. 2-3). The student demonstrated particular difficulty with following simple directions, demonstrating the appropriate use of objects, identifying familiar objects in a group, using more than one object during play, taking turns, producing various consonant sounds, imitating words, and naming objects in pictures (id.). During the assessment, the speech-language pathologist noted that the student attempted to pull the evaluator's hair, and the parent reported frequent hair-pulling and biting by the student (id. at p. 1). The speech-language pathologist observed the student's use of "primarily . . . non-verbal means"—such as grabbing, reaching, eye gaze, and two American Sign Language signs—to "communicate wants and needs" (id. at pp. 2-3). In summary, the student presented with severe receptive and expressive language delays, and he exhibited "limited play skills and poor joint attention," which were noted to impede his ability to communicate and function effectively within his environment (id. at p. 3). The speech-language pathologist recommended intensive, individual speech-language therapy to increase the student's joint attention and play skills, his ability to follow directions, and his ability to expand his receptive and expressive communication skills (id.).

To evaluate the student's OT needs, the AHRC therapist relied upon the information provided by the Peabody Developmental Motor Scales-Second Edition (PDMS-2), a "HELP checklist," Clinical Observation, a Chart Review, a Sensory Profile Questionnaire, and a Parent Interview (Dist. Ex. 8 at p. 1). As a result of the student's scores on the Sensory Profile and the therapist's behavioral observations, the therapist noted the following behavioral and sensory concerns: limited attention span, an inability to remain seated during directed play, self-directed, poor ability to transition at times, difficulty following verbal commands, impulsive behavior (grabbing toys, reaching over examiner), retreating to enclosed spaces, zoning out, tactile sensitivity, texture sensitivity during meals, frequently tantrums, easily frustrated, and controlling of his environment (id. at pp. 1-3). The therapist's report indicated that based upon the student's scores on the PDMS-2, the student demonstrated poor levels of performance in the areas of visual-motor integration and grasping skills, which was indicative of "significantly delayed" fine motor activities (id. at pp. 3-4). Based upon the evaluation, the therapist concluded that the student currently functioned "at an age level of approximately 15-23 months" in fine motor skills (id. at p. 4). In summary, the therapist opined that the student "may benefit from skill" OT services that emphasized increased task initiation, sensory integration, upper extremity and grip strengthening,

increased attention span, dexterity training and mature grasping patterns, and increased organization for increased skill development (*id.* at pp. 4-5).

By letter dated November 2, 2007, AHRC provided the district's CPSE administrator with the evaluation packet completed by AHRC (Dist. Ex. 11). The CPSE administrator testified at the impartial hearing that when she received the AHRC evaluation packet, she scheduled a meeting to review the evaluations (Tr. pp. 280-84, 287-88; *see* Dist. Exs. 11-12).⁶ In addition to receiving AHRC's evaluation packet, the CPSE administrator also received a medical report and a McCarton educational progress report prepared by the student's then-current teacher at McCarton (Tr. pp. 284-87; Dist. Exs. 4-8; 10; Parent Ex. I). The McCarton educational progress report, dated October 17, 2007, indicated that although the student exhibited significant difficulties transitioning into the new classroom, the student was "able to work with his teachers to adjust to the classroom routine and through shaping and positive reinforcement [was] now making consistent progress and acquiring new skills" (Parent Ex. I at p. 1). The "Learning Style" portion of the progress report detailed the student's difficulty following directions, remaining seated during work time and in small groups, and transitioning, which impeded his ability to acquire new skills (*id.* at p. 1). In addition, the progress report indicated that the student demonstrated "numerous escape-related" behaviors, disruptive and aggressive behaviors—including tantrums and self-stimulatory behaviors—and "extremely low levels of frustration tolerance" due to the student's "lack of ability to self-regulate" (*id.*). However, the progress report noted that during the first two months, the student "learn[ed] to develop appropriate communicative replacement behaviors for escape, and the ability to better self-regulate, due to the implementation of preventative behavioral strategies, such as a daily sensory and oral motor diet, mand training sessions, developing appropriate play skills, and differential reinforcement of appropriate behaviors" (*id.*). In addition to the student's learning style, the progress report included information about the student's communication, cognition, activities of daily living, gross/fine motor skills, social and play skills, and his overall progress to date, which included that the student required 1:1 adult supervision and "highly structured individualized behavioral teaching methods" to develop new skills (*id.* at pp. 1-4). The CPSE administrator testified at the impartial hearing that she had the McCarton educational progress report at the November 30, 2007 CPSE meeting and that she had read the report (Tr. pp. 325-26). She also testified that the information contained in the McCarton report was consistent with the information contained in the AHRC evaluations, because all of the reports described a student with "a lot of trouble with attention, a lot of trouble with communication, a lot of trouble focusing, who needed a small classroom where he could get attention as frequently as possible" (Tr. p. 287).

On November 30, 2007, the CPSE convened to conduct the student's initial referral review and to develop an IEP for the 2007-08 school year (Dist. Exs. 13; 15; 17 at pp. 1-2). The CPSE administrator, an AHRC representative, the parent, the student's grandmother, and an additional

⁶ In addition to the social history and the psychological, speech-language and OT evaluations, AHRC prepared a "Preschool Student Evaluation Summary Report," which contained summaries of the evaluation findings and a statement of the student's needs in the areas of cognition, social/emotional, physical/motor development, language and communication, and adaptive/functional behavioral assessment (Dist. Ex. 9 at pp. 1-2).

parent member attended the meeting (Tr. p. 288; see Dist. Ex. 13).⁷ The CPSE administrator testified at the impartial hearing that the purpose of the meeting was to determine the student's services and a placement to deliver those services (Tr. p. 288). A draft IEP had been prepared prior to the meeting, which included annual goals drafted by AHRC personnel (Tr. p. 291). The sections of the IEP describing the student's present levels of academic performance and learning characteristics, social/emotional performance, and health and physical development, contained information taken directly from the AHRC evaluation reports (compare Dist. Ex. 17 at pp. 3-5, with Dist. Exs. 5-9).

According to the CPSE administrator's testimony, the CPSE's discussion focused on a "small, center-based program" and a 6:1+3 classroom ratio in order to meet the student's needs because, based upon the reports, he required "structure and limits," as well as the "attention" that he could receive in a small classroom (Tr. pp. 288-90).⁸ The CPSE administrator also testified that she believed "we should try a classroom" for the student (Tr. p. 290). The CPSE administrator spoke about a "few sites" with potential availability for placement and "certain sites" that had no availability for placement (Tr. pp. 289-90; see Tr. pp. 68, 87). At that time, the CPSE administrator knew that one potential placement—the Association for Metroarea Autistic Children (AMAC)—had a seat available, so she suggested that an appointment be scheduled for the student because AMAC required an intake interview prior to accepting the student (Tr. pp. 289-90). The CPSE administrator also testified that AMAC would need to accept or approve of the student's placement prior to finalizing the student's IEP (Tr. pp. 290-92). The CPSE administrator indicated that the student's goals were not discussed at this CPSE meeting because she knew that the CPSE would reconvene to finalize the student's IEP and that the goals could be discussed at that meeting (id.). The CPSE recommended placement in a 12-month center-based program with related services of speech-language therapy and OT (Tr. p. 292; Dist. Ex. 17). The parent agreed to visit AMAC, and according to the CPSE administrator's testimony, the parent did not raise any issues with respect to the AHRC evaluation reports or the placement option at AMAC (Tr. pp. 289-90). According to the hearing record, the parent requested a copy of the student's IEP at the conclusion of the CPSE meeting and was not provided with a copy (Tr. pp. 85-86; see Tr. pp. 43-44). The CPSE administrator testified that when the parent requested a copy of the IEP, she explained to the parent that it was against school policy to "give out draft IEPs" and that the IEP needed to be completed (Tr. pp. 339-43).

By letter dated December 3, 2007, the student's mother forwarded a copy of her son's 2006-07 IEP from his previous school district to the CPSE administrator and noted that she was "looking forward to visiting AMAC" (Parent Ex. D at p. 1).

By due process complaint notice dated December 5, 2007, the parent alleged that the district failed to provide her son with a free appropriate public education (FAPE) for the 2007-08 school year based upon substantive and procedural violations (Parent Ex. B at p. 1). The parent

⁷ According to the grandmother's testimony at the impartial hearing, she held academic degrees in teaching and psychology (Tr. p. 65). The grandmother had experience teaching in a general education setting, but no experience in the special education setting, and last taught in 1995 (Tr. pp. 65-67).

⁸ The CPSE administrator testified that the November 30, 2007 CPSE convened for "an hour plus" (Tr. p. 294).

alleged that the district failed to develop an IEP that it would "share with and release to" the parent upon her request, despite having "convened several meetings" and proposing "numerous placements" (*id.* at pp. 1-2). In addition, the parent alleged that the IEP meeting was untimely and improperly convened, that the CPSE was improperly composed, and that the district could not implement the placements discussed (*id.* at p. 3). In a footnote, the parent advised that the due process complaint constituted notice of the parent's intention to seek tuition reimbursement (*id.* at p. 1 n.1).⁹ The parent noted that the "placement, program and interventions" she obtained for her son were appropriate and that equitable considerations would not preclude an award of tuition reimbursement (*id.* at pp. 1-2). As relief, the parent requested reimbursement for the costs of her son's tuition expenses at McCarton for the 2007-08 school year, extending from September 2007 through August 2008 (a 12-month program) (*id.* at p. 3).

On December 7, 2007, the student and his grandparents attended an intake interview at AMAC (Dist. Ex. 14 at pp. 1-2; *see* Parent Ex. DD). In a letter, the parent indicated that due to her work schedule, she could not attend the scheduled intake interview (Dist. Ex. 14 at p. 2). At the impartial hearing, the student's grandmother testified that she did not believe AMAC was an appropriate placement for the student because he required a 1:1 intensive program, the amount of speech-language therapy and OT was insufficient, and the school day at AMAC was "too short" (Tr. p. 61). She also testified that after the intake interview at AMAC, she communicated with her daughter (the parent) about her observations of AMAC (Tr. pp. 63-64; *see* Tr. pp. 417, 427-40). By letter dated December 13, 2007, AMAC notified the CPSE administrator that the student had been accepted by AMAC to attend a 6:1+3 classroom, which was composed of students ranging in age from 2.5 to 5 years old with similar management, physical, social developmental, and functional levels of performance (Dist. Ex. 15; *see* Tr. pp. 292-93). The preschool acceptance letter indicated that the student would receive speech-language therapy and OT pursuant to his IEP (*id.*).

By meeting notice dated December 13, 2007, the CPSE administrator scheduled a CPSE meeting on December 21, 2007 (Dist. Ex. 16; *see* Tr. p. 292; Dist. Ex. 17 at pp. 1-2). The CPSE administrator testified at the impartial hearing that the purpose of the December 21, 2007 meeting was to finalize the student's IEP and to put AMAC on the student's IEP as the recommended placement (Tr. p. 292; *see* Tr. p. 153). The following individuals attended the December 21, 2007 CPSE meeting: the CPSE administrator, an AHRC representative, the parent, the student's grandmother, an additional parent member, and the AMAC intake coordinator (Tr. p. 293; Dist. Ex. 17 at p. 2).¹⁰ A McCarton representative had been invited to the meeting, but did not attend, and the CPSE did not receive any updated McCarton reports for the December CPSE meeting (Tr. p. 294).

According to the CPSE administrator's testimony, the discussion at the December meeting focused on the student's placement in the center-based program and the recommended related services of three 30-minute sessions per week of 1:1 speech-language therapy and three 30-minute

⁹ The parent's due process complaint notice also sought pendency services (Parent Ex. B at p. 2).

¹⁰ The AMAC intake coordinator in attendance at the CPSE meeting participated in the student's intake interview at AMAC and guided the grandparents' tour of AMAC (*see* Tr. pp. 36-37, 51, 135-51; Dist. Ex. 17 at p. 2).

sessions per week of 1:1 OT (Tr. p. 293; see Dist. Ex. 17 at pp. 1-2, 13, 15).¹¹ The CPSE administrator further testified that the parent expressed interest in visiting AMAC, herself, which the AMAC intake coordinator agreed to accommodate at any time through January 14, 2008 (Tr. pp. 294-95; see Tr. pp. 158-59). The AMAC intake coordinator also agreed to "hold the seat" for the student until January 14, 2008 (Tr. p. 295; see Tr. pp. 158-59). According to the AMAC intake coordinator's testimony, the parent did not contact her to schedule a visit after the December 21, 2007 CPSE meeting (Tr. pp. 159-60; see Tr. p. 295).

According to the CPSE administrator's testimony, the student's grandmother questioned whether the student would be disruptive to the classroom she observed during her visit to AMAC (Tr. pp. 297-98). The CPSE administrator explained that the students "don't improve overnight" but that it probably took time for the students she observed to exhibit that behavior (*id.*). Another issue raised and discussed at the December CPSE meeting was the age of the students observed in the AMAC program, as it was noted that AMAC had both preschool and school-age students in the program (Tr. p. 298; see Tr. pp. 156-57). Acknowledging this fact, the CPSE explained that the preschool and school-age students entered AMAC through separate entrances and remained separated throughout the school day on different floors in the building (Tr. pp. 298-99). The CPSE administrator did not recall the parent discussing assistive technology or whether the student required assistive technology; although if it had been mentioned, the CPSE administrator would have had the student evaluated in that area (Tr. p. 299).

The CPSE administrator also testified that the CPSE did not review the goals and objectives listed in the student's IEP because the parent needed to leave for work (Tr. pp. 295-97; see Tr. pp. 358-61). Before the parent left the meeting, the AHRC representative offered to make herself available via telephone to review the goals and objectives "one by one" with the parent (Tr. pp. 295-96). The parent received a copy of the student's 2007-08 IEP at the end of the meeting (Tr. pp. 45-46, 296).

The CPSE administrator sent a Final Notice of Recommendation (FNR), dated December 21 2007, notifying the parent of the student's recommended placement at AMAC, with related services of speech-language therapy and OT, scheduled to begin on January 2, 2008 (Dist. Ex. 18; see Dist. Ex. 19).

By amended due process complaint notice dated January 3, 2008, the parent reiterated that the district failed to offer her son a FAPE for the 2007-08 school year based upon substantive and procedural violations (Parent Ex. A at p. 1). The parent argued that she would establish the following at the impartial hearing: the district's failure to timely convene and develop an IEP; the district's failure to properly evaluate the student's present levels of performance; the district's failure to include a regular education teacher, a school psychologist, and a social worker at the CPSE meeting; the district's failure to indicate when "notice of the December 21, 2007 meeting was sent" to the parent; the district's failure to conduct a functional behavioral assessment (FBA) and develop a behavioral intervention plan (BIP); the district's failure to consider assistive technology; the district's failure to develop appropriate goals and objectives at the IEP meeting

¹¹ The parent testified at the impartial hearing that the December 21, 2007 CPSE meeting lasted "over two hours at least" (Tr. p. 380).

with "meaningful participation" of the parent; the district's failure to develop clear and measureable goals and objectives; the district's failure to recommend sufficient speech-language therapy services; the district's failure to comply with the regulations pursuant to 8 NYCRR 200.13 regarding speech-language therapy and parent training and counseling; the district's impermissible predetermination of the student's services; the district's failure to recommend an appropriate placement in a 1:1 setting; and the district's failure to recommend a placement where the student could "model speaking children" (*id.* at pp. 3-4). As relief, the parent sought reimbursement for her son's tuition costs at McCarton for the 2007-08 school year, as requested in her original due process complaint notice (*id.* at pp. 4-5).

On February 5, 2008, the parties proceeded to an impartial hearing, which concluded on June 12, 2008 after six days of testimony (Tr. pp. 1-1116). When questioned about whether the district recommended sufficient speech-language therapy services, the CPSE administrator acknowledged that the student had "very poor communication skills" and further explained that at AMAC, the student would be in a "five day a week, five hour a day language intensive classroom" (Tr. pp. 325-28; *see* Tr. pp. 157-58). She also testified that the CPSE agreed to start with the stated recommendations and add more services if necessary, that the AMAC intake coordinator agreed with the recommendations, but the parent requested more speech-language therapy services (Tr. pp. 328-29). At the end of that discussion, the CPSE administrator believed that the parent "accepted the arguments that were made" and the rationale behind the CPSE's recommendation for speech-language therapy services (Tr. pp. 330-31). With respect to assistive technology, the CPSE administrator identified the Picture Exchange Communication System (PECS) as a "very basic assistive technology" that the student was "beginning to use . . . to request desired items" at McCarton (Tr. pp. 332-34; *see* Parent Ex. I at p. 2). She testified that the CPSE did not identify assistive technology as an area of student need on the IEP because the student "would be attending an entirely new situation" and that there was no need "at this particular point for assistive technology services" (Tr. pp. 335-36). The CPSE administrator also testified that neither AHRC nor the parent requested assistive technology services (Tr. p. 336).

Turning to the issue of the student's behavior, the CPSE administrator testified that the student demonstrated "a lot of difficulty focusing" and "concentrating" (Tr. p. 337). The CPSE administrator acknowledged that according to the McCarton educational progress report dated October 17, 2007, the student exhibited interfering behaviors (Tr. pp. 337-38; *see* Parent Ex. D). She explained that the CPSE did not identify in the IEP that the student's behavior seriously interfered with instruction or that the student required a BIP because the student "had had no opportunity to be in a small classroom and deal with a small population to see whether or not a center-based program could, would have an effect" (Tr. pp. 338-39, 344-45). She further explained that the CPSE did not conduct an FBA because the FBA "should be done at the site where the [student] would be attending" and had the parent agreed to the recommended placement, "it would have been my suggestion that AMAC look to do [an FBA] to see whether a behavior plan should be written and they should look at his behaviors in terms of exactly how and what kinds of behavioral plan could be written" (Tr. pp. 344-47; *see* Tr. pp. 162-63, 165-66, 236-39). In addition, the CPSE administrator testified that the parent was present at the CPSE meeting when the decisions were made to not identify the student's behaviors and that he did not require a BIP (Tr. pp. 338-40).

The CPSE administrator testified that she believed AMAC was an appropriate placement for the student because it provided small classrooms, and further, because AMAC was "very good with children who cannot focus, have emotional difficulties, have communication difficulties, [and] poor attention skills" (Tr. p. 296). She also testified that AMAC was "small enough" so that the student could get "assistance" and improve his "focusing and attention" (Tr. p. 297). At AMAC, the student would be in "an actual classroom for all the social goals" and for the "social development that a preschooler needs" (id.).

Finally, the CPSE administrator testified that a regular education teacher did not attend either the November or December CPSE meetings because the student "had never attended a general ed classroom . . . and it was quite clear that he needed more than a general ed classroom" (Tr. p. 362). She also noted that the AHRC representative who attended both CPSE meetings was not only a special education teacher, but she was also a regular education teacher (Tr. pp. 362-63). In addition, the AMAC intake coordinator testified that the student could not work with a regular education teacher to access a modified general education curriculum, but would require a special education teacher to access a modified general education curriculum (Tr. pp. 251-52).

In his decision dated August 22, 2008, the impartial hearing officer addressed each of the parent's substantive and procedural claims asserted in her amended due process complaint notice as a basis upon which to find that the district failed to offer the student a FAPE for the 2007-08 school year (IHO Decision at pp. 4-33, 43-44). The impartial hearing officer also addressed issues he characterized as "additional claims" and claims "made in the parent's memorandum" submitted after the completion of the impartial hearing (id. at pp. 33-43). The impartial hearing officer concluded that the district sustained its burden to establish that the IEP and recommended placement offered the student a FAPE for the 2007-08 school year, and thus, denied the parent's request to be reimbursed for the costs of the student's tuition at McCarton (id. at p. 44). The impartial hearing officer then discussed equitable considerations, which he concluded did not favor the parent (id. at pp. 44-47).

In particular, the impartial hearing officer determined that the district timely and properly assessed and evaluated the student, which formed the basis for the development of the student's IEP, and further, that the hearing record did not contain evidence that the district's evaluations failed to accurately assess the student's present levels of performance (IHO Decision at pp. 4-5, 36-37, 41-43). Regarding the allegation that the district failed to indicate when it sent the December 21, 2007 CPSE meeting notice or provided the student's IEP to the parent, the impartial hearing officer noted that the hearing record indicated that neither the parent nor the student's grandmother asserted that the notice had not been received, and that based upon the student's IEP, the parent received the IEP on December 21, 2007 (id. at pp. 5-6). He also concluded that the district did not impermissibly predetermine the student's special education programs and services (id. at pp. 6, 46-47). In his decision, the impartial hearing officer cited to relevant legal authority for the principles that "predetermination is not synonymous with preparation," that procedural violations only rise to the level of a denial of a FAPE under certain circumstances, and that a district could bring a draft IEP to review at a meeting, so long as the parent had an opportunity to object or make suggestions (id.). With respect to the allegation of improper CPSE composition, the impartial hearing officer found that the hearing record supported the conclusion that since the student would not participate in a general education setting, the failure to include a regular

education teacher on the CPSE did not deny the student a FAPE (id. at pp. 6, 37). As for the failure to include a school psychologist or a social worker on the CPSE, the impartial hearing officer found that according to the hearing record, both the CPSE administrator—who attended both the November and December CPSE meetings—and the AMAC intake coordinator—who attended the December CPSE meeting—were school psychologists (id. at p. 7). Regarding the timeliness of convening and developing the IEP, the impartial hearing officer faulted any delay on AHRC and the evaluation process, finding that the parent's August 14, 2007 letter "consenting" to additional evaluations insufficient as a "consent form" (id. at p. 41). The impartial hearing officer indicated that for purposes of calculating the timeliness of the IEP, the parent's consent on September 25, 2007 started the timeframe according to the regulations in 8 NYCRR 200.16(e) and (f) (id. at pp. 41-42). Although the district did not meet the deadlines imposed by the regulations, the impartial hearing officer noted that AHRC's delay in sending the evaluations caused the district's "negligence" and that the delay, in this case, did not cause substantive harm to the student denying him a FAPE (id. at p. 42).

The impartial hearing officer then went on to address the parent's allegations that the district failed to comply with the regulations set forth in 8 NYCRR 200.13 relating to parent training and counseling and instructional services to meet the student's individual speech-language needs (IHO Decision at pp. 7-8, 16-19). He concluded that the hearing record supported a finding that AMAC provided parent training and counseling (id. at pp. 7-8). According to the testimonial evidence, AMAC offered parent training to all parents; a parent who wanted training could schedule an appointment to work with the student in the classroom with the student's teacher and with AMAC's director of ABA (ABA director) (id. at p. 7). The ABA director would train the parent on whatever behaviors or areas of concern requested by the parent and would teach the parent to "run the program and collect the data" (id.). The ABA director would also encourage a parent to videotape the student at home when implementing the program so that the ABA director could review the videotape to analyze the effectiveness of the program, as well as the parent's implementation of the program (id.). Turning to the parent's assertion that the district's recommended speech-language therapy did not comply with the regulations in 8 NYCRR 200.13 and that the recommended placement did not provide the student with an opportunity to "model speaking children," the impartial hearing officer determined that AMAC could provide the services necessary to meet the student's needs (id. at pp. 16, 43-44). Reviewing the hearing record, the impartial hearing officer "could not find where the [student's] mother was informed by the District Representative that it was important for the [student] to model speaking children" (id.). Notwithstanding, the impartial hearing officer found that AMAC, like McCarton, offered community outings, which provided students with opportunities to interact with other children (id. at pp. 16-17). In addition, the recommended AMAC classroom employed a language-based program creating a structured environment allowing the students to work on socialization, parallel play, eye contact, and play skills (id. at p. 17). The impartial hearing officer found that the "core" of the AMAC program was the "constant analysis of data" and the modification of the students' program if the student did not make progress (id. at p. 16). He also found that all of the professional staff at AMAC "consciously utilize[d] language, continuously throughout the day, with [the students] for both comprehension and expressive language purposes" (id. at p. 18). The impartial hearing officer noted that the 6:1+3 classroom ratio allowed the teachers to work with students "to pull the [students'] language out" (id. at p. 17). He also noted that the related service providers would employ the student's language program with the student through the day when working with

the student (*id.* at p. 18). Based upon the foregoing, the impartial hearing officer concluded that the recommended program complied with the regulations in 8 NYCRR 200.13 (*id.* at p. 19).

Addressing the parent's assertion that the district denied her meaningful participation in the development of the student's goals and objectives and that the district failed to develop clear and measureable goals and objectives, the impartial hearing officer concluded that although the parent did not participate in the development of the goals and objectives, the district did not deny her meaningful participation and thus, did not deny the student a FAPE (IHO Decision at pp. 8-15). After considering extensive testimonial evidence on the subject of the goals and objectives, the impartial hearing officer determined that the parent did not participate in a discussion about the goals and objectives because she voluntarily left the December 21, 2007 CPSE prior to "discussing all the goals" (*id.* at pp. 9-15). He also found that the parent meaningfully participated in both the November 30 and December 21, 2007 CPSE meetings prior to her departure at the second meeting (*id.* at p. 15). In addition, the impartial hearing officer indicated that based upon the testimony of the AMAC intake coordinator and the CPSE administrator, the AHRC representative at the December CPSE meeting volunteered to make herself available as a resource to the parent to review the goals and objectives listed on the IEP "one by one" over the telephone and the parent never contacted any representative of the district, AHRC, or AMAC following the December meeting (*id.* at pp. 9, 15). The impartial hearing officer also found that the goals and objectives were clear and measureable based upon the testimony of the ABA director, and further, that the hearing record did not support the parent's contention that the student had already mastered some of the goals on the IEP (*id.* at pp. 37-40). According to the ABA director's testimony, the goals and objectives were consistent with the student's strengths and deficits and that the systemic use of ABA throughout the AMAC program would provide a proper foundation upon which to measure the student's progress and modify his program, if necessary, to continue to meet the student's needs (*id.*).

As for the parent's assertion that the district failed to consider assistive technology for the student, the impartial hearing officer concluded that the claim was without merit (IHO Decision at pp. 19-25). Reviewing the documentary and testimonial evidence, the impartial hearing officer found that neither the McCarton documents nor the AHRC evaluations recommended "any other assistive technology" beyond the use of PECS, which was incorporated within the "learning strategies" used at AMAC (*id.*). Turning to the parent's allegation that the district's failure to conduct an FBA and develop a BIP—despite significant interfering behaviors—denied the student a FAPE, the impartial hearing officer similarly found that the claim was without merit (*id.* at pp. 25-33). In part, the impartial hearing officer indicated that based upon the documentary and testimonial evidence, the district's alleged failure did not deny the student a FAPE because none of the AHRC evaluations recommended an FBA or BIP, and significantly, that AMAC's entire program was based upon principles of behavior analysis (*id.* at p. 25). In addition, the ABA director testified at length regarding AMAC's use of ABA especially in relation to a student's behavior (*id.* at pp. 27-33). She also testified that all students at AMAC receive ABA special education and that ABA was used with related services (*id.* at p. 29). The impartial hearing officer noted that based upon the ABA director's testimony, every student entering AMAC undergoes clinical observations and/or assessments targeting all areas of the student's developmental, academic, and social levels (*id.*). At AMAC, observations and data collection to establish baselines began as soon as a student entered the classroom and often included videotaping for later

review to analyze a student's behavior (id. at pp. 29-30). The impartial hearing officer also noted that the ABA director testified that AMAC professionals continuously conduct a functional analysis of the student's behavior and that BIPs are also continuously developed (id. at p. 30). Ultimately, the impartial hearing officer concluded that an FBA and BIP were enmeshed within the AMAC program, and thus, the district's alleged failure to conduct an FBA or develop a BIP did not deny the student a FAPE (id. at pp. 25-33).

On appeal, the parent alleges that the impartial hearing officer erred in his decision by applying erroneous legal standards, failing to address whether the parent sustained her burden to establish the appropriateness of McCarton, ignoring testimony and evidence, and creating credibility issues. In particular, the parent contends that the district failed to sustain its burden to establish that it offered the student a FAPE for the 2007-08 school year and seeks to reverse the impartial hearing officer's decision based upon the following grounds: the district failed to timely develop and provide an IEP; the district failed to recommend sufficient speech-language therapy services consistent with 8 NYCRR 200.13; the district failed to recommend parent counseling and training consistent with 8 NYCRR 200.13; the district denied the parent a meaningful opportunity to participate in the development of the student's IEP; the district impermissibly predetermined the student's IEP; the district failed to consider assistive technology for the student; the district failed to conduct an FBA and develop a BIP; and the CPSE did not include the participation of a regular education teacher. In addition to reversing the impartial hearing officer's decision, the parent also requests reimbursement for the costs of her son's tuition at McCarton for the 2007-08 school year (12-month program).

In its answer, the district contends that the impartial hearing officer properly concluded that the district offered the student a FAPE for the 2007-08 school year. The district argues that although the CPSE may not have initially convened within the statutory time frame, ultimately the district offered a placement in a timely manner and thus, did not rise to the level of a denial of a FAPE. With respect to the CPSE's decision to not conduct an FBA, develop a BIP, or consider assistive technology, the district asserts that these omissions did not deprive the student of educational benefits and thus, did not rise to the level of a denial of a FAPE. The district further contends that because the student was eligible for special education programs and services as a preschool student with a disability, the provisions contained in 8 NYCRR 200.13 for speech-language and parent counseling and training do not apply to this student or to this case. In addition, the district alleges that the parent failed to sustain her burden to establish the appropriateness of the unilateral placement at McCarton for the 2007-08 school year, and further, that the impartial hearing officer properly determined that equitable considerations preclude an award of tuition reimbursement to the parent. The district asserts that the impartial hearing officer's decision should be upheld in its entirety.

The parent prepared a reply responding to the district's answer. By letter dated November 20, 2008, the district objected to the consideration of the parent's reply because it failed to comply with the regulations, asserting that the reply did not address any procedural defenses raised in the district's answer or any additional documentary evidence attached to the district's answer, because the district did not assert any procedural defenses or attach additional documentary evidence (see 8 NYCRR 279.6). The parent responded to the district's letter objecting to the reply, asserting that the parent's reply addressed new facts and issues raised in the district's answer and that the district

consented to the parent's request for an extension of time to submit the reply. Having reviewed the parent's reply and both the district's objection and the parent's reasoning to accept the reply, I agree with the district's stated objection and thus, will not consider the parent's reply.

Two purposes of the Individuals with Disabilities Education Act (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 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 (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]; 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 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 P. v. Newington Bd. of Educ., 546 F.3d 111 [2d Cir. 2008]).

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]), 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).

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 statute took effect for impartial hearings commenced on or after October 14, 2007 (see Application of the Bd. of Educ., Appeal No. 08-016).

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 v. Arlington Cent. Sch. Dist., 489 F.3d 105, 111 [2d Cir. 2007]; 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).

After carefully reviewing the entire hearing record, I find that the impartial hearing officer, in a thorough and well-supported 50-page decision, correctly determined that the district's recommended program and placement for the 2007-08 school year was reasonably calculated to confer educational benefit and thus, offered the student a FAPE for the 2007-08 school year, and further, that the parent was not entitled to reimbursement for the costs of her son's tuition at McCarton (IHO Decision at p. 44). Contrary to the parent's assertions on appeal, the impartial hearing officer applied the proper legal standard in determining whether the student was offered a FAPE, including whether the district complied with the procedural requirements in the IDEA by analyzing the issues raised by the parent regarding whether the parent meaningfully participated at the CPSE meeting, whether the CPSE was properly composed, whether the special education programs and services recommended in the student's 2007-08 IEP were predetermined, and whether the district timely convened and developed the student's IEP (id. at pp. 4-6, 9-15, 37, 41-

42, 46-47).¹² Specifically, the impartial hearing officer found that the parent's voluntary departure from the December CPSE meeting prevented her from meaningfully participating in the development of, or a discussion about, the student's goals and objectives listed in the IEP; that the CPSE did not need to include a regular education teacher since the student was not being considered for placement in a general education setting, and further, that the CPSE properly included a school psychologist;¹³ that the CPSE's use of a draft IEP did not constitute predetermination; and that the district's delay in recommending a program or placement arose as a result of AHRC's delay sending the evaluations, which did not result in any substantive harm (*id.*).

The impartial hearing officer also applied the appropriate legal standard to analyze the parent's allegations regarding whether the district complied with 8 NYCRR 200.13 as to parent counseling and training and instructional services to meet the student's individual speech-language, whether the district developed clear and measureable goals and objectives, whether the district failed to consider assistive technology, and whether the district's failure to conduct an FBA or develop a BIP denied the student a FAPE (IHO Decision at pp. 7-33, 37-40, 43-44). In determining that the district complied with 8 NYCRR 200.13, the impartial hearing officer properly concluded that the district's recommended placement at AMAC would have provided the student with sufficient instructional services to meet the student's individual speech-language needs through the intensive language-based classroom and recommended related services (*id.* at pp. 16-19).

Having determined that the district offered the student a FAPE, the impartial hearing officer went on to analyze, under the proper legal standard, whether equitable considerations favored the parent (IHO Decision at pp. 44-46). Based upon his findings and conclusions of law, the impartial hearing officer properly determined that the parent was not entitled to reimbursement for the costs of her son's tuition at McCarton for the 2007-08 school year. I also note that the decision demonstrates that the impartial hearing officer carefully marshaled and weighed all of the testimonial and documentary evidence presented by both parties with regard to the parent's procedural and substantive challenges to the student's 2007-08 IEP and properly based his ultimate determinations on the weight of the evidence. The hearing record amply supports the impartial hearing officer's conclusion that the district offered the student a program that was appropriate to meet his special education needs. In short, based upon my review of the entire hearing record, I find that the impartial hearing was conducted in a manner consistent with the requirements of due process and that there is no need to modify the findings of fact or conclusions of law as determined by the impartial hearing officer regarding the issues raised in the parent's appeal, and thus, the parent's appeal is dismissed in its entirety (34 C.F.R. § 300.514[b][2]; Educ. Law § 4404[2]; see Application of a Child with a Disability, Appeal No. 07-054; Application of a Child with a Disability, Appeal No. 05-095; Application of the Bd. of Educ., Appeal No. 03-085; Application of a Child with a Disability, Appeal No. 02-096).

¹² See 8 NYCRR 200.16 (e), (f).

¹³ I note that the parent did not cite to any relevant legal authority for the proposition that a social worker was a required member of the CPSE (see 8 NYCRR 200.3[a][2]). According to the regulations, a school psychologist is also not a required member of the CPSE (*id.*).

I have reviewed the parties' remaining contentions and in light of my determinations, I need not reach them.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
 December 22, 2008

PAUL F. KELLY
STATE REVIEW OFFICER