



The University of the State of New York

The State Education Department

State Review Officer

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No. 08-158

Application of a STUDENT WITH A DISABILITY, by his parents, for review of a determination of a hearing officer relating to the provision of educational services by the Board of Education of the Katonah-Lewisboro Central School District

Appearances:

Law Office of Peter D. Hoffman, PC, attorney for petitioners, Peter D. Hoffman, Esq., of counsel

Shaw, Perelson, May and Lambert, LLP, attorneys for respondent, Michael K. Lambert, Esq., of counsel

DECISION

Petitioners (the parents) appeal from the decision of an impartial hearing officer which denied their request to be reimbursed for their son's tuition costs at the Maplebrook School (Maplebrook) for the 2006-07 and 2007-08 school years. The appeal must be dismissed.

At the time of the impartial hearing in February 2008, the student was attending a special class at Maplebrook with approximately eight other students (Tr. p. 1904; see Tr. p. 1452). Maplebrook has not 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 has received diagnoses of a pervasive developmental disorder, not otherwise specified (PDD-NOS); an attention deficit disorder (ADD), predominately inattentive type; a reading disorder; and mild mental retardation (Dist. Exs. 2 at p. 10; 45 at p. 7). The student's eligibility for special education services as a student with multiple disabilities is not in dispute in this appeal (Dist. Ex. 44 at p. 1; see 34 C.F.R. § 300.8[c][7]; 8 NYCRR 200.1[zz][8]).

The hearing record provides an account of the student's early developmental, medical and educational history that will not be repeated here in detail (Tr. pp. 931-40; see, e.g., Dist. Exs. 2 at pp. 5-6; 45 at pp. 2-3). Briefly, the student reportedly has an "extensive history of neurological, neurocognitive and psychiatric symptoms" and has received special education and related services through the Early Intervention Program (EIP), the Committee on Preschool Special Education (CPSE) and the Committee on Special Education (CSE) (see Tr. p. 1568; Dist. Ex. 2 at p. 5). From

kindergarten through fourth grade, while attending a public elementary school in another district, the student was primarily placed in self-contained classes for academic instruction and received related services (Dist. Ex. 2 at p. 5). During summer 2002, following his fourth grade year, the student attended the "partial hospitalization program" at a psychiatric outpatient facility "due to emotional difficulties accompanied by visual and auditory hallucinations," where he was offered diagnoses of a schizoaffective disorder, bipolar type and borderline intellectual functioning, for which he subsequently received treatment (Dist. Exs. 2 at p. 5; 26; Parent Ex. DD at p. 4).

From September 2002 through May 2004 (fifth and sixth grades), the student attended a State-approved private school as a day student in an 8:1+1 therapeutic special class and received counseling, occupational therapy (OT) and speech-language therapy (Dist. Ex. 21; Parent Ex. DD at pp. 1, 4). In May 2004, respondent's (the district's) CSE changed the student's placement to a special class for students with multiple disabilities that offered academic instruction, a "life skills" component¹ and related services at its middle school (Tr. pp. 806, 811; Dist. Ex. 64 at pp. 1, 4-5). For the 2004-05 school year, the student attended seventh grade at the district's middle school in an 8:1+1 special class and received individual and group counseling, individual OT and individual and group speech-language therapy services (Tr. p. 811; Dist. Ex. 64 at p. 1).

In December 2004, two of the district's reading teachers conducted a reading evaluation of the student (Tr. p. 560; Dist. Ex. 25). Two assessments, the Stanford Diagnostic Reading Test and the Spache Diagnostic Reading Form S were attempted, but not completed with the student due to concerns about the test length, his level of frustration, and his inability to answer any comprehension questions (Dist. Ex. 25 at p. 1). The Woodcock Reading Master Test (WRMT) was administered to the student over two days (*id.*). The teachers reported that the student required many prompts to understand subtest directions and portions of the test were discontinued due to the student's frustration level (*id.*). Results of the WRMT, reported only in grade equivalent terms, indicated that the student's word identification, word comprehension and passage comprehension skills were within a second grade level, and his word attack skills were within a first grade level (*id.*). The teachers concluded that the student qualified for remedial reading services and that he demonstrated needs in both a "phonetic/linguistic approach" and with comprehension (*id.* at p. 2). The teachers also reported that the student had difficulty tracking, recognizing that he missed sections or words, that he did not grasp the complex skills of inferring or predicting, and that he exhibited weak vocabulary skills (*id.*). The teachers provided reasons why the Wilson Language System (Wilson) may not be beneficial for the student and after considering the reading programs available at the middle school, opined that the student "would benefit most from a program administered in his special class program" (Tr. p. 824; Dist. Ex. 25 at p. 2).

In June 2005, an occupational therapist conducted an assistive technology evaluation of the student (Dist. Ex. 4). The resultant evaluation report recommended specific word processing and word prediction tools that were currently available in the student's classroom (Dist. Exs. 1 at p. 5; 4 at p. 4). According to the report, the evaluating occupational therapist and the student's classroom teacher discussed the use of a compensatory reading tool with the student; however, the

¹ The hearing record provides examples of "life skills" including telling time, reading a calendar, counting money, being responsible, participating in community activities, being honest and having relationships with peers (Tr. p. 806).

classroom teacher felt the use of such a tool conflicted with the remedial approach she was using with the student (Dist. Ex. 4 at p. 5).

At the commencement of the 2005-06 school year, the student attended eighth grade at the district's middle school and continued in the 8:1+1 special class for students with multiple disabilities with speech-language therapy, OT and counseling (Dist. Ex. 1 at p. 5).² On October 28, 2005, the district received parental consent to evaluate the student, on the condition that the district inform the student's mother in writing of the names and credentials of the evaluators, the names of the "tests and measures," and the days the student would be tested, and also that she would have the opportunity to speak to the evaluators prior to testing the student (Dist. Ex. 5). The student's mother reserved the right to "decide if a particular test will be given" because she was pursuing an independent evaluation and did not want tests to be duplicated (id.).

By letter dated December 26, 2005, the district provided the parents with a report of the student's progress toward his individualized education program (IEP) goals (Dist. Ex. 16). Out of 60 short-term objectives, the student achieved designations of "NS" (Not Started) on 2, "S" (Some Progress) on 31, "P" (Progressing Satisfactorily) on 11 and "PS" (Progressing Satisfactorily-anticipated that the objective/benchmark will be achieved by the end of the school year or next CSE review) on 16 (id.).

In December 2005, the parents obtained a private psychoeducational evaluation of the student that occurred over three days (Tr. p. 568; Dist. Ex. 2). In a report dated January 19, 2006, the private psychologist and learning specialist (evaluators) indicated that the parents questioned whether their son was learning to read at a rate consistent with his potential and were seeking strategies to improve his success (Dist. Ex. 2 at p. 4). Administration of the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV), yielded a verbal comprehension index score of 81 (low average), a perceptual reasoning index score of 71 (borderline), a working memory index score of 68 (extremely low), a processing speed index score of 59 (extremely low) and a full scale IQ score of 64 (extremely low) (id. at p. 13).³ According to the evaluators, the student "seem[ed] especially hampered by difficulty with short-term and long term memory and processing speed. However, he succeeds better with concepts" (id. at p. 7). To further assess his cognitive skills, the evaluators administered the Test of Nonverbal Intelligence, Third Edition (TONI-3) to the student, which required him to use conceptual thinking skills and yielded a score in the 26th percentile for his age (id. at p. 8). The evaluators opined that "summarized" test scores yielded low estimates of

² On September 27, 2005, the CSE convened to review the student's assistive technology evaluation report (Dist. Ex. 29 at p. 2). Subsequently, the parents filed a State administrative complaint with the Office of Vocational and Educational Services for Individuals with Disabilities (VESID) (*see* 8 NYCRR 200.5[1]), alleging that at the September 2005 meeting they were prevented from "addressing their son's needs as it concerns a reading program," that the meeting was not complete, and that it did not generate an IEP (Dist. Ex. 30 at pp. 1, 5; *see* Parent Ex. A). In a response dated May 1, 2006, VESID informed the district that these allegations were not sustained (Dist. Ex. 30).

³ The evaluators reported that the student's December 2005 WISC-IV results were consistent with the results of a 2002 administration of the Wechsler Intelligence Scale for Children, Third Edition (WISC-III) (Dist. Ex. 2 at p. 8).

the student's potential and that his success was greatly affected by his ability to maintain attention at a given time (id.).

Tests of the student's vocabulary, language and reading indicated that his reading skills were "well below grade expectations," but were also a "relative strength" (Dist. Ex. 2 at p. 9). He exhibited good decoding skills for words in isolation, self-corrected misread words and understood simple stories (id.). The student used phonics skills to spell words, and while his spelling was reportedly "not good," it could be understood (id.). The student exhibited basic addition and subtraction skills and understood the concept of multiplication (id.). Results of a design-copying test were below normal limits for his age, but his printing was "fluent with large formed letters" (id.). The student's difficulties with word recognition, spelling and processing skills suggested to the evaluators that the student had weak long-term and short-term visual memory skills (id.). The parents' responses to behavioral rating scale questions indicated that the student had many anxieties and fears and had difficulty maintaining attention or organizing himself (id. at pp. 9-10). Projective assessment instruments administered by the evaluators indicated that in general, the student had a good self-image, and exhibited feelings of being nurtured and loved by his family, but that he also felt "unpopular" and wanted more friends (id. at p. 10). The evaluators reported that the student's history and behavior were consistent with the diagnoses of PDD-NOS, ADD-predominantly inattentive type, and a reading disorder, and that there were no indications of an emotional disorder (id.). The psychoeducational evaluation report stated that the student exhibited a greater reading disability than would be expected based on his WISC-IV results (id.). The evaluators opined that the student "seem[ed] to respond well to rules and strategies; thus a more formal approach to reading than has been provided in his current school would be to his advantage. [The student] has relative strengths in the areas of receptive language and phonemic awareness, as well as mastery of some phonics skills" (id.). The private evaluators recommended that the student receive one hour of daily in-school, individual reading instruction from a trained reading specialist using an Orton-Gillingham approach such as Preventing Academic Failure or Wilson (id. at p. 11), and that such multisensory reading instruction should be provided in addition to the student's school-based speech-language, OT and special education instruction (id.). The evaluators also provided recommendations for classroom strategies to promote the student's reading and math skills as well as socialization opportunities (id.).

By facsimile to the district's director of special services (director) dated January 19, 2006, counsel for the parents sent the student's January 19, 2006 private psychoeducational evaluation report and stated counsel's expectation that it would be discussed at a scheduled CSE meeting (Dist. Ex. 2 at pp. 1-3; see Dist. Ex. 5 at p. 3). By letter to the director dated January 20, 2006, counsel for the parents informed the district that the parents waived their right to an additional parent member and that counsel and the private psychologist who prepared the January 2006 psychoeducational evaluation report of the student would attend the upcoming CSE meeting (Dist. Ex. 8). The parents requested that the CSE meeting agenda include a discussion of the January 2006 psychoeducational evaluation report and any subsequent changes to the student's program, alternative out-of-district placements and district referrals, and an Orton-Gillingham based reading program for the student (id.).

On February 2, 2006, the district social worker conducted a social history interview with the student's mother as part of the student's annual review (Dist. Ex. 3; see Dist. Ex. 1 at p. 5). The student's mother reported that the student had grown socially and emotionally over the previous

two years, but that he had made "little academic progress in reading, largely due to a lack of consistent, structured research-based program. He ha[d] made some progress in his math skills" (Dist. Ex. 3 at pp. 2-3). The parent stated that she did not believe that the student's program was meeting his needs, that he needed "intensive reading support and a more intensive language program," and that she would like his program to be more individualized and targeted in reading, speech-language needs and athletics (id. at p. 3).

On February 14, 2006, the district's occupational therapist conducted an OT reevaluation of the student (Dist. Ex. 7). Administration of the Beery-Buktenica Developmental Test of Visual-Motor Integration (VMI), the Supplemental VMI Developmental Tests of Visual Perception and Motor Coordination and the Bruininks-Oseretsky Test of Motor Proficiency (BOT-2) and the occupational therapist's nonstandardized observations revealed that the student demonstrated below average visual-motor integration skills, visual perceptual skills and fine-motor skills, and borderline average motor coordination skills (id.). The occupational therapist recommended that the student use specific writing utensils and indicated that the CSE would determine the "extent and degree" of services (id. at p. 4). On March 8, 2006, the occupational therapist completed a report of the student's eligibility for extended school year (ESY) services and recommended that the student receive OT two times per week for 40-minutes per session (Dist. Ex. 12 at p. 2).

On February 27, 2006, the district's CSE convened for a review of the student's progress (Dist. Ex. 1). The CSE reviewed the student's January 2006 private psychoeducational evaluation report and subsequently recommended that the student receive five 25-minute sessions of individual multisensory reading instruction per week for the remainder of the 2005-06 school year and that he undergo a speech-language evaluation (id. at pp. 1, 5). The reading instruction was provided to the student at the district's high school (Parent Ex. B).⁴

On March 21, 2006, the student's special education teacher prepared the student's report card and provided specific information regarding the student's reading, phonics, spelling, writing, math, social studies, science, technology and life skills (Dist. Ex. 9). The special education teacher reported that in reading, the student read one chapter per day with a teacher, answered comprehension questions, completed fill in the blank exercises and that his comprehension and fluency were improving (id. at p. 1). According to the report card, the student needed reminders to use complete sentences, in addition to prompts and cues to go back to passages to complete his reading work, and that he sometimes substituted and left out words (id.). The special education teacher reported that the student received grades of 100 percent on most spelling tests and wrote paragraphs in response to given topics, when provided with clear step-by-step instructions (id.). She commented that the student was becoming "more and more independent," showed responsibility for his daily homework, and was a role model for other students (id. at p. 2). The student reportedly often helped his peers and enjoyed playing with them at recess (id.).

On March 31, 2006, the district's speech-language pathologist conducted a speech-language reevaluation of the student (Dist. Ex. 6). Administration of several subtests of the Clinical Evaluation of Language Fundamentals-Fourth Edition (CELF-4) to the student, which

⁴ In a letter to the district's counsel dated April 26, 2006, the parents' counsel indicated that the reading program contained in the February 2007 IEP was accepted by the parents "under protest" due to concerns regarding the student's ability to make the trip from the middle school to the high school (Parent Ex. B).

assessed his receptive and expressive language skills, yielded a core language standard score of 56 (0.2 percentile) (*id.* at p. 1). On the Peabody Picture Vocabulary Test-Third Edition (PPVT-III), a measure of the student's receptive vocabulary skills, he achieved a standard score of 72 (3rd percentile) and on the Expressive Vocabulary Test (EVT) a measure of his expressive vocabulary, he achieved a standard score of 78 (7th percentile) (*id.*). The speech-language pathologist noted that the student exhibited a lisp during conversational speech (*id.* at p. 2). She recommended that the student receive speech-language therapy services for the 2006-07 school year (*id.*).⁵

By letter to the district's counsel dated April 5, 2006, the parents' counsel identified the parents' concerns related to an April 4, 2006 CSE meeting,⁶ which included requests for the results of a reading test that were used as a precursor to the provision of the student's reading instruction, a written account of the special education teacher's basis for establishing the student's goals/benchmarks, and IEPs from the February 27 and April 4, 2006 CSE meetings (Dist. Ex. 13). On April 7, 2006, the student's special education teacher administered the Weschler Individual Achievement Test-Second Edition (WIAT-II) to the student (Parent Ex. C).⁷ The student achieved the following subtest standard scores: word reading 62 (1st percentile), reading comprehension 62 (1st percentile), numerical operations 65 (1st percentile), math reasoning 51 (<0.1 percentile), spelling 65 (1st percentile) (Parent Ex. C; *see* Dist. Ex. 17 at p. 4).

On April 17, 2006, the student's special education teacher prepared a teacher report of his strengths and weaknesses (Dist. Ex. 10). Although the student continued to exhibit reading, math and writing skills that were below grade level, the special education teacher reported that his decoding, reading comprehension and writing skills were improving (*id.*). The student also demonstrated improvement in his ability to solve math problems involving addition and subtraction with regrouping, multiplication, word problems and his ability to count money (*id.*). The special education teacher reported that the student "demonstrate[d] appropriate basic academic skills in a highly structured and supportive learning environment" (*id.*). The student read chapter books that were on a mid-second grade to beginning third grade level and was working to improve word attack skills (*id.*). His written paragraphs included a topic sentence and contained relevant information (*id.*). He was "moving ahead with the multiplication table" and solved division problems with a calculator (*id.*). The special education teacher reported that the student had improved his ability to work independently, and that he independently followed a daily routine and classroom schedule, was prepared for weekly spelling tests, wrote his daily homework, and packed/unpacked his belongings (*id.*). The student reportedly enjoyed interacting with classmates during the day and at recess and enjoyed talking to adults about his interests (*id.*). The special education teacher also completed a report of the student's eligibility for ESY services (Dist. Ex. 12 at p. 1).

⁵ The speech-language pathologist did not identify the frequency or duration of the speech-language services.

⁶ The hearing record does not include a copy of the April 2006 IEP and does not describe the purpose of the April 2006 CSE meeting.

⁷ Portions of the April 2006 WIAT-II Individual Performance Summary Report contained in the hearing record are illegible; however, the April 2006 WIAT-II subtest standard scores are reported in the student's June 2006 IEP (Dist. Ex. 17 at p. 4; Parent Ex. C).

On April 30, 2006, a private speech-language pathologist conducted a speech-language evaluation of the student (Dist. Ex. 11). Administration of the CELF-4 yielded the following standard scores: receptive language 60 (0.4 percentile), expressive language 57 (0.2 percentile), core language score 56 (0.2 percentile) and language memory index 52 (0.1 percentile) (*id.* at p. 2). Administration of the PPVT-III and the EVT yielded standard scores of 79 (8th percentile) and 81 (10th percentile), respectively (*id.*). The student attained an overall standard score of 74 (4th percentile) on the Test of Auditory Processing Skills-Revised (TAPS-3), a measure of his auditory skills (*id.* at pp. 2, 4-5). The private speech-language pathologist concluded that the student demonstrated below average receptive and expressive vocabulary skills and processing abilities (*id.* at p. 5). Although the student demonstrated a variety of strengths and weaknesses throughout the administration of the CELF-4, the speech-language pathologist concluded that his receptive and expressive language skills were below the average range (*id.*). She noted that attentional factors may have had a negative affect on his CELF-4 and TAPS-3 test scores (*id.*). The speech-language pathologist also noted the presence of a lisp, and recommended that the student receive three sessions of speech-language therapy per week, to address articulation concerns and language delays (*id.* at pp. 6-7).

Prior to June 5, 2006, the student and his mother visited Maplebrook, a private, boarding/day school that accepts students between 11 and 18 years of age who exhibit "learning differences" and ADD (Dist. Ex. 65; Parent Ex. V at pp. 2-3). By letter dated June 5, 2006, the dean of admissions at Maplebrook informed the student's mother that in order to determine whether the academic program was the "most appropriate" placement for her son, the admissions committee recommended that he attend a one-week evaluation period on campus during the summer (Dist. Ex. 65).

On June 7, 2006, the CSE convened for the student's annual review for the 2006-07 school year (Dist. Ex. 17).⁸ Attendees included the CSE chairperson, a district psychologist, three special education teachers, a regular education teacher, a speech-language pathologist, a social worker, two guidance counselors, counsel for the district, the parents, and counsel for the parents (*id.* at p. 6). The IEP indicated that the parents waived the participation of an additional parent member (*id.*). The parents' private psychologist who conducted the student's January 2006 psychoeducational evaluation participated in the meeting by telephone (*id.*). According to comments describing the CSE meeting that were contained in the resultant IEP, the student's special education teacher reported that the student exhibited greater independence in his work, demonstrated steady academic growth, and participated in activities during life skills instruction (Tr. pp. 800-01, 865-66; Dist. Ex. 17 at p. 6). The special education teacher, social worker, and speech-language pathologist discussed the student's progress and reviewed proposed annual goals (Dist. Ex. 17 at p. 6). The special education teacher who provided the student's Wilson reading instruction described the student as "engaged in the work" and reported that he was making progress (Tr. pp. 2424-27; Dist. Ex. 17 at p. 7). Special education teachers from the district's high school described the 8:1+2 and 15:1+1 special class programs offered at the high school and the CSE reviewed and discussed with the parents, the class profiles of both classes at the meeting (Tr.

⁸ On May 10, 2006, the CSE convened to review the student's progress and begin development of the 2006-07 IEP (Tr. p. 229; Dist. Exs. 32; 33). The CSE meeting was adjourned to allow for the participation of additional special education teachers and to review of the student's assistive technology evaluation report (Tr. pp. 229-30).

pp. 154-55; Dist. Ex. 18). The private psychologist opined that the 15:1+1 special class that paralleled the high school curriculum would be "too academically advanced" for the student, but that he would benefit from practical math and small group or individual multisensory reading instruction (Dist. Ex. 17 at pp. 6-7). The private psychologist also opined that a program that provided "challenging" academic instruction with a vocational component was appropriate for the student (*id.*). The parents stated that the student could learn life skills at home and that time spent on vocational education would be better spent on academic instruction (*id.* at p. 7).

For the 2006-07 school year, the June 2006 CSE recommended that the student be placed in an 8:1+2 special class at the district high school and receive five 40-minute sessions of individual reading instruction, one 30-minute session of individual counseling, two 40-minute sessions of group OT, and one individual and two group 40-minute sessions of speech-language therapy per week (Dist. Ex. 17 at p. 1). The June 2006 CSE further recommended that the student participate in the district's regular physical education program and that he receive ESY services consisting of a special education program and related services for summer 2006 (*id.* at pp. 1-3).

By letter dated June 19, 2006, the district provided the parents with a report of their son's progress toward his annual goals and short-term objectives on his 2005-06 IEP (Dist. Ex. 31). Out of 60 short-term objectives, the student achieved designations of "PS" (Progressing Satisfactorily-anticipated that the objective/benchmark will be achieved by the end of the school year or next CSE review) on 40 and "A" (Achieved) on 18 (Dist. Ex. 16).⁹ During summer 2006, the district offered the student special education and related services pursuant to the June 2006 IEP for the summer 2006 ESY program; however, the parents declined some of the ESY services (Tr. pp. 1030-35; Dist. Ex. 34). During summer 2006, the student attended a week-long academic program at Maplebrook and a "sleep-away" camp for non-disabled children (Tr. pp. 1032-33).

By letter to the district's counsel dated August 4, 2006, the parents, through their counsel, informed the district that they rejected the 2006-07 IEP, having deemed it "not appropriate," and further advised that the student would be attending Maplebrook for the 2006-07 school year (Dist. Ex. 35). The parents indicated that they would be "compelled" to request an impartial hearing unless a resolution was reached (*id.*). The parents informed the district that they were "amendable [sic] to looking at appropriate [Board of Cooperative Educational Services (BOCES)] referrals and other State approved referrals" for the upcoming school year (*id.*). On August 7, 2006, the parents signed a contract for admission for their son to attend Maplebrook for the 2006-07 school year (Dist. Ex. 72).

The student attended Maplebrook as a day student during the 2006-07 school year (Tr. p. 1061; Dist. Ex. 44 at p. 6). On October 12, 2006, Maplebrook staff developed the student's "individual education plan" that included annual goals and short-term objectives in the areas of math "transactions" (budgeting, maintaining a checkbook, purchasing, etc.), English, reading, and American history (Parent Ex. X). He received English, math, and American history instruction in an 8:1 setting, reading instruction in a 6:1 setting, and a daily 40-minute individual reading tutorial (Dist. Ex. 44 at p. 6; Parent Ex. Y at p. 7). The student's program of reading instruction was

⁹ The student did not receive final designations for two of his short-term objectives that related to self-concept and social skills (Dist. Ex. 31 at p. 7). Comments regarding those short-term objectives included that the student had a "very successful trimester," and that he appeared to be comfortable interacting with peers and adults (*id.*).

designed by his teacher and focused on the student's reading comprehension skills (Dist. Ex. 44 at p. 6). The student also participated in a social skills program entitled Responsibility Increases Self-Esteem (RISE) on an "advanced" level because he was prepared, made a good effort and was achieving independence (see Tr. p. 1829; Dist. Ex. 44 at p. 6). The student did not attend Regents Competency Test (RCT) "prep" classes, although Maplebrook offered such classes (Tr. pp. 276, 1754; Dist. Ex. 44 at p. 6). The student also received speech-language therapy to improve his articulation, pragmatic language and auditory processing skills (Parent Ex. Y at pp. 12-13).

By letters to counsel for the district dated March 12, 2007 and April 2, 2007, the parents' counsel requested a CSE meeting (Dist. Exs. 40; 41). The CSE convened on May 11, 2007 to discuss the student's progress (Dist. Exs. 43; 44 at p. 6). Attendees included the CSE chairperson, a district psychologist, a special education teacher, a regular education teacher, a guidance counselor, counsel for the district, the parents and their counsel (Dist. Ex. 44 at p. 6). The dean of Maplebrook participated at the May 2007 CSE meeting by telephone (id.). No IEP was developed as a result of this meeting; however, meeting notes indicated that the dean reported to the May 2007 CSE that the student had a "pretty good year" (id.). The dean described the student's instructional program at Maplebrook and discussed the student's progress and areas of weakness (id.). Educational testing completed by Maplebrook was not available at the time of the May 2007 CSE, and the CSE decided to reconvene upon receipt of that information (id.).

Upon referral by the student's mother, two neuropsychologists conducted a private psychological evaluation of the student on May 23, 2007 (Dist. Ex. 45). Administration of the WISC-IV to the student yielded the following index standard scores: verbal comprehension 81 (10th percentile, low average), perceptual reasoning 75 (borderline),¹⁰ working memory 68 (2nd percentile, borderline) and processing speed 59 (0.3 percentile, impaired) (id. at p. 4). The student's full scale IQ score was 64 (1st percentile, impaired) (id.). The neuropsychologists reported that the student's overall linguistic ability was in the below average range and his visuo-perceptual reasoning skills were in the borderline range, with overall intellectual skills in the impaired range of cognitive functioning (id. at p. 6). Administration of selected subtests of the Woodcock-Johnson Tests of Achievement-Third Edition (WJ-III ACH) to the student yielded scores that were "overall below expectations compared to other children in the 9th grade" (id. at p. 6). Specifically, the student achieved the following subtest standard scores: word attack 83 (13th percentile, below average), letter-word identification 81 (10th percentile, below average), reading fluency 71 (3rd percentile, moderately impaired), passage comprehension 67 (1st percentile, significantly below expectations), spelling 72 (3rd percentile, moderately impaired), calculation 57 (1st percentile, significantly below expectations), math fluency 62 (1st percentile, significantly below expectations), and applied problems 72 (3rd percentile, moderately impaired) (id. at pp. 5-6). By parent report, the student's adaptive behavior skills, measured by the Vineland Adaptive Behavior Scales, Second Edition (VABS), indicated that the student exhibited significantly below expectation communication, socialization, and daily living skills (id. at p. 6). The neuropsychologists concluded that the student's performance was overall far below age expectations in the domains of working memory, processing speed, perceptual reasoning, and abstraction skills; and although his linguistic skills were better developed in comparison to other

¹⁰ The corresponding percentile rank for the perceptual reasoning index standard score is not legible in this exhibit (Dist. Ex. 45 at p. 4).

areas of intellectual functioning, they still remained in the below average range (id. at p. 7). Although it was reported that the student had made progress in reading and some progress in mathematical reasoning skills, the student's academic skills particularly in the domains of reading skills, mathematics, and writing were far below average (id.).

The neuropsychologists reported that these deficits, in addition to the student's deficits in adaptive and coping skills qualified the student for a diagnosis of mild mental retardation (Dist. Ex. 45 at p. 7). In addition, due to the student's previous psychiatric difficulties, the neuropsychologists opined that the "longstanding diagnosis" of a PDD appeared appropriate (id.). The neuropsychologists opined that the student would benefit from a highly structured pre-vocational program and further recommended that he receive basic academic instruction (id.). The neuropsychologists provided instructional/management strategies to use with the student, which included providing him with information in a simplified form, and providing structure, repetition and extended time to enable him to consolidate and learn information (id.). Learning to slow down during social interactions and while approaching tasks, and the provision of redirection and behavioral strategies to help with self-monitoring were strategies recommended to assist the student with his executive functioning difficulties (id.). The neuropsychologists recommended that the student's pre-vocational program incorporate the strategies contained in their report, and provided descriptions of how a job coach should interact with the student (id. at pp. 7-8). Additionally, the neuropsychologists recommended that the student's academic instruction be tied closely to the job demands (id. at p. 8).

On or about June 24, 2007, the district received a copy of the private psychological evaluation report (Tr. pp. 268-69). On June 29, 2007, the parents signed a contract for admission and paid the student's first tuition payment to Maplebrook for the 2007-08 school year (Dist. Ex. 68). By letter dated July 9, 2007, the district invited the parents to a CSE meeting scheduled for July 23, 2007; however, the meeting did not take place as scheduled, because the parents were unable to attend (Tr. pp. 269-70; Dist. Ex. 46).

On August 9, 2007, the CSE convened for the student's annual review for the 2007-08 school year (Dist. Ex. 44). Attendees included the CSE chairperson, a district psychologist, a special education teacher, a regular education teacher, counsel for the district, the student's father, and the parents' counsel (id. at p. 6). According to CSE comments contained in the resultant IEP, the CSE reviewed the student's end-of-year progress reports from Maplebrook and the May 2007 private psychological evaluation report obtained by the parents (Dist. Ex. 44 at p. 6; see Dist. Exs. 45; 48). The August 2007 CSE considered a class profile of students that would be placed with the student in the recommended 8:1+2 special class (Tr. pp. 282-83; Dist. Ex. 49). The student's father expressed concern about the student's opportunities for social skill development, interaction with peers, and participation in sports at the district's high school (Dist. Ex. 44 at p. 6). Comments in the August 2007 IEP described discussion of possible opportunities such as joining clubs, athletic teams and after-school activities, as well as in-school opportunities for general education instruction in physical education, art, music and vocational training (id.).

The August 2007 CSE recommended that the student be placed in an 8:1+2 special class program at the district's high school and receive one 30-minute session of individual counseling, two 40-minute sessions of group OT, and one individual and two group 40-minute sessions of

speech-language therapy per week (Dist. Ex. 44 at p. 1). The August 2007 CSE recommended that the student participate in the district's regular physical education program (id. at p. 3).

During the August 2007 CSE meeting, the CSE sought the parents' consent to conduct updated WIAT testing (Dist. Exs. 44 at p. 6; 50). On August 22, 2007, an educational evaluator from the district administered the WIAT-II to the student (Dist. Ex. 51). The student demonstrated extremely low achievement in word reading (1st percentile) and reading comprehension (0.3 percentile) (id. at p. 3). He exhibited low average achievement on the pseudoword decoding subtest (16th percentile), which revealed a relative strength (id.). The student's performance on the spelling subtest was extremely low (1st percentile) and his written expression skills were significantly below average compared to his age peers (id.). In mathematics, the student demonstrated extremely low achievement in both numerical operations (0.1 percentile) and math reasoning (0.2 percentile) (id.). The student's score on the listening comprehension subtest was in the 5th percentile (id. at p. 1). The educational evaluator's report also provided the CSE with a number of instructional strategies to use with the student (id. at p. 4).

The student attended Maplebrook during the 2007-08 school year (Parent Exs. Z; AA; BB). By letter dated September 13, 2007, the parents informed the district's interim superintendent that they rejected the August 2007 IEP and provided specific reasons for their rejection (Dist. Ex. 53). The parents further advised the district that they were sending the student to Maplebrook for the 2007-08 school year, and requested that the district reimburse them for the costs of his tuition (id. at p. 2). By facsimile to the district dated September 24, 2007, the parents requested an observation of the district's proposed classroom on either September 25 or 26, 2007 (Dist. Ex. 55).

By letter dated September 25, 2007, the district's interim superintendent responded to the parents' September 13, 2007 letter and indicated that he was unable to alter the CSE's recommendation, but recommended that the CSE reconvene to discuss the parents' concerns, as he had been advised by the district's director of special education¹¹ that those concerns were not raised at the August 2007 CSE meeting or at any time thereafter (Dist. Ex. 54 at p. 1). By letter dated September 27, 2007, the director of special services responded to the parents' request to observe the proposed class by seeking clarification of who they wished to conduct the observation and the purpose of their request (Dist. Ex. 56). The director of special services also expressed her concern that the student was currently attending Maplebrook and questioned the appropriateness of permitting such an observation, unless the parents intended to move their son from Maplebrook to a district classroom (id.).

On September 27, 2007, Maplebrook staff convened for an education team meeting and developed the student's "individual education plan," which included annual goals and short-term objectives in the areas of math, English, global studies, biology, reading, health, physical education and speech-language therapy (Parent Ex. Z). The student's reading instruction included components of the Wilson Reading System (id. at pp. 19-20).

The district scheduled a CSE progress review meeting for October 10, 2007 to review the results of the WIAT evaluation report, which was adjourned by letter dated October 4, 2007 by the parents for personal reasons (Tr. p. 317; Dist. Exs. 57; 58). In the letter, the parents' counsel

¹¹ Also referred to in the hearing record as the director of special services (Dist. Exs. 54 at p. 1; 56).

informed counsel for the district that he would advise the district when the parents would be able to attend a CSE meeting (Dist. Ex. 58).

By due process complaint notice dated December 7, 2007, the parents alleged that the district had failed to offer the student a free appropriate public education (FAPE) for the previous "three or more years" and they requested, among other things, tuition reimbursement for Maplebrook for the 2006-07 and 2007-08 school years (IHO Ex. 1 at pp. 4, 8).¹² Specifically, the parents maintained that the district insisted that the self-contained program recommended by the district was the only program that would be offered to the student and that the parents were denied an opportunity to explore other programs, such as a BOCES program, that might better suit their son's educational needs (*id.* at p. 6). The parents further contended that in developing their son's IEPs, the district should have considered the student's strengths, as well as the parents' concerns for enhancing their son's education (*id.* at p. 7). Moreover, the parents argued that while developing the challenged IEPs, the district should have taken into consideration evaluation results, in addition to the student's academic, developmental and functional needs (*id.*). They also asserted that the goals enumerated in the student's IEPs failed to provide academic and functional goals designed to meet the student's needs that resulted from his disability (*id.*). With respect to the program proposed by the district for the 2006-07 and 2007-08 school years, the parents maintained that it was a life skills program which would have placed their son with students who were "more severely autistic or otherwise impaired and/or who ha[d] physical disabilities and/or behavioral problems" that would be highly distracting and inappropriate for the student (*id.*). The parents also indicated that the district's CSE was unwilling to change its view, practices or program, and that its recommendation was "based narrowly and solely on IQ, rather than the whole student," despite the parents' requests for program changes (*id.*). The parents added that as a result of the defects contained in the challenged IEPs, there was no suitable program in the district for the student to attend during the past two years and they were "driven" to send the student to Maplebrook (*id.*).

An impartial hearing convened on February 4, 2008 and concluded on October 21, 2008 after 16 days of testimony from 12 witnesses (Tr. pp. 1-2641). The impartial hearing officer also received 138 exhibits into evidence (Dist. Exs 1-64; Parent Exs. A-HH; IHO Exs. 1-24).¹³ In a 44-page decision dated November 21, 2008, the impartial hearing officer found that the district offered the student an educational program in the least restrictive environment (LRE) "that was reasonably calculated to provide progress" (IHO Decision at pp. 40-41). The impartial hearing officer determined that the parents had a full opportunity to participate in the decisions of the CSE and that the evidence did not support the conclusion that the student could not receive educational

¹² Although the parents reference the 2005-06 IEP in their due process complaint notice (IHO Ex. 1; *see* Dist. Ex 1), the IEPs in dispute in this appeal are the June 2006 and August 2007 IEPs (Pet. ¶¶ 3, 6, 8; *see* Dist. Exs. 17; 44).

¹³ The impartial hearing officer noted that the impartial hearing in this case was "overly protracted" (IHO Decision at p. 1), and therefore, I remind the parties that State regulations contain provisions regarding the timelines for initiating, conducting and completing impartial hearings (8 NYCRR 200.5[j][3][iii][a]-[b], [xiii], [5]). I also note that several provisions have been promulgated to assist impartial hearing officers in complying with State regulations, such as limiting the examination of witnesses and limiting the number of additional witnesses to avoid testimony that is irrelevant, immaterial or unduly repetitious (8 NYCRR 200.5[j][3][xii][d]-[e]), which, in this case, are tools that may have been useful during the 16-day development of testimonial evidence.

benefits from the life skills program offered by the district (*id.* at p. 41). The impartial hearing officer concluded that the evaluations proffered by the parents' experts did not support their claim that the program recommended by the CSE was insufficient (*id.*). He further noted that the district offered the student a multisensory reading program beginning in February 2006 (*id.*).¹⁴ Although the impartial hearing officer acknowledged the parents' educational credentials, their desire to obtain the best possible education for the student and their belief that Maplebrook was better suited for the student's needs, he determined that the district was not required to maximize the potential of the student and that the program offered by the district was legally sufficient because the hearing record did not support the conclusion that the student did not or could not make progress in the educational placement recommended on his IEP (*id.* at pp. 42-43).¹⁵ According to the impartial hearing officer, the evidence showed that the student was making progress in the district's program during the 2005-06 school year, and there was no reason to conclude that the student's progress would suddenly stop if he continued his studies in the life skills program recommended by the district (*id.* at p. 43). Consequently, the impartial hearing officer denied the parents' tuition reimbursement claims for Maplebrook for the 2006-07 and 2007-08 school years (*id.*).

The parents appeal and request as relief, among other things, reversal of the impartial hearing officer's decision, in addition to an award of tuition reimbursement for Maplebrook for the 2006-07 and 2007-08 school years. On a procedural level, with respect to the June 2006 IEP, the parents contend that it was impermissibly predetermined, thereby resulting in a denial of a FAPE. The parents also raise a number of procedural defects surrounding the creation of the August 2007 IEP. In particular, the parents argue that the August 2007 CSE was improperly constituted due to the absence of a special or regular education teacher who had either previously taught the student or would have implemented the proposed IEP. They further assert that the August 2007 CSE failed to discuss the class profile during the meeting. Lastly, the parents argue in their memorandum of law that the goals listed in the August 2007 IEP were predetermined which ultimately deprived them of a meaningful opportunity to participate in their development, and deprived the student of any meaningful benefit.

Substantively, the parents argue that the June 2006 and August 2007 IEPs were inappropriate, inasmuch as neither IEP was designed to confer any educational benefit on the student to allow him to progress. In particular, the parents assert with respect to both IEPs that: (1) the student's reading program recommended in the 2006-07 IEP was not appropriately implemented during the remainder of the 2005-06 school year; (2) they were not provided with a proposed curriculum for the recommended programs prior to the CSE meetings; (3) the parents were not provided with a proposed curriculum at the CSE meetings; (4) the challenged IEPs failed to contain a curriculum or methodology as to how the program would be administered; (5) the class profiles for the recommended placements indicated that the student would have been placed with students whose needs were vastly different than his needs; (6) the proposed programs and goals lacked a significant academic component; (7) the proposed goals were too basic and generic

¹⁴ The impartial hearing officer noted that Maplebrook did not provide the student with a multisensory reading program for the 2006-07 school year (IHO Decision at p. 41).

¹⁵ The impartial hearing officer did not specify whether he was discussing the June 2006 IEP, the August 2007 IEP or both; however, the 8:1+2 life skills class was recommended on both IEPs (IHO Decision at p. 43; *see* Dist. Exs. 17; 44).

and would not allow the student to make any meaningful progress; (8) the CSEs ignored information from the parents and outside experts in developing its program recommendations; (9) the CSE denied the parents' request to consider alternative programs; and (10) the student was erroneously compared to normal peers with normal IQ scores, which resulted in a miscategorization of the student and a program recommendation that did not reflect the student's needs. In addition, the parents contend that there was no reading program contained in the August 2007 IEP.

Next, the parents challenge the manner in which the impartial hearing was conducted to the extent that they allege that the impartial hearing officer demonstrated bias toward them. Regarding their claim that the impartial hearing officer was biased toward the school district, the parents contend, among other things, that the impartial hearing was protracted and delayed as a result of the impartial hearing officer's vacation schedule. They assert that the impartial hearing officer unfairly denied them an opportunity to present witness testimony. Additionally, the parents cite a number of examples from the hearing record, which they assert establish that the impartial hearing officer was biased toward the district.

The district submitted an answer and requested that the impartial hearing officer's decision be affirmed in its entirety. Contrary to the parents' allegation that the impartial hearing officer failed to address a number of issues surrounding the development of the challenged IEPs, the district asserts that he properly confined his decision to issues raised in the due process complaint notice. Next, the district argues that both of the IEPs in dispute on appeal were reasonably calculated to address the student's special education needs and to confer an educational benefit. The district maintains that both IEPs were developed based on current and accurate evaluative data and that the goals and objectives enumerated in both IEPs were also appropriate. Additionally, the district asserts that the placement recommendation of a life skills program for the 2006-07 and 2007-08 school years was appropriate, particularly in light of the student's academic and cognitive profile. The district notes that the program recommendation was aligned with State standards, consistent with the recommendations of the parents' private evaluator, and was the LRE for the student. Furthermore, notwithstanding the parents' assertion that the CSE refused to give them an opportunity to explore other programs as options for the student, the district alleges that the hearing record fails to substantiate their claims. With respect to the parents' claims that the impartial hearing officer demonstrated bias against them, the district contends that such claims lack merit.

The parents filed a reply to the answer, contending that the district should not have been granted an extension of time to submit its answer and raising new allegations that the district's extension request was made under false allegations and without due diligence. Moreover, the parents refute the district's assertion that they failed to raise procedural violations of the IDEA with respect to the development of the 2006-07 and 2007-08 IEPs. Pursuant to State regulations, a reply is limited to any procedural defense interposed by a respondent or to any additional documentary evidence served with the answer (8 NYCRR 279.6). Additionally, a reply may not be used to generally respond to each of the allegations made in the answer, as the parents have attempted to do in this case (Application of a Child with a Disability, Appeal No. 05-100; Application of the Bd. of Educ., Appeal No. 05-023; Application of a Child with a Disability, Appeal No. 04-002). In this case, the parents' reply contains allegations that do not respond to procedural defenses interposed by the district or address additional documentary evidence served with the answer and, to this extent, it does not comply with State regulations (8 NYCRR 279.6). Therefore, I will not

consider the allegations in the reply that do not respond to procedural defenses raised in the answer (Application of a Student with a Disability, Appeal No. 08-102; Application of a Student Suspected of Having a Disability, Appeal No. 08-002; Application of a Child with a Disability, Appeal No. 06-046; Application of a Child with a Disability, Appeal No. 04-064; Application of a Child with a Disability, Appeal No. 02-009; Application of a Child with a Disability, Appeal No. 98-37).

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 (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 Perricelli, 2007 WL 465211, at *15). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]; see Rowley, 458 U.S. at 192).

An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs (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). 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 the 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 (Burlington, 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).

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; therefore, it applies to the instant case (see Application of the Bd. of Educ., Appeal No. 08-016).

At the outset, I will address the parents' claim that the impartial hearing officer demonstrated bias. As set forth in greater detail below, I find that their claim is unpersuasive. State regulations provide that an impartial hearing officer shall not have a personal or professional interest that would conflict with his or her objectivity in the impartial hearing (8 NYCRR 200.1[x][3]; Application of a Child with a Disability, Appeal No. 01-046). An impartial hearing officer should avoid giving the appearance of impropriety (Application of a Child with a Disability, Appeal No. 07-008; Application of the Bd. of Educ., Appeal No. 03-015; Application of a Child with a Disability, Appeal No. 02-027; Application of a Child with a Disability, Appeal No. 00-063; Application of a Child with a Disability, Appeal No. 99-061; Application of a Child with a Disability, Appeal No. 99-025; Application of a Child with a Disability, Appeal No. 98-73; Application of a Child with a Disability, Appeal No. 98-55; Application of a Child with a Disability, Appeal No. 94-32). An impartial hearing officer, like a judge, must be patient, dignified and courteous in dealings with participants in the impartial hearing process and must perform all duties without bias or prejudice in favor or against any person, and shall not, by words or conduct,

manifest bias or prejudice, according each party the right to be heard (Application of a Child with a Disability, Appeal No. 07-090; Application of a Child with a Disability, Appeal No. 04-046; Application of a Child Suspected of Having a Disability, Appeal No. 01-021; see 8 NYCRR 200.1[x][3], [4][v]). At all stages of the hearing, an impartial hearing officer may "assist an unrepresented party by providing information relating only to the hearing process" (8 NYCRR 200.5[j][3][vii]). An impartial hearing officer must render a decision that is based solely upon the hearing record (8 NYCRR 200.5[j][5][v]; see Application of a Child with a Disability, Appeal No. 00-063; Application of a Child Suspected of Having a Disability, Appeal No. 00-036; Application of a Child with a Disability, Appeal No. 98-55). State regulations do not impair or limit the authority of an impartial hearing officer to ask questions of counsel or witnesses for the purpose of clarification or completeness of the record (8 NYCRR 200.5[j][3][vii]).

After reviewing the entire hearing record, including the impartial hearing officer's interaction with the parties and the language of his decision, I find that the evidence does not support the parents' contention that the impartial hearing officer acted with bias or prejudice against them. At the commencement of the impartial hearing, the impartial hearing officer advised the parties of his experience representing school districts, and although counsel for the parents initially moved for his recusal, he later withdrew this motion (Tr. pp. 3, 7, 9-10). The hearing record also indicates that the impartial hearing officer asked questions of the witnesses presented by both parties and that he sustained and overruled objections raised by counsel for each party (see, e.g., Tr. pp. 148, 237, 240, 367-68, 2404). Although the parents contend that the impartial hearing was protracted and delayed due to the impartial hearing officer's conduct, their claims are belied by their own requests for extensions, which also contributed to the delay (Tr. pp. 354-56; IHO Ex. 24 at p. 8). Under the circumstances, while the parents disagree with the conclusions reached by the impartial hearing officer, their disagreement does not provide a basis for finding that the impartial hearing officer acted with bias (Application of a Child with a Disability, Appeal No. 07-078; Application of a Child with a Disability, Appeal No. 06-102; Application of a Child with a Disability, Appeal No. 06-013; Application of a Child with a Disability, Appeal No. 96-3; Application of a Child with a Disability, Appeal No. 95-75).

Next, I turn to the parties' arguments regarding the assertion of procedural violations related to the 2006-07 and 2007-08 IEPs. In their petition for review, the parents raise several procedural deficiencies surrounding the development of both IEPs in dispute. With respect to the June 2006 IEP, the parents claim that the district's program recommendation was predetermined. The parents also contend that a number of procedural infirmities surrounded the creation of the August 2007 IEP. In particular, they assert that: (1) the CSE was not properly constituted to the extent that it lacked a special education teacher who would have been responsible for implementing the IEP, and a regular education teacher who had either taught or would have taught the student; (2) the August 2007 CSE failed to discuss the class profile; and (3) the district predetermined the goals enumerated in the August 2007 IEP.

A party requesting an impartial hearing may not raise issues at the impartial hearing that were not raised in its original due process complaint notice unless the other party agrees (20 U.S.C. § 1415[f][3][B]; 34 C.F.R. §§ 300.507[d][3][i], 300.511[d]; 8 NYCRR 200.5[j][1][ii]) or the original due process complaint notice is amended prior to the impartial hearing per permission given by an impartial hearing officer at least five days prior to the impartial hearing (20 U.S.C. § 1415[c][2][E][i][II]; 34 C.F.R. § 300.507[d][3][ii]; see A.B. v. San Francisco Unified Sch. Dist.,

2008 WL 4773417, at *9 [N.D. Cal. Oct. 30, 2008]; Saki v. Hawaii, 2008 WL 1912442, at *6-*7 [D. Hawaii April 30, 2008]; Application of a Student with a Disability, Appeal No. 08-102; Application of the Dep't of Educ., Appeal No. 08-037; Application of a Child with a Disability, Appeal No. 06-139; Application of a Child with a Disability, Appeal No. 06-065).

Here, a review of the parents' due process complaint notice reveals that none of the alleged procedural violations identified above were raised in their due process complaint notice (IHO Ex. 1). Furthermore, I note that the impartial hearing officer appropriately did not address or render a decision on these issues. Moreover, a review of the hearing record reflects that counsel for the district consistently objected to testimony addressing issues that were not raised in the due process complaint notice (Tr. pp. 379-80, 383, 491, 518, 986-88, 1033, 1082; IHO Ex. 18 at pp. 2-3), and therefore, I find that there is no indication in the hearing record that the parties agreed to expand the scope of the impartial hearing to include the additional claims that the parents now specifically allege for the first time on appeal. Under these circumstances, I decline to consider the claims enumerated in the parents' petition that were not previously raised in their due process complaint notice or ruled upon by the impartial hearing officer (Application of a Student with a Disability, Appeal No. 08-102; Application of a Student Suspected of Having a Disability, Appeal No. 08-100; Application of the Bd. of Educ., Appeal No. 08-029; Application of a Student with a Disability, Appeal No. 08-020; Application of a Student with a Disability, Appeal No. 08-008; Application of a Student Suspected of Having a Disability, Appeal No. 08-002; Application of the Bd. of Educ., Appeal No. 07-114; Application of a Child with a Disability, Appeal No. 07-051; Application of a Child with a Disability, Appeal No. 07-047; Application of a Child with a Disability, Appeal No. 06-139; Application of a Child with a Disability, Appeal No. 06-065; Application of a Child with a Disability, Appeal No. 04-019; Application of a Child with a Disability, Appeal No. 03-095; Application of a Child with a Disability, Appeal No. 02-024; Application of a Child with a Disability, Appeal No. 01-024; Application of a Child with a Disability, Appeal No. 99-060).

I will now address the substantive issues regarding the challenged IEPs in chronological order. As set forth in greater detail below, the hearing record as a whole supports the impartial hearing officer's conclusion that the June 2006 IEP and August 2007 IEP, at the time they were formulated, were reasonably calculated to confer educational benefits on the student and therefore, offered the student a FAPE in the LRE.

The hearing record contains evaluative data describing the student's special education needs that was before the CSE. The June 2006 IEP was based upon numerous reports considered by the CSE, including the April 2006 ESY eligibility form and teacher report; the March 2006 speech-language evaluation report, report card and ESY eligibility form; the February 2006 OT evaluation report; the January 2006 private psychoeducational evaluation report submitted to the district by the parents; an undated social history update; the June 2005 assistive technology evaluation report; and the December 2004 reading diagnostic report (Dist. Ex. 17 at p. 5; see Dist. Exs. 2-4; 6-7; 9-10; 12). The resultant present levels of performance contained in the June 2006 IEP reflected descriptions of the student's cognitive ability and academic skills that contained information from the January 2006 private psychoeducational evaluation report and the March/April 2006 teacher reports (compare Dist. Exs. 2 at pp. 8-10; 9; 10, with Dist. Ex. 17 at pp. 3-4). Descriptions of the student's speech-language skills were based upon information included in the student's March 2006 speech-language evaluation report (compare Dist. Ex. 6, with Dist.

Ex. 17 at pp. 3-4). The June 2006 IEP description of the student's abilities in the areas addressed by OT included information from the February 2006 OT reevaluation (compare Dist. Ex. 7, with Dist. Ex. 17 at p. 5). The student's present levels of social-emotional functioning contained information from the January 2006 private psychoeducational evaluation report and the March/April 2006 teacher reports (compare Dist. Exs. 2 at pp. 9-10; 9 at p. 2; 10, with Dist. Ex. 17 at pp. 4-5). Comparison of the June 2006 IEP and the underlying evaluation reports shows that the description of the student's physical development and prescribed medications included information from the January 2006 private psychoeducational evaluation report and information provided by the parents through the February 2006 social history (compare Dist. Ex. 2 at p. 5, and Dist. Ex. 3 at p. 2, with Dist. Ex. 17 at p. 5). Overall, the June 2006 IEP indicated that despite a potentially low estimate due to attentional difficulties, the student's performance on cognitive assessments suggested that his intellect and ability to achieve academically were extremely low when compared to his nondisabled peers (Dist. Ex. 17 at p. 3; see Dist. Ex. 2 at p. 10). The IEP reflected the results of academic achievement assessments, which had recently been conducted, and suggested that his performance levels were generally in the extremely low range (Dist. Ex. 17 at p. 3). In addition, the student demonstrated delays in memory, adaptive behavior, social-emotional functioning, receptive and expressive language, and areas addressed by OT (id. at pp. 3-5). He also exhibited "anxieties and fears" and difficulty maintaining attention and organization (id. at p. 3). The June 2006 IEP provided specific information regarding the student's skills in the areas of reading, spelling, written language, mathematics, social studies, and science (id. at pp. 3-4). The June 2006 IEP also identified the student's specific social-emotional and management abilities and needs (id. at pp. 4-5). Accordingly, as stated above, the hearing record demonstrates that the recommendations of the June 2006 CSE were based upon sufficient current evaluative data. To the extent that the parents contend that the CSE did not consider their views in formulating the student's June 2006 IEP, I find their argument is unpersuasive since in making its recommendations, the CSE relied in part upon the information provided to it from the parents and the experts that they retained.

I also disagree with the parents' argument that the June 2006 IEP was inappropriate because the goals were "too generic, too low" or "canned." As detailed below, the district established at the impartial hearing that the goals enumerated in the June 2006 IEP were appropriate and tailored to meet the student's educational needs. Preliminarily, the hearing record shows that the goals and objectives contained in the June 2006 IEP were reviewed during the CSE meeting, and that despite their objections to the program recommendation, neither the parents nor their attorney voiced objections to the specific proposed goals; instead, the student's mother testified that she rejected the IEP and the goals in their entirety (Tr. pp. 146, 868-69, 991). The hearing record also shows that the district conducted a pre-CSE meeting with the student's mother regarding the proposed IEP goals (Tr. pp. 867, 986, 989-90). Contrary to the parents' assertion that the proposed goals were too basic and too generic and that they lacked a significant academic component, the June 2006 CSE developed approximately 43 annual goals and over 120 short-term objectives to address the student's needs in the areas of study skills, reading, writing, mathematics, speech-language, social/emotional/behavioral, motor, basic cognitive/daily living skills (id. at pp. 7-25). Furthermore, a review of the June 2006 IEP annual goals and short-term objectives indicates that they are measurable and provide requisite evaluation criteria, procedure to evaluate and evaluative schedules (see 34 C.F.R. § 300.320[a][2]; 8 NYCRR 200.4[d][2][iii]).

Next, I will consider the parties' contentions regarding the June 2006 CSE's recommendation to place the student in the 8:1+2 life skills program. Although the student's mother testified that her objective was to provide an opportunity for the student to prepare for RCTs and obtain a local diploma (Tr. p. 2034), she also explained that at the time student was attending Maplebrook, he was not placed in an RCT class because the student lacked the necessary basic skills (Tr. pp. 1754-55). The June 2006 IEP offered by the district contained a transition plan for the student, which indicated that the student was interested in attending a vocational education program and that he planned to pursue job opportunities that offered supported employment after graduation (Dist. Ex. 17 at p. 5). The June 2006 CSE offered the student the opportunity to participate in activities that discussed and researched various career choices of interest, participate in a variety of community-based activities consistent with his skills and abilities, and participate in activities required for financial transitions (e.g., budgeting, maintaining bank accounts, purchasing retail items) (*id.* at p. 6). Various program modifications including use of a positive reinforcement plan, modified curriculum, and refocusing/redirection of the student were recommended (*id.* at p. 2).

The hearing record reflects that the June 2006 CSE's recommendation that the student be placed in the 8:1+2 special class was in part, based upon his success in that program in prior school years. The student's special education teacher during the 2004-05 and 2005-06 school years testified that the student demonstrated academic progress during both of the years that he was in her class (Tr. pp. 829-39, 842, 845-57). Furthermore, no one in attendance at the June 2006 CSE meeting disputed the gains that the student had achieved in core academic areas (Tr. pp. 866, 872). The special education teacher further testified that she participated in the development of the student's 2006-07 IEP in which she recommended a ninth grade class similar to the class she taught, because the student needed "a continuum of what we were doing, what he was learning at the middle school in ninth grade at a higher level" (Tr. p. 860). The student's mother acknowledged that the student had made progress socially and emotionally during the 2004-05 and 2005-06 school years (Tr. pp. 1603-05). Comments reflected in the June 2006 IEP indicated that the student's father described the recommended program as follows: "it's not that it's not good – it's not optimal" (Tr. pp. 36, 2290; Dist. Ex. 17 at p. 7). As detailed above, I find that the hearing record sufficiently demonstrates that the student had made meaningful progress during the previous (2004-05 and 2005-06) school years in the district's program (see M.C. v. Rye Neck Union Free Sch. Dist., 2008 WL 4449338, *16 [S.D.N.Y. September 29, 2008] [concluding that when the student's IEP mirrored his IEP from the previous school year under which he demonstrated significant progress, the subsequent IEP was reasonably calculated to afford the student educational benefit and was therefore substantively adequate to provide him with a FAPE]; Application of the Bd. of Educ., Appeal No. 08-091; see generally Thompson R2-J Sch. Dist. v. Luke P., 540 F.3d 1143, 1153-54 [10th Cir. 2008] [holding that when the IEP in question was modeled upon a prior IEP that had succeeded in generating some progress, there was a strong likelihood that the IEP in question would continue the same trend, especially where the IEP incorporated suggestions from the parents and their experts]). Accordingly, I agree with the impartial hearing officer's determination that there was no reason to conclude that the student's progress would suddenly stop had he continued his studies in the program recommended by the district's CSE, particularly in light of the progress that the student previously achieved in the district's program (IHO Decision at p. 43).

The special education teacher of the district's proposed 8:1+2 special class for the 2006-07 school year testified that the class was composed of one special education teacher, two teacher assistants who were certified teachers and an additional assistant (Tr. pp. 2436-37).¹⁶ The special education teacher described the recommended program as offering a combination of academic and community/life skills instruction (Tr. pp. 2431, 2436, 2498-2500). During the morning portion of the school day, students received instruction in math, language arts, science and social studies (Tr. p. 2436). The special education teacher described how she grouped the student's in the class according to their functional academic ability and that she was able to individualize their instruction due to the high teacher-to-student ratio (Tr. pp. 2437-41). The special education teacher for the proposed class also testified that she would have been the provider of the student's 1:1 reading instruction (Tr. pp. 2441-43). The special education teacher indicated that the afternoon portion of the school day focused on a variety of life skill activities such as community service at the public library, the opportunity for employment at a grocery store and veterinary clinic, and cooking and swimming (Tr. pp. 2443-47). Students had the opportunity to acquire knowledge of the Dewey Decimal System and banking concepts, learn how to alphabetize books and how to use a cash register, and participate in fitness and speech-language activities (*id.*). Students in the recommended program interacted with non-disabled peers during lunch, "special" classes such as art and music, physical education and during extracurricular activities (Tr. pp. 2448-49). In light of the foregoing evidence of the student's special education needs, the hearing record demonstrates that the 8:1+2 placement recommended by the June 2006 IEP, at the time it was formulated, was reasonably calculated to confer an educational benefit on the student.

Turning next to the parents' claims that the district failed to present the parents with a proposed curriculum and/or methodology for the student at the time of the CSE meetings or include it in the student's IEPs, I note that the parents have not identified any federal or State authority that requires a district to adopt such a procedure or make curricula or methodology components of a student's IEP. Although an IEP must provide for specialized instruction in the student's areas of need, a CSE is not required to specify methodology on an IEP and the precise teaching methodology to be used by a student's teacher is generally a matter to be left to the teacher (Rowley, 458 U.S. at 204; M.M. v. Sch. Bd. of Miami-Dade County, 437 F.3d 1085, 1102 [11th Cir. 2006]; Lachman v. Illinois State Bd. of Educ., 852 F.2d 290, 297 [7th Cir. 1988]; Application of the Dep't of Educ., Appeal No. 08-075; Application of a Child with a Disability, Appeal No. 07-065; Application of a Child with a Disability, Appeal No. 07-054; Application of a Child with a Disability, Appeal No. 07-052; Application of a Child with a Disability, Appeal No. 06-022; Application of a Child with a Disability, Appeal No. 05-053; Application of a Child with a Disability, Appeal No. 94-26; Application of a Child with a Disability, Appeal No. 93-46). Furthermore, as set forth below, the district established at the impartial hearing that the June 2006 CSE's program recommendation was aligned with State standards (see 8 NYCRR 100.1[t]). The special education teacher of the recommended class for the 2006-07 school year testified that the curriculum used in her class was based upon New York State Standards and the students' IEP goals and objectives (Tr. pp. 2481-83, 2505; Parent Ex. GG at p. 3).¹⁷ The hearing record indicates that

¹⁶ The special education teacher of the proposed class was familiar with the student because she provided the student's related service reading instruction during spring 2006 (Tr. pp. 2425-27).

¹⁷ VESID has published the Learning Standards and Alternate Performance Indicators for Students with Severe Disabilities, which is available at <http://www.vesid.nysed.gov/specialed/publications/learnstand/lrnstdi.htm>.

the recommended program was designed to meet the needs of students who expect to receive an IEP diploma; however, it offered students the opportunity to prepare for Regents examinations and the RCTs (Tr. p. 1754; Parent Ex. GG at p. 3). The special education teacher testified that the students in her class had the opportunity to transition to classes focused on the acquisition of a high school diploma (Tr. pp. 2499-2500). Additionally, students in the recommended program were provided with mainstream opportunities "when appropriate to their abilities" (Parent Ex. GG at p. 3). The June 2006 CSE determined that the student would be assessed by using the New York State Alternate Assessment for Students with Severe Disabilities and offered testing accommodations including special location, directions read/explained, flexible scheduling, questions read, extended time and revised test format (id. at p. 2; see Tr. pp. 1571-72).¹⁸ Under the circumstances presented above, the hearing record reflects that the June 2006 CSE's recommendation was reasonably calculated to meet the student's educational needs in the least restrictive setting.

Next, I will consider the parents' argument that that the class profile for the recommended placement for the 2006-07 school year showed that the student would have been grouped with students whose needs vastly differed than their son's educational needs. In the instant case, the hearing record reflects the parents' concern that the students in the recommended class functioned on a lower cognitive, language, and social level than their son (see, e.g., Tr. pp. 998-1003). A review of the evaluative data contained in the hearing record and the class profile for the 2006-07 school year supports the district's position that the student was appropriately placed in the recommended 8:1+2 program (Dist. Exs. 2; 4; 6; 11; 16; 18). As stated above, the district was aware of the student's ongoing significant deficits in cognitive and academic ability (Dist. Exs. 17 at pp. 4, 7; 21; 26; Parent Ex. DD). The June 2006 CSE considered the parents' January 2006 private psychological evaluation report that stated, "overall results of the WISC IV suggest that [the student's] intellectual potential related to academics is low. Scores may be a low estimate of his abilities but they do reflect how he is performing day-to-day in school" (Dist. Exs. 2 at p. 7; 17 at p. 7).¹⁹ The 2006-07 class profile reflected that the students in the class were grouped based on the similarity of their individual needs consistent with the requirements set forth by 8 NYCRR 200.6(h)(2)(3) (Dist. Ex. 18). Although the student exhibited an area of relative strength reflected in his verbal comprehension cognitive testing scores, this strength was not reflected in the measures of his expressive and receptive language skills or other academic areas (Dist. Exs. 2; 11; 13). The student's assessed performance in other areas of cognitive functioning such as processing speed and working memory, and his academic achievement was similar to the assessed cognitive and academic levels of the other students in the proposed class (Dist. Ex. 18). Accordingly, I find that the hearing record illustrates that the student would have been appropriately grouped with students whose individual needs were similar to his. Based on the foregoing, I find that the

¹⁸ The hearing record reflects that the student had been participating in the alternate assessment at least since entering the district during the 2002-03 school year (Parent Ex. DD at p. 1; see Dist. Ex. 64 at p. 1). Further information regarding alternate performance indicators and the New York State Learning Standards is available at <http://www.vesid.nysed.gov/specialed/publications/policy/broch.htm>.

¹⁹ The phrase "low estimate" was underlined by the authors of the exhibit (Dist Ex. 2 at p. 7).

impartial hearing officer correctly determined that the district sustained its burden of persuasion that it offered the student a FAPE during the 2006-07 school year.²⁰

With regard to the parents' claims regarding the appropriateness of the 2007-08 IEP, the hearing record establishes that, like the student's June 2006 IEP, his August 2007 IEP was reasonably calculated to confer an educational benefit. As described in greater detail below, the August 2007 IEP was based upon evaluative data that identified the student's needs, which the district's CSE in turn documented in the student's present levels of performance, while taking into consideration the parents' concerns as well as the recommendations of their private evaluators (Dist. Ex. 44). Additionally, a review of the hearing record reveals that the August 2007 IEP was developed over the course of two CSE meetings and contained annual goals and short-term objectives to address the student's areas of need and recommended a program that provided the appropriate supports and services needed to implement the student's goals in the LRE (id. at p. 6).

With regard to the 2007-08 school year, the school psychologist who participated in the August 2007 CSE meeting testified that she reviewed the student's May 2007 private psychological evaluation report at the CSE meeting (Tr. pp. 2317-18; Dist. Ex. 44 at p. 6). The May 2007 private psychological evaluation report referenced the January 2006 private psychoeducational evaluation of the student and the school psychologist indicated that the findings regarding the student's cognitive functioning were commensurate between the two reports (Tr. pp. 2327-32). The May 2007 private neuropsychological evaluation report also indicated and the August 2007 CSE acknowledged that the student exhibited "far below average" academic skills (Tr. p. 2336; Dist. Ex. 45 at p. 7).

The present levels of academic and functional performance contained in the August 2007 IEP were based in part, on information from the May 2007 private neuropsychologists' evaluation report (compare Dist. Ex. 44 at pp. 3-4, with Dist. Ex. 45 at pp. 4-5), and the student's June 2006 IEP (compare Dist. Ex. 17 at pp. 3-5, with Dist. Ex. 44 at pp. 3-5). In addition to continuing the testing accommodations and program modifications contained in the June 2006 IEP, the August 2007 CSE added guided practice or models for new skills/concepts, reduce distraction, and provide visual cues to support auditory instruction to the August 2007 IEP (compare Dist. Ex. 17 at p. 2, with Dist. Ex. 44 at p. 2). The hearing record also reveals that the goals contained in the August 2007 IEP were discussed at length during both the May 2007 CSE meeting and during the August 2007 CSE meeting (Tr. p. 489). According to the director of special services, the August 2007 CSE meeting was a "long meeting," in which the CSE reviewed information from Maplebrook and discussed at length what the student's father believed his son needed (Tr. p. 492). The director of special services also indicated that there was significant discussion "about the student and his needs," and that the CSE further discussed the student's strengths and weaknesses relative to goal areas (Tr. pp. 492-93). Consequently, no changes were made to the student's transition plan from the June 2006 IEP, and following review by the August 2007 CSE, he was offered annual goals and short-term objectives consistent with the annual goals and short-term objectives contained in

²⁰ The 2006-07 class profile does not contain information regarding social skill needs (Dist. Ex. 18). I note that testimony from the student's 2005-06 special education teacher indicates that the students in her class, as well as the student in the instant case, needed support in the area of social skills (Tr. pp. 854-55). She also testified that the student initiated conversations with both adults and peers in the classroom (id.).

the June 2006 IEP (Tr. pp. 278, 280-82; compare Dist. Ex. 17 at pp. 5-25, with Dist. Ex. 44 at pp. 5-25).²¹

In the May 2007 neuropsychological evaluation report obtained by the parents, the private neuropsychologists recommended that "[the student] should continue in a vocationally driven training program for individuals with significant cognitive deficits and basic academic remediation to support functional skills should continue" (Dist. Ex. 45 at p. 7). The school psychologist testified that she reviewed the private neuropsychologists' recommendations at the August 2007 CSE meeting in terms of recommending a program for the upcoming school year (Tr. pp. 2337-38). Moreover, the director of special services added that the proposed class and program as well as opportunities at the high school, were discussed at length with the student's father at the August 2007 CSE meeting (Tr. p. 494). The school psychologist testified that she was familiar with the program recommended by the CSE, had observed it, had discussed the program with the teacher and participated in CSE meetings for the other students (Tr. p. 2340). She further testified that the district's recommendation to place the student in the 8:1+2 program was consistent with the recommendation of the private neuropsychologists (Tr. pp. 2340-41).²² Likewise, the director of special services testified that the private neuropsychologists recommended a program with a strong vocational component (Tr. p. 275). The school psychologist's description of the program recommended for the student for the 2007-08 school year was consistent with the 2006-07 program description (compare Tr. pp. 2431, 2436, 2498-2500, with Tr. pp. 2342-45). Under the circumstances, the hearing record indicates that the program recommended for the student for the 2007-08 school year, which consisted of academic and life skills instruction, was consistent with the recommendation of the private neuropsychologists and appropriate to meet the student's special education needs. Contrary to the parents' contention that the students in the 2007-08 recommended program functioned on a substantially different cognitive, language, and social level than the student (Tr. pp. 1119, 1125-31), the hearing record does not indicate that the student's cognitive, language or social skills changed significantly during the 2006-07 school year, such that he would have been inappropriately grouped with the students whose profiles are reflected in the 2007-08 class profile (Tr. p. 2335; Dist. Ex. 49; see Dist. Ex. 45).²³ Based on the foregoing set of circumstances, to the extent that the August 2007 CSE developed a program that took into

²¹ The parents also contend that the August 2007 IEP was devoid of any reading program. Testimony from the district's school psychologist refutes this assertion. According to the school psychologist, the proposed program offered academic instruction within the special class setting, consisting of language arts, reading, writing, math, science and social studies (Tr. p. 2342). I note that the CSE did not recommend 1:1 reading instruction as a related service for the 2007-08 school year (see Dist. Ex. 44 at p. 1). The hearing record reflects that the May 2007 private psychological evaluation report does not recommend that the student receive individual reading instruction, and reports from Maplebrook considered by the August 2007 CSE reflect that the student received individual reading instruction three times during the 2006-07 school year (Dist. Exs. 44 at p. 6; 45 at pp. 7-8; Parent Ex. Y at p. 7).

²² Although the evaluators who performed the May 2007 neuropsychological evaluation were retained by the parents, the student's mother testified that she disagreed with their opinions with regard to the student's cognitive functioning (Tr. p. 1569).

²³ Although the May 2007 private psychological evaluation report does not include specific assessments of the student's receptive and expressive language skills, I note that Vineland-II results reflect scores in the 5th percentile in the communication domain, characterized by the evaluators as "significantly below age expectation" (Dist. Ex. 45 at p. 6).

consideration the parents' private evaluators' recommendations as well as the student's educational strengths and weaknesses, the hearing record substantiates the district's contention that the special education program and related services recommended by the district in the August 2007 IEP were reasonably calculated to confer educational benefits to the student and were offered in the LRE. Accordingly, at the time it was formulated, the August 2007 IEP offered the student a FAPE for the 2007-08 school year (see Viola v. Arlington Cent. Sch. Dist., 414 F. Supp. 2d 366, 382 [S.D.N.Y. 2006] citing J.R. v. Bd. of Educ., 345 F. Supp. 2d 386, 395 n.13 [S.D.N.Y. 2004]; Antonaccio v. Bd. of Educ., 281 F. Supp. 2d 710, 724-25 [S.D.N.Y. 2003]).

In conclusion, I find that the impartial hearing officer's determination that the district offered the student a FAPE during the 2007-08 school year is supported by the hearing record. Having determined that the district offered the student a FAPE in the LRE for the 2006-07 and 2007-08 school years, I need not reach the issue of whether Maplebrook was appropriate for the 2007-08 school year, and the necessary inquiry is at an end (M.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 considered the parties' remaining contentions and find that I need not reach them in light of my conclusions herein.

THE APPEAL IS DISMISSED.

**Dated: Albany, New York
February 19, 2009**

**PAUL F. KELLY
STATE REVIEW OFFICER**