The University of the State of New York

The State Education Department
State Review Officer
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No. 12-121

Application of a STUDENT WITH A DISABILITY, by his parent, for review of a determination of a hearing officer relating to the provision of educational services by the Board of Education of the Enlarged School District of Troy

Appearances:
Guercio & Guercio, LLP, attorneys for respondent, Kathy A. Ahearn, Esq., of counsel

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from a decision of an impartial hearing officer (IHO) which found, among other things, that Individualized Education Programs (IEP's) developed by respondent (the district) for the parent's child (the student) in October 2010, February 2011, and July 2011 were reasonably calculated to provide an educational benefit, and that the district properly implemented those IEPs. The appeal must be dismissed.

II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an IEP, which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a school district representative (Educ. Law. § 4402; see 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; 34 CFR 300.151-300.152, 300.506, 300.511; Educ. Law § 4404[1]; 8 NYCRR 200.5[h]-[l]).

New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding "any matter relating to the

identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student" (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][6]-[7]; 34 CFR 300.503[a][1]-[2], 300.507[a][1]). First, after an opportunity to engage in a resolution process, the parties appear at an impartial hearing conducted at the local level before an IHO (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j]). An IHO typically conducts a trial-type hearing regarding the matters in dispute in which the parties have the right to be accompanied and advised by counsel and certain other individuals with special knowledge or training; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed five business days before the hearing; and obtain a verbatim record of the proceeding (20 U.S.C. § 1415[f][2][A], [h][1]-[3]; 34 CFR 300.512[a][1]-[4]; 8 NYCRR 200.5[j][3][v], [vii], [xii]). The IHO must render and transmit a final written decision in the matter to the parties not later than 45 days after the expiration period or adjusted period for the resolution process (34 CFR 300.510[b][2],[c], 300.515[a]; 8 NYCRR 200.5[j][5]). A party may seek a specific extension of time of the 45-day timeline, which the IHO may grant in accordance with State and federal regulations (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5]). The decision of the IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]).

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

This matter involves a student who has attended the district's schools since kindergarten and who, in the 2010-11 school year, was enrolled in ninth grade at the district's high school (Joint Exs. 1 at p. 1; 9 at p. 1). The hearing record reflects that the student – who has been diagnosed with attention deficit disorder/inattentive type (Joint Ex. 2 at p. 4) - struggled with reading since at least the first grade (Tr. p. 929), and that he received services from the district during the 2007-08 school year (sixth grade), the 2008-09 school year (seventh grade), and the 2009-10 school year (eighth grade) pursuant to plans offered in accordance with Section 504 of the Rehabilitation Act of 1973 (504 Plans) (see Joint Exs. 1 at pp. 1-2; 2 at p. 3; 5 at pp. 1-3; 6 at p. 1; 7 at pp. 1-4; 8 at p. 1). Believing that the student required greater assistance, however, the parent ultimately sought to have the student classified as a student with a disability (Tr. p. 930).

On July 13, 2010, a CSE met and determined that the student was eligible to receive special education and related services as a student with an other health-impairment (OHI) (Tr. pp. 85-89, 92-98, 100-01; Joint Ex. 9 at pp. 1-5).[1] As a result, an IEP was developed that recommended various accommodations, including the use of "guided notes," that long assignments be broken down into "smaller, more manageable tasks," that the student be provided with extended time (2x) on all tests, and that testing occur in a "quite, distraction free environment" (Joint Ex. 9 at p. 2). In addition, the July 2010 CSE recommended that the student receive resource room support for 42 minutes per day (Tr. pp. 86-89; Joint Ex. 9 at pp. 1-2).

Subsequently, however, the parent indicated that he had concerns with the July 2010 IEP and that he wanted to discuss changes (Tr. pp. 107, 964-68). On October 27, 2010, therefore, a CSE met to review the annual goals and accommodations on the July 2010 IEP (Tr. pp. 107-109, 964-65; Joint Ex. 10 at pp. 1, 5) and recommend adding certain accommodations, including the provision of additional time to complete tasks, and a requirement that the student's resource room teacher check to see that assignments were written into his "agenda book" (Tr. pp. 117-18; compare Joint Ex. 9 at pp. 1-2 with Joint Ex. 10 at pp. 1-2).[2] The October 2010 CSE also modified some of the student's annual goals and added two reading goals to the student's IEP (Tr. pp. 109-116, 119; compare Joint Ex. 9 at pp. 6-7 with Joint Ex. 10 at pp. 6-7).

The parent, however, continued to have concerns about the student's performance in school (Tr. pp. 120, 260, 968-72; Joint Ex. 11 at pp. 2, 4-5, 17-19, 37). Accordingly, the record reflects that some additional academic testing was conducted in December 2010 (Joint Ex. 22; Tr. pp. 132-33), and that on February 7, 2011, a CSE again met for a further program review of the student's IEP (Tr. pp. 120, 968; Joint Ex. 12 at pp. 1-2, 6; see also generally Joint Ex. 11). At this meeting the CSE recommended that, in addition to the resource room program that the student was receiving, the student's program of special education be intensified to include a consultant teacher in English language arts (ELA) five times a week for 40 minutes and a teaching assistant (TA) in math five times a week for 40 minutes (Tr. pp. 121-24; Joint Ex. 12 at p. 6).[3] In addition, another reading goal was added to the student's IEP (compare Joint Ex. 10 at pp. 6-7 with Joint Ex. 12 at pp. 6-8), and an accommodation requiring that the student's "agenda book" be reviewed by his classroom teachers (in addition to his resource room teacher) was also added (compare Joint Ex. 10 at p. 2 with Joint Ex. 12 at p. 2). However, the hearing record reflects that in order to provide

[1] The student's eligibility for special education and related services as a student with an OHI is not in dispute in this proceeding (see 34 CFR 300.8[c][9]; 8 NYCRR 200.1[zz][10]). However, the hearing record reflects that the district did not initially agree to classify the student as a student with a disability, and that this was the subject of a prior due process proceeding that was ultimately settled in the parent's favor (Joint Ex. 4 at p. 1; Tr. pp 25-26).

[2] The hearing record reflects that an "agenda book" is book that is given to all 9th grade students that is used to keep track of assignments and other important things (Tr. pp. 111, 401-02, 517, 885).

[3] A consultant teacher is a special education teacher who provides special education support to students either directly or indirectly within the regular education classroom (Tr. p. 121; see 8 NYCRR 200.1[m], 200.6[d]). The hearing record reflects that the consultant teacher might work on specific strategies with students, whereby for example, curriculum might be broken down and/or students might receive testing accommodations within the classroom (Tr. pp. 121-22). The hearing record also reflects that the provision of consultant teacher services to the student in science was also discussed at the February 2011 CSE meeting (Joint Ex. 11 a p. 44), however this service is not reflected on the February 2011 IEP (see generally, Joint Ex. 12).

the CT services and TA at that point in the school year, the student's academic schedule would have needed to change which parent opposed because he felt that the increased supports should be provided to the student in the courses and classrooms that he was then-currently in (Joint Ex. 11 at pp. 27, 30-33, 35, 40-41; Tr. pp. 125-26).[4] Accordingly, the CSE Chairperson and school psychologist testified that as a result of this disagreement, the February 2011 IEP was not implemented (Tr. pp. 124-26, 276-77, 352).[5]

A. Due Process Complaint Notice

By due process complaint notice dated May 25, 2011, the parent requested that an IHO "intervene" to "secure the services [the student] desperately needs." Specifically, the parent made a number of assertions relating to "ongoing violations" of the student's IEPs, including that "guided notes" were not provided for any of the student's classes (other than for Global Studies), that no long-term assignments were being broken down into smaller more manageable tasks,[6] and that the requirement that the student's "agenda book" be reviewed and signed by his classroom teachers was not being fully implemented (see Joint Ex. 16 at p. 3). In addition, the parent indicated that he disagreed with or "disputed" certain aspects of the student's IEP, including that no "push-in" services were provided for the student,[7] and that the IEP lacked a goal designed to close the student's reading "gap" over the course of his high school career (Joint Ex. 16 at p. 3). The parent also indicated that he had "suggested some testing that could be done to measure and achieve this goal," but that the school psychologist had "refused to do any testing to determine [the student's] present grade level deficiencies" (id.). As relief, the parent requested to have the "IEP fully implemented," and to "have honest, genuine input" into the content of the IEP.[8]

B. Relevant Events Post-Dating the Due Process Complaint Notice

On July 6, 2011 a subcommittee of the district's CSE met for the student's annual review and to develop the student's IEP for the 2011-12 school year (Tr. 137, 273; Joint Exs. 13 at p. 1,

[4] The school psychologist noted the reason for the needed schedule change was because the consultant teacher and teacher assistant required by the student's IEP was already in place in a different classroom (Tr. pp. 125-26, 242-43).

[5] Notwithstanding this testimony, the hearing record indicates that the additional accommodation which provided that the student would approach his classroom teachers to have his agenda book reviewed and signed and the additional annual reading goal were both implemented subsequent to the February 2011 CSE meeting (see e.g., Tr. pp. 403, 513-14, 526-29, 643; Dist. Exs. 7 at p. 1; 8 at p. 3; see Joint Ex. 12 at pp. 2, 7).

[6] The parent specifically noted that in English, a "book assignment" was not broken down, and that instead the student was given zeros for chapter quizzes he was not prepared for (id.).

[7] It appears from the totality of the record that this allegation relates to the parent's dispute with the district concerning where consultant teacher services should be provided to the student (i.e., in the student's then-current classrooms vs. classroom in which consultant teachers were already placed).

[8] The parent's due process complaint notice does not specify which IEP is being referred to.

14 at p. 1).[9] During this meeting the subcommittee, among other things, discussed the student's progress and continued needs, the specifics of an annual reading goal, integrated co-teaching (ICT) services,[10] the continuation of the student's resource room program, and testing accommodations (See generally Joint Ex. 13).[11] As a result, an IEP was developed which, among other things recommended the continuation of resource room services five times per week for 40 minutes, as well as the initiation of ICT services for math, science, social studies, and ELA (Joint Ex. 14 at pp. 1-3, 11). In addition, the July 2011 IEP recommended goals to address the student's organization and reading comprehension (Joint Ex. 14 at pp. 1, 4, 7-11). The July 2011 IEP also included a coordinated set of transition activities to facilitate the student's movement from school to post-school activities, including that the student would take courses leading to a Regents diploma (Joint Ex. 14 at p. 13).[12]

On July 30, 2011, a pre-hearing conference was held before the IHO assigned to this matter (IHO Prehearing Conference Summary dated July 31, 2011). At this pre-hearing conference, an amendment to the parent's May 25, 2011 due process complaint notice was discussed and agreed to by the district (IHO Prehearing Conference Summary dated July 31, 2011 at pp. 1-2). In August 2011, therefore, the parent filed an amendment to his due process complaint notice which accused the district of perpetrating a "fraud against the IHO to deceive the IHO into believing that the IEP was effective and that [the parent's] complaint was frivolous and without merit" (Joint Ex. 17 at p. 2). In particular, the parent accused the district of giving the student "illegal assistance" during two Regents exams and a district English exam which was not "sanctioned" by his IEP, and which allowed the student – who struggled in those subjects - to pass these exams. The parent, therefore,

[9] It appears from the record that this meeting doubled as a resolution session per the suggestion of the IHO who indicated that such discussions "might prove helpful" since the parent had "waived" a resolution session originally scheduled for June 10, 2011 (IHO Prehearing Summary dated July 5, 2011 at p. 3; see also Tr. pp. 55, 273-74, 344, 821, 939, 995-96, 998-1000, 1003-04; Parent Ex. 10 at p. 1). However, I note that while the resolution meeting required by the federal IDEA and parallel State regulations may be waived if both the parent and the district agree in writing to do so; those regulations make no provision for either the parent or the district to unilaterally waive the resolution meeting (see 34 CFR 300.510[a][3][i]; 8 NYCRR 200.5[j][2][iii]).

[10] ICT services are referred to throughout the hearing record in a variety of ways, including an "integrated co-teaching class," "co-taught classes,", a "co-taught service," a "co-teaching class," and a "cointegrated" class (see e.g., Tr. pp. 137-43, 202, 203, 210-11, 213, 214-15, 275, 330, 698, 699, 711, 791-92; Joint Exs. 4 at pp. 2, 3, 11; 13 at pp. 40, 41, 45, 46, 52-53, 67, 83). For purposes of this decision, the term "ICT services" will be used for consistency.

[11] "Integrated co-teaching services" consists of "the provision of specially designed instruction and academic instruction provided to a group of students with disabilities and nondisabled students" (8 NYCRR 200.6[g]). Effective July 1, 2008, the "maximum number of students with disabilities receiving integrated co-teaching services in a class . . . shall not exceed 12 students" (8 NYCRR 200.6[g][1]). The hearing record reflects that ICT services within the district consist of a regular education teacher and a special education teacher in a classroom that co-teach the curriculum, which is a curriculum geared towards allowing students to pass Regents examinations (Tr. pp. 138-39).

[12] The July 2011 CSE also agreed that the district would conduct additional testing of the student to determine his specific areas of need in reading (see Tr. pp. 1002-03; Joint Ex. 13 at pp. 15-31, 67-68, 83-85), but it is not clear from the record whether this testing was done (see e.g., Petition ¶13).

indicated a "hope and belief" that the IHO would "see through this blatant deception and remedy [his] complaint accordingly" (id. at p. 3).[13]

Finally, the record reflects that the parent again amended his due process complaint notice to allege "pendency" violations against the district (Joint Ex. 18).[14] In particular, this claim appears to arise from the fact that the district implemented the July 2011 IEP for about a month at the beginning of the 2011-12 school year although the parent disagreed with it because he did not want the student receiving ICT services and/or the classes associated with such services, and because he objected to the electives assigned to the student which were different from the electives the parent had selected at the end of the 2010-11 school year (Tr. pp. 140-42, 783-84, 982-83). Accordingly, the parent requested that the student's pendency be "reinstated," that the student's classes be "restored to what [he] had chosen for him in June, that the student's "IEP for the 2010-2011 school year . . . be in effect," and that the "new/latest IEP [be] voided."

The record reflects that in response to the parent's concerns, the district changed the student's electives to what the parent wanted on September 13, 2011 (Tr. pp. 788, 798). In addition, the record also reflects that the district began providing services to the student in accordance with his July 2010 IEP, which the parent agreed was the last agreed upon IEP for purposes of pendency (Tr. p. 739).

C. Impartial Hearing Officer Decision

An impartial hearing convened on January 11, 2012 and concluded on March 9, 2012 after five days of hearings (Tr. pp. 1, 284, 502, 758, 1023, 1063).[15] In a 61-page decision, an IHO found, among other things, that while there was not "100% daily implementation by the district for checking the agenda planner," this did not constitute a denial of free appropriate public

[13] The district, by response dated August 18, 2011, responded to the parent's amendment to his May 2011 due process complaint notice by, among other things, denying parent's allegations and asserting that it fully complied with the student's IEP in administering the student's Regents and final examinations (Joint Ex. 20 at pp. 1, 2).

[14] The record reflects that the parent raised the issue of pendency to the IHO in a September 15, 2011 e-mail which is not contained in the record before me (See IHO Decision at pp. 2, 36; See also IHO Prehearing Conference Summary dated September 21, 2011 at p. 1). It appears that this issue was discussed at a prehearing conference on September 27, 2011, and that the parent initially decided to "withdraw" his pendency request and "seek his remedies in a different venue" (see IHO Prehearing Conference Summary dated September 30, 2011). Thereafter, the parent filed a complaint regarding pendency to the New York State Education Department which was ultimately unable to make a pendency determination (See Tr. pp. 732, 735, 1010, 1015; see also IHO Decision at p. 36). The parent's pendency issues, therefore, ended up back before the IHO (see e.g., Tr. p. 737; see also IHO Decision at p. 36).

[15] As noted above, multiple pre-hearing conferences were also held in this matter, including one on June 29, 2011 (IHO Prehearing Conference Summary dated July 5, 2011), one on July 30, 2011 (IHO Prehearing Conference Summary dated July 31, 2011), one on September 19, 2011 (IHO Prehearing Conference Summary dated September 21, 2011), and one on September 27, 2011 (IHO Prehearing Conference Summary dated September 30, 2011). In addition, the hearing record reflects that a further prehearing conference was held on January 6, 2012 regarding subpoenas issued on behalf of the parent (IHO Decision at p. 2), but the hearing record does not contain the transcript or summary of the January 6 prehearing conference as required by State regulation (see 8 NYCRR 200.5[j] [3][xi]).

education (FAPE) and the district "properly implemented the IEP's" (id at p. 60 & 61).[16] In addition, the IHO found that the annual goals in the different IEPs were appropriate when written (IHO Decision at pp. 52-53, 61), that the district relied upon appropriate evaluations in evaluating the student (IHO Decision at pp. 41-43, 60), that the October 2010 IEP, February 2011 IEP, and July 2011 IEP were each "reasonably calculated to provide an educational benefit," and that the parent "had genuine and honest input into the creation of the IEP's" (id. at p. 61). Further, and with respect to the parent's amendments to his due process complaint notice, the IHO rejected the contentions regarding the alleged provision of "illegal assistance" on tests to the student (IHO Decision at p. 61), and found that he "does not have jurisdiction to issue a remedy punishing any parties regarding alleged testing improprieties" (id.). The IHO also did not find any pendency violations (see generally, id. at pp. 25, 35-38). Finally, the IHO made findings on issues not raised in the parent's due process complaint notices, including that an Independent Education Evaluation (IEE) obtained by the district (Joint Ex. 6) was sufficient (IHO Decision at pp. 43, 60).[17]

IV. Appeal for State-Level Review

The parent appeals the IHO's decision and alleges that he was biased, lacked objectivity, and that he committed numerous errors during the course of proceedings. In addition, the parent expresses disagreement with the IHO's decision, objects to many of his findings, and contends, among other things, that he (the parent) was denied "honest genuine input into [the student's] IEP," that the evaluations relied upon by the district were "unreliable and invalid," that testing that he requested to determine grade-level equivalency in math and reading was not done, that the present levels of performance on the student's July 2010, October 2010 and February 2010 IEPs were deficient, that goals in the student's IEP were deficient, that the district did not offer appropriate program supports for the student,[18] and that various accommodations required by the student's IEPs, including the use of an "agenda book," the breaking-down of long-term assignments, and the provision of testing in a "quiet distraction free [sic] environment," were not (or were not properly/consistently) implemented. In addition, the parent disputes the IHO's findings regarding the provision by the district of accommodations not required by the student's IEPs on certain examinations, and contends that by implementing the July 2011 IEP at the beginning of the 2011-12 school year, the district violated the student's "[p]endency rights." The parent requests (1) special education intervention better suited to address the student's difficulties with attention and concentration; (2) 40 minutes a day in a resource room; (3) an individual classroom aide for three hours daily during the student's academic classes in order to refocus the student and to keep him on task during class; (4) consultant teacher services for all core classes; (5) the projected dates for the initiation of service and the anticipated duration of services including extended year services;

[16] The IHO's finding in this regard encompassed not only the claims raised by the parent in his due process complaint notice, but additional "implementation" claims raised during the impartial hearing, including that the district did not fail to provide certain testing accommodations required by the student's IEPs (IHO Decision at pp. 46, 60-61).

[17] The record reflects that during the hearing the parent attempted to argue that this document was based upon fraudulent documentation (see e.g., Tr. at pp. 949-50).

[18] In particular, the parent suggests that the student requires CT services (and not ICT services), and that the student should not have to be moved to a particular classroom to receive these services (i.e., that CT services should be provided to the student in whatever classroom he wanted the student to be in).

(6) comprehensive testing to determine the student's present levels of "education development;" (7) appropriate objective criteria for future evaluation procedures; (8) objective schedules for determining whether or not instructional goals are being achieved; (9) a statement of needed transition services; and (10) remedial tutoring for reading and math.

The district answers the parent's petition by generally denying each allegation. In addition, the district argues that the hearing record fully supports the IHO's findings of fact and decision, that the district's July 2010, October 2010, February 2011, and July 2011 IEPs offered or provided the student a FAPE in the least restrictive environment (LRE), and that the district acted properly and in good faith. The district also argues that the petition includes "matters and documents" that are not a part of the hearing record, and requests that the petition be dismissed because it does not contain a clear and concise statement of the parent's claims and does not contain separately numbered paragraphs. The district also asserts that the parent's due process complaint notice regarding the student's pendency placement is moot.

In a reply the parent asserts that he clearly stated what his concerns are with respect to the district's conduct, and he apologizes for being "remiss in [his] failure to separately number the paragraphs of [his] [p]etition." The parent, however, requests that I use my discretion to "view this as a minor infraction" that did not confer upon him an advantage or harm the district. In addition, and with respect to the district's contention that his claim relating to the student's pendency placement is moot, the parent asserts that the "significance of [this] issue is that despite the [d]istrict's being fully aware that no resolution agreement had been reached at the 7/6/11 Annual Review/Resolution meeting they with forethought and malice unilaterally implemented [the July 2011 IEP]." The parent also submits with his reply a number of documents, as well as two audio compact discs (CDs), as additional evidence for consideration.[19]

V. Applicable Standards

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see generally Forest Grove v. T.A., 557 U.S. 230, 239 [2009]; Bd. of Educ. v. Rowley, 458 U.S. 176, 206-07 [1982]).

[19] By letter dated June 25, 2012, the district objects to my consideration of the parent's reply and requests that, if I do consider it, I only consider "those parts . . . that respond to procedural defenses raised in the Answer." A reply is limited to any procedural defenses interposed by a respondent or to any additional documentary evidence served with the answer (8 NYCRR 279.6). A reply, therefore, may not be used to generally respond to each of the allegations made in an answer (Application of a Student with a Disability, Appeal No. 08-158; Application of a Student with a Disability, Appeal No. 08-102; 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 district did not proffer any additional evidence with its answer, and most of the allegations in the reply do not respond to the district's procedural defenses. Accordingly, much of the parent's reply is beyond the scope of the State regulations, and I will therefore only consider those portions which respond to affirmative defenses raised by the district.

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 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 [2007]; A.H. v. Dep't of Educ., 2010 WL 3242234, at *2 [2d Cir. Aug. 16, 2010]; 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 IHO's decision must be made on substantive grounds based on a determination of whether the student received a FAPE (20 U.S.C. § 1415[f][3][E][i]). A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction" (Rowley, 458 U.S. at 203). However, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP" (Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 130 [2d Cir. 1998]; see Rowley, 458 U.S. at 189). The statute ensures an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents" (Walczak, 142 F.3d at 132, quoting Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 [2d Cir. 1989] [citations omitted]; see Grim, 346 F.3d at 379). Additionally, school districts are not required to "maximize" the potential of students with disabilities (Rowley, 458 U.S. at 189, 199; Grim, 346 F.3d at 379; Walczak, 142 F.3d at 132). Nonetheless, a school district must provide "an IEP that is 'likely to produce progress, not regression,' and . . . affords the student with an opportunity greater than mere 'trivial advancement'" (Cerra, 427 F.3d at 195, quoting Walczak, 142 F.3d at 130 [citations omitted]; see P. v. Newington Bd. of Educ., 546 F.3d 111, 118-19 [2d Cir. 2008]; Perricelli, 2007 WL 465211, at *15). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]; see Rowley, 458 U.S. at 192). The student's recommended program must also be provided in the LRE (20 U.S.C. § 1412[a][5][A]; 34 CFR 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see Newington, 546 F.3d at 114; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132; E.G. v. City Sch. Dist. of New Rochelle, 606 F. Supp. 2d 384, 388 [S.D.N.Y. 2009]; Patskin v. Bd. of Educ., 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]).

An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs (34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]; Tarlowe v. Dep't of Educ., 2008 WL 2736027, at *6 [S.D.N.Y. July 3, 2008]), establishes annual goals related to those needs (34 CFR 300.320[a][2]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (34 CFR 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).

Once a parent consents to a district's provision of special education services, such services must be provided by the district in conformity with the student's IEP (20 U.S.C. § 1401[9][D]; 34 CFR 300.17[d]; see 20 U.S.C. § 1414[d]; 34 CFR 300.320). With regard to the implementation of a student's IEP, a denial of a FAPE occurs if the district deviates from substantial or significant provisions of the student's IEP in a material way (A.P. v. Woodstock Bd. of Educ., 2010 WL 1049297, at *2 [2d Cir. Mar. 23, 2010]; see Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 821-22 [9th Cir. 2007]; Houston Indep. School District v. Bobby R., 200 F.3d 341, 349 [5th Cir. 2000]; see also Sumter Co. Sch. Dist. 17 v. Heffernan, 642 F.3d 478, 484 [4th Cir. 2011; Fisher v. Stafford Township Bd. of Educ., 2008 WL 3523992, at *3 [3d Cir. Aug. 14, 2008]; Couture v. Bd. of Educ., 535 F.3d 1243 [10th Cir. 2008]; Neosho R-V Sch. Dist. v. Clark, 315 F.3d 1022, 1027 n.3 [8th Cir. 2003]). Accordingly, in reviewing claims challenging the implementation of an IEP under the IDEA, courts have held that it must be ascertained whether the aspects of the IEP that were not followed were substantial, or in other words, "material" (A.P. v. Woodstock Bd. of Educ., 2010 WL 1049297 [2d Cir. Mar. 23, 2010]; see Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811 [9th Cir. 2007] [holding that a material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled student and the services required by the student's IEP]; see also Catalan v. Dist. of Columbia, 478 F. Supp. 2d 73 [D.D.C. 2007] [holding that where a student missed a 'handful' of speech-language therapy sessions as a result of the therapist's absence or due to the student's fatigue, nevertheless, the student received consistent speech-language therapy in accordance with his IEP, and the district's failure to follow the IEP was excusable under the circumstances and did not amount to a failure to implement the student's program]).

The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see M.P.G. v. New York City Dep't of Educ., 2010 WL 3398256, at *7 [S.D.N.Y. Aug. 27, 2010]).

VI. Discussion

A. Preliminary Matters

1. Sufficiency of Petition

As noted above, the district requests that the petition be dismissed because (a) it does not contain a clear and concise statement of the parent's claims, and (b) it does not contain separately numbered paragraphs.

State regulations require a party appealing to an SRO to "clearly indicate the reason for challenging the [IHO's] decision" and to identify the findings, conclusions, and orders of the IHO with which the party disagrees in its petition for review (see 8 NYCRR 279.4[a]). SRO's have exercised their discretion and dismissed petitions that failed to comply with 8 NYCRR 279.4(a)

(see e.g. Application of the Dep't of Educ., Appeal No. 13-236; Application of a Student with a Disability, Appeal No. 12-016; Application of a Student with a Disability, Appeal No. 09-110; Application of a Student with a Disability, Appeal No. 08-053; Application of a Student with a Disability, Appeal No. 08-004). However, a review of the petition in this matter shows that the allegations asserted by the parent, who appears pro se, are not so ambiguous that the district has been precluded from effectively formulating a responsive answer (see Application of a Child with a Disability, Appeal No. 07-133; Application of a Child with a Disability, Appeal No. 06-138; Application of a Child with a Disability, Appeal No. 06-097; Application of a Child with a Disability, Appeal No. 06-096). In fact, the district formulated such an answer, and there is no indication that the district has been prejudiced in any way. Accordingly, I decline to dismiss the petition on this basis.

However, state regulations also provide that "pleadings shall set forth the allegations of the parties in numbered paragraphs" (see 8 NYCRR 279.8[a][3]), and documents that do not comply with these requirements "may be rejected in the sole discretion" of an SRO (8 NYCRR 279.8[a]). Here, while the parent's petition does contain numbered paragraphs, many of those paragraphs contain multiple allegations and, thus, do not technically comply with the above-described regulation. However, I again recognize that the parent is proceeding in this matter pro se, and I note that there is no allegation by the district that it has been harmed or prejudiced by the form of the parent's petition. Accordingly, in the exercise of my discretion, I will not dismiss the parent's petition on this basis in this particular instance.

2. Additional Evidence

As noted above, the parent submits additional documentary evidence and two CD's for my consideration. The two CDs submitted by the parent appear to be recordings of the February 2011 and July 2011 CSE meetings at issue in this matter and, to that extent, are duplicative of what is already contained in the record as Parent Exhibit 3. Accordingly, there is no reason to accept these CDs into the record as additional evidence.

Further, and with respect to the documentary evidence submitted by the parent, documentary evidence not presented at an impartial hearing may be considered in an appeal from an IHO's decision only if such additional evidence could not have been offered at the time of the impartial hearing and the evidence is necessary in order to render a decision (see e.g., Application of the Dep't of Educ., Appeal No. 12-103; Application of a Student with a Disability, Appeal No. 11-041; Application of a Student with a Disability, 10-047; Application of a Student with a Disability, Appeal No. 09-073; Application of a Student with a Disability, Appeal No. 08-030; Application of a Student with a Disability, Appeal No. 08-003; Application of the Bd. of Educ., Appeal No. 06-044; Application of a Child with a Disability, Appeal No. 05-080; Application of a Child with a Disability, Appeal No. 05-068; Application of the Bd. of Educ., Appeal No. 04-068). Here, while it appears that some of additional documents submitted by the parent for my consideration are things that post-date the hearing or were marked for identification but never admitted into evidence at the hearing, other things appear to have been available at the time of the hearing but not presented to the IHO. Further, and more importantly, the parent does not specify why any of these documents are necessary for me to render a determination in this matter, and it does not appear from a review of these documents (as well as the record) that they are necessary for this purpose. Accordingly, I will not accept these additional documents it into the record.

3. Scope of Review

The parent asserts a number of claims in his petition that are raised for the first time on appeal, including that the present levels of performance on the July 2010, October 2010 and February 2011 IEPs were deficient, and claims that appear to challenge the general measurability of the goals on the student's IEPs.[20] These claims do not directly challenge the impartial hearing officer's specific conclusions or determinations and, therefore, do not comply with State regulations which require that a party appealing an impartial hearing officer's decision "clearly indicate the reasons for challenging the impartial hearing officer's decision, identifying the findings, conclusions and order to which the exceptions are taken, . . . " (8 NYCRR 279.4[a]). Accordingly, these claims are outside the appropriate the scope of review and must be dismissed.

4. Improper Testing Accommodations (Jurisdiction)

Finally, the parent raises an issue in his petition regarding whether the district provided the student with illegal assistance and/or unsanctioned accommodations during certain final examinations, which relates to violations of district testing protocols and/or of the standards for the administration of Regents examinations. My jurisdiction, however, is limited to the review of matters relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of a FAPE to such child (see 20 U.S.C. §1415[b][6]; 34 CFR §300.507[a]; 8 NYCRR §200.5[i][1]). Accordingly, and while I recognize that the parent is raising this issue to show that any apparent success that the student may have had on certain examinations is illusory, I have no jurisdiction to consider whether the district complied with district protocols regarding the administration of final examinations or State standards relative to the administration of Regents examinations (see e.g., Application of a Student Suspected of Having a Disability, Appeal No. 11-044). Accordingly, this issue is not properly before me and will not be considered.

B. Allegations of IHO Error and Bias

As noted above, the parent contends that the IHO was biased and lacked objectivity. It is well settled that an IHO must be fair and impartial and must avoid even the appearance of impropriety or prejudice (see Application of a Student with a Disability, Appeal No. 12-066; Application of a Student with a Disability, Appeal No. 11-144; Application of the Bd. of Educ., Appeal No. 10-097; Application of a Student with a Disability, Appeal No. 10-018; Application of a Student with a Disability, Appeal 10-004; Application of a Student with a Disability, Appeal No. 09-084; Application of the Bd. of Educ., Appeal No. 09-057; Application of a Student with a Disability, Appeal No. 09-052; Application of a Student with a Disability, Appeal No. 08-090). An IHO must also render a decision based on the hearing record (see Application of a Student with

[20] There are a number of issues raised in the parent's petition that are not raised in his due process complaint notice, however, some of those issues were raised during the impartial hearing and considered by the IHO. Issues pertaining to the general sufficiency of the goals on the student's various IEPs, however, were not raised by the parent. Moreover, while the parent did argue at one point that the district's attorney "opened the door" to the issue of the student's "academic performance" (Tr. 868), his purpose in doing so appears to have been an attempt to present evidence to rebut the testimony given by other witnesses, and not to suggest that the student's IEPs were somehow deficient. Further, the sufficiency of the present levels of performance that are reflected on an IEP go beyond academic issues and raise much broader concerns. Accordingly, I cannot find that the present levels of performance reflected on the student's IEPs were challenged by the parent at the impartial hearing.

a Disability, Appeal No. 09-058; Application of a Student with a Disability, Appeal No. 08-036). Moreover, an IHO, like a judge, must be patient, dignified and courteous in dealings with litigants and others with whom the IHO interacts in an official capacity and must perform all duties without bias or prejudice against or in favor of any person, and shall not, by words or conduct, manifest bias or prejudice, according each party the right to be heard (Application of a Student with a Disability, Appeal No. 12-064; Application of a Child with a Disability, Appeal No. 07-090; Application of a Child with a Disability, Appeal No. 07-075; Application of a Child with a Disability, Appeal No. 04-046; Application of a Child Suspected of Having a Disability, Appeal No. 01-021).

Upon a careful and complete review of the hearing record, I am unable to find that the IHO acted in a way that was biased or that lacked objectivity toward the parent. Rather, and to the contrary, the record as a whole reveals that the IHO attempted to accommodate the parent throughout the course of the impartial hearing, allowed him to be heard on all issues, and acted fairly and impartially with respect to him. In this regard, I note that the IHO, for example, allowed the parent to amend his due process complaint twice during the course of proceedings and, despite requirements prohibiting a party from doing so (see e.g., 34 CFR 300.511[d]), allowed the parent to present evidence and argument on issues that exceeded the scope of his due process complaint notice/amendments during the impartial hearing. Thus, while I recognize that parent may not be happy with the IHO's decision and that he may believe that the IHO may have mischaracterized things or "disregarded" testimony that he (the parent) deemed to be persuasive and relevant,[21] this does not establish that the IHO manifested a bias. Accordingly, I am unable to find that the parent's allegations of bias have merit.

The parent, however, also claims that the IHO erred in a number of respects. Specifically, the parent contends that the IHO erred by allowing the district to proceed first at the impartial hearing, by not allowing him to subpoena witnesses and evidence, by allowing the district to submit evidence that had not been disclosed to him five days prior to the impartial hearing, by improperly precluding him from submitting a draft copy of an IEE obtained by the district (see Joint Ex. 6), by declining to issue a subpoena to obtain copies of the IEPs of the other children in the student's resource room class, by excluding the parent's audio CD recordings of the February 2011 and July 2011 CSE meetings, and by precluding him from entering evidence relating to the student's pendency placement. However, and with respect to the order in which the parties presented, since neither the IDEA nor any implementing federal or State law or regulations speak to which party should present their case first during an impartial hearing, and further since New York State law, as noted above, generally provides that the burden of proof is on the school district during an impartial hearing (see Educ. Law § 4404[1][c]; see M.P.G. v. New York City Dep't of Educ., 2010 WL 3398256, at *7 [S.D.N.Y. Aug. 27, 2010]), the fact that the district was allowed to present its case first cannot be deemed an error. Further, and with respect to the parent's evidentiary concerns, I am unable to find that much of the evidence that the parent sought to introduce was necessary and/or relevant to claims raised in his due process complaint notice, or that, given the totality of the

[21] For example, the parent accuses the IHO of "tow[ing] the [d]istrict's party line" by mischaracterizing his request for grade-deficit reduction goals (Petition at ¶100), and he contends that he disregarded the student's testimony regarding the provision of improper test help which evidenced a "double standard" (id. at ¶ 115).

circumstances, the IHO's actions resulted in any prejudice to the parent.[22] Accordingly, I decline to award the parent relief on this basis.

C. Parent Participation

A significant concern of the parent in this matter relates to his ability to participate in the development of the student's IEPs. Specifically, the parent, in his original due process complaint notice, requested that the IHO award him "honest, genuine input" into the student's IEP (Joint Ex. 16 at p. 2), and he contends in his petition that he was "denied honest genuine input into [the student's] IEP" (Petition at ¶119).

The IDEA sets forth procedural safeguards that include providing parents an opportunity "to participate in meetings with respect to the identification, evaluation, and educational placement of the child" (20 U.S.C. § 1415[b][1]). Federal and State regulations governing parental participation require that school districts take steps to ensure that parents are present at their child's IEP meetings or are afforded the opportunity to participate (34 CFR 300.322; 8 NYCRR 200.5[d]). Although school districts must provide an opportunity for parents to participate in the development of their child's IEP, mere parental disagreement with a school district's proposed IEP and placement recommendation does not amount to a denial of meaningful participation (see P.K. v. Bedford Cent. Sch. Dist., 569 F. Supp. 2d 371, 383 [S.D.N.Y. 2008] ["A professional disagreement is not an IDEA violation"]; Sch. for Language & Commc'n Dev. v. New York State Dep't of Educ., 2006 WL 2792754, at *7 [E.D.N.Y. Sept. 26, 2006] ["Meaningful participation does not require deferral to parent choice"]; Paolella v. District of Columbia, 210 Fed. App'x 1, 3, 2006 WL 3697318 [D.C. Cir. Dec. 6, 2006]).

In this case the record shows that the parent attended all of the CSE meetings at which the student's IEPs were discussed (Joint Exs. 9 at p. 5; 10 at pg. 5; 12 at pp. 5-6; 14 at p. 1) and that the parent, in general, actively participated at these meetings and made his concerns known (see e.g., Tr. pp 873, 964-72, 975-91, 998-1007; see also generally Joint Exs. 11 & 13). In addition, the record demonstrates that the district considered the parent's concerns. Among other things, for example, the hearing record establishes that (1) after the parent expressed his concerns

[22] There is no indication in the record, for example, that the draft copy of the IEE that the parent wanted to submit into evidence and copies of other students' IEP's (which raises privacy issues) in any way supported claims raised by the parent in his due process complaint notices. Moreover, and with respect to the IHO's decision to accept evidence into the hearing record from the district notwithstanding that such evidence had not been disclosed to the parent five days before the first day of hearings, the hearing record shows that the parties and the IHO discussed this issue on the record (see Tr. pp. 3-4, 12-14, 40, 387-89, 391, 403-405, 407, 436-37, 463-64, 466-67), and that IHO premised his determination to admit the evidence into the hearing record on the basis that the parent would be able to cross-examine relevant witnesses with respect to the documents on the next hearing date, which was more than five days from the date that the documents were admitted into evidence (Tr. pp. 463-64, 466-67; see also Tr. pp. 284, 502). In addition, and regarding the parent's claim that he was precluded from entering evidence regarding the student's pendency, the record reflects that both the parent and the district agreed that the July 2010 IEP represented the student's pendency placement (see Tr. pp. 741-42). Accordingly, and as discussed below, the issue of the student's pendency placement became moot, and evidence of what constituted the student's pendency placement during the course of the due process hearing was not necessary. Finally, I note that contrary to the parent's assertion, the IHO admitted the audio CD recordings referenced by the parent into evidence (Tr. pp. 360, 361, 363-64, 687; Amended Certification of Record dated June 13, 2012 with attached letter from district dated June 13, 2012; see Parent Ex. 3).

regarding the adequacy of the annual goals and accommodations in the July 2010 IEP and of the academic testing reflected in that IEP, the October 2010 CSE modified and added to the student's annual goals and also added accommodations regarding the student's agenda book and that the student would have additional time to complete work that he was not able to complete in class or at home (see e.g., Tr. pp. 108, 117, 256-58); (2) as a result of concerns the parent raised subsequent to the October 2010 CSE meeting relating to the student's performance in his classes, additional testing was done (see e.g., Tr. p 132; Joint Ex. 22) and the February 2011 CSE convened and recommended an additional accommodation with respect to the student's agenda book, an additional reading annual goal, and a more intensive level of special education services for the student (see e.g., Tr. pp. 122-23, 260; Joint Exs. 11; 12 at pp. 2, 8); and (3) during the July 2011 CSE meeting, the CSE responded positively to the parent's desire for annual goals that would facilitate closing (or narrowing) the gap between the student's previously tested performance and that of other students, as well as to the parent's desire to continue the student's resource room program and numerous of his accommodations (see e.g., Joint Exs. 13 at pp. 7-12, 17-25, 34-35, 55-58, 83-85; 14 at pp. 11-13). Thus, while I understand that the CSE did not do everything that the parent wanted (and even rejected some of his requests), this alone does not mean that he was not allowed to offer meaningful input into the student's IEP. Again, "[m]eaningful participation does not require deferral to parent choice" (Sch. for Language and Communication Development v. New York State Dep't of Educ., 2006 WL 2792754, at *7 [E.D.N.Y. Sept. 26, 2006], and the IDEA's requirement that the district provide a parent with meaningful participation in the development of an IEP does not equate to the right of a parent to dictate the provisions of a student's IEP (J.C. v. New Fairfield Bd. of Educ., 2011 WL 1322563, at *16 [D. Conn. Mar. 31, 2011]; see e.g., Tr. pp. 818, 823, 825, 831; Joint Ex. 11 at pp. 31, 40-41, 42). Accordingly, and on the record before me, I find the district provided the parent with meaningful input into the development of the student's IEPs.[23]

D. Parent's Pendency and IEP Claims

Finally, the parent raises issues in his due process complaint notices and petition relating to the student's pendency and his IEPs. For the reasons discussed below, these claims must be dismissed.

It is well settled that the dispute between the parties in an appeal must at all stages be "real and live," and not "academic," or it risks becoming moot (see Lillbask v. State of Conn. Dep't of Educ., 397 F.3d 77, 84 [2d Cir. 2005]; Patskin v. Bd. of Educ., 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]; J.N. v. Depew Union Free Sch. Dist., 2008 WL 4501940, at *3-*4 [W.D.N.Y. Sept. 30, 2008]; see also Chenier v. Richard W., 82 N.Y.2d 830, 832 [1993]; Hearst Corp. v. Clyne, 50 N.Y.2d 707, 714 [1980]; Application of a Child with a Disability, Appeal No. 07-139). In general, cases dealing with issues such as desired changes in IEPs, specific placements, and implementation

[23] Although digressing from the major points of contention in this case, I find no merit to the parent's contention that he was denied participation because the district "conflated" CT services and ICT services (Petition at ¶119). Likewise, I am unable to find that the record supports the parent's contention that he was denied meaningful participation because the district did not offer CT services in math and science, and that "[a]ll options needed to be legitimately on the table in order to have a meaningful discussion of what would be the appropriate services for [the student]" (Petition at ¶47). In fact, the hearing record reflects that the district may have been willing to give the student CT services in these subjects to settle this matter (see e.g., Tr. pp. 834-35, 840-42).

disputes may become moot at the end of the school year because no meaningful relief can be granted (see e.g., Application of the Bd. of Educ., Appeal No. 06-044; Application of the Bd. of Educ., Appeal No. 05-058; Application of a Child with a Disability, Appeal No. 04-027; Application of a Child with a Disability, Appeal No. 00-037; Application of the Bd. of Educ., Appeal No. 00-016; Application of a Child with a Disability, Appeal No. 96-37). Administrative decisions rendered in cases that concern such issues that arise out of school years since expired may no longer appropriately address the current needs of the student (see Daniel R.R. v. El Paso Indep. Sch. Dist., 874 F.2d 1036, 1040 [5th Cir. 1989]; M.S. v. New York City Dept. of Educ., 734 F.Supp.2d 271, 280-81 [E.D.N.Y. 2010]; Application of a Child with a Disability, Appeal No. 07-139; Application of the Bd. of Educ., Appeal No. 07-028; Application of a Child with a Disability, Appeal No. 06-070; Application of a Child with a Disability, Appeal No. 04-007.

In this case, there is no longer any live controversy regarding the student's pendency placement during the course of this proceeding. In general, the IDEA and the New York State Education Law require that a student remain in his or her then current educational placement, unless the student's parents and the board of education otherwise agree, during the pendency of any proceedings relating to the identification, evaluation or placement of the student (20 U.S.C. § 1415[j]; Educ. Law §§ 4404[4], 4410[7][c]; 34 CFR 300.518[a]; 8 NYCRR 200.5[m]; see Student X v. New York City Dep't of Educ., 2008 WL 4890440, at *20 [E.D.N.Y. Oct. 30, 2008]; Bd. of Educ. of Poughkeepsie City Sch. Dist. v. O'Shea, 353 F. Supp. 2d 449, 455-56 [S.D.N.Y. Jan. 18, 2005]; Application of the Dep't of Educ., Appeal No. 08-061; Application of a Student with a Disability, Appeal No. 08-050; Application of the Dep't of Educ., Appeal No. 08-009; Application of a Student with a Disability, Appeal No. 08-003; Application of a Student with a Disability, Appeal No. 08-001; Application of a Child with a Disability, Appeal No. 07-095; Application of a Child with a Disability, Appeal No. 07-062). Pendency has the effect of an automatic injunction, and the party requesting it need not meet the requirements for injunctive relief such as irreparable harm, likelihood of success on the merits, and a balancing of the hardships (Zvi D. v. Ambach, 694 F.2d 904, 906 [2d Cir. 1982]; see Wagner v. Bd. of Educ., 335 F.3d 297, 301 [4th Cir. 2003]; Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 [3d Cir. 1996]). The purpose of the pendency provision is to provide stability and consistency in the education of a student with a disability and "strip schools of the unilateral authority they had traditionally employed to exclude disabled students . . . from school" (Honig v. Doe, 484 U.S. 305, 323 [1987]; Evans v. Bd. of Educ., 921 F. Supp. 1184, 1187 [S.D.N.Y. 1996], citing Bd. of Educ. v. Ambach, 612 F. Supp. 230, 233 [E.D.N.Y. 1985]).

Here the IHO found (and the record demonstrates) that the parties agreed that the July 2010 IEP reflected the student's pendency placement for purposes of this matter (see Tr. pp. 741-42). Moreover, the record reflects that with the exception of about a month at the beginning of the 2011-12 school year, the district has been implementing the student's July 2010 IEP (see e.g., Tr. pp. 140, 739-40). Accordingly, there is no dispute regarding the student's pendency placement, and no additional relief with respect to pendency can be given. The parent's claims regarding the student's pendency placement, therefore, have become moot.[24]

[24] Further, to the extent that the parent argues that the district's implementation of the July 2011 IEP at the beginning of the 2011-12 school year somehow entitles him to relief, no support is provided for this position.

Likewise, there is no longer a live controversy relating to the parties' disputes regarding the content and/or implementation of the IEPs relative to the 2010-11 school year or the July 2011 IEP. This is because both the 2010-11 school year and the 2011-12 school year have ended, and as a consequence no meaningful relief can be granted to the student with respect to any IEP from those school years.[25] This is especially true since an administrative decision in this case, which of necessity will focus on concerns with respect to the student which relate to expired school years, may no longer appropriately address the student's current needs. Accordingly, the parent's claims with respect to the student's IEPs are moot.

Finally, and though the parent's IEP claims must be dismissed moot, I am compelled to note that even if such claims were not moot, they would still be dismissed. While I understand that the student struggled in certain academic areas and I can appreciate the parent's frustration in that regard, the record demonstrates that the district took appropriate steps to assist the student throughout the course of the 2010-2011 school year. For example, the record reflects the district relied on various evaluations which amply identified the student's various needs, including his academic, management, and executive functioning deficits (Joint Exs. 1, 6, 8, 9 at p. 4), and that the district took steps to address those needs, including classifying him as a student with a disability and providing him with various accommodations and resource room support (see e.g., Tr. pp. 92-101; Joint Ex. 9 at p. 1). The record also demonstrates that the district's CSE met a number of times during the course of the 2010-2011 school year and made numerous changes to the student's IEP, including an offer of additional instructional supports (CT services) in addition to what the student received in his resource room, to further assist the student. Thus, while the parent may have initiated many of the meetings and, further, while I understand that these changes may not have gone far enough for (or may not have been on terms favorable to) the parent, this alone is not a basis for the provision of relief. Rather, and as noted above, the IDEA 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

[25] In his request for relief to an SRO, the parent requests remedial tutoring for reading and math. I note here that ordinarily, an unresolved claim for additional services and/or a claim for compensatory education will prevent a claim from becoming moot due to the passage of time and that such a case will therefore survive a mootness challenge (see Application of the Bd. of Educ., Appeal No. 11-129; Application of a Student Suspected of Having a Disability, Appeal No. 11-044; Application of a Student with a Disability, Appeal No. 09-113; Application of a Student with a Disability, Appeal No. 08-076; Application of the Bd. of Educ., Appeal No. 8-060; Application of a Student with a Disability, Appeal No. 08-035; Application of the Bd. of Educ., 07-031; Application of a Child with a Disability, Appeal No. 02-030). However, neither the parent's May 2010 due process complaint notice nor the subsequent amendment to that due process complaint notice sets forth a claim for compensatory education and/or additional services (see Joint Exs. 16, 17). Nor did the parent's due process complaint notice relating to the student's pendency placement assert that the student should be provided with compensatory pendency services (see Joint Ex. 18; see also Application of the Bd. of Educ., Appeal No. 12-018). Further, the parent did not at any time request that his due process complaint notices be amended to include any such relevant claims; the IHO did not authorize an amendment of the parent's due process complaint notices to include such claims; and nor did the district at any time during or prior to the impartial hearing agree that such claims should be a part of the impartial hearing. Under such circumstances, I find that the parent's belated claim for additional services is not properly before me (Application of the Bd. of Educ., Appeal No. 11-088; see 20 U.S.C. § 1415[c][2][E][i][II], [f][3][B]; 34 CFR 300.507[d][3][i], [ii], 300.511[d]; 8 NYCRR 200.5[i][7][b], [j][1][ii]). Nor will it operate to prevent the parent's claims from being considered moot (see Application of a Student with a Disability, Appeal No. 09-113).

[2d Cir. 1989] [citations omitted]; see Grim, 346 F.3d at 379). On the record before me, I find that this is what the district offered the student in this case.

In light of the above I need not address the parties' remaining contentions.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
June 30, 2014

JUSTYN P. BATES
STATE REVIEW OFFICER