



The University of the State of New York

The State Education Department

State Review Officer

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No. 12-198

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 New York City Department of Education

Appearances:

Educational Advocacy Services, attorneys for petitioners, Jennifer A. Tazzi, Esq., of counsel

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for respondent, Neha Dewan, 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. Petitioners (the parents) appeal from the decision of an impartial hearing officer (IHO) which denied their request to be reimbursed for the costs of the student's tuition at Reach for the Stars (RFTS) for the 2011-12 school year.¹ The appeal must be dismissed.

II. Overview—Administrative Procedures

A party aggrieved by the decision of an IHO may 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

¹ The Commissioner of Education has not approved RFTS as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

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]).²

III. Facts and Procedural History

The parties' familiarity with the facts and procedural history of the case and the IHO's decision is presumed and will not be recited here.³ On April 14, 2011, the Committee on Special Education (CSE) convened to conduct the student's annual review and to develop an individualized education program (IEP) for the 2011-12 school year (see generally Dist. Exs. 1; 3).⁴ The April 2011 CSE recommended a 12-month school year program in a 6:1+1 special class placement at a specialized school combined with related services consisting of five 30-minute sessions per week of individual occupational therapy, three 30-minute sessions per week of individual physical therapy, four 60-minute sessions per week of individual speech-language therapy, and one 60-minute session per week of speech-language therapy in a small group (Dist. Ex. 1 at pp. 1-3, 19). Additionally, the April 2011 CSE recommended the services of a full-time, 1:1 crisis management paraprofessional and attached a behavioral intervention plan (BIP) to the IEP (id. at pp. 2, 19). In a letter dated June 15, 2011, the parents notified the district of their intention to place the student at RFTS for the 2011-12 school year because the "placement recommended was not appropriate" for the student (Parent Ex. C). By due process complaint notice dated May 15, 2012, the parents alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2011-12 school year, and further asserted that the assigned public school site was not appropriate (see generally Parent Ex. A at pp. 1-4).

On July 11, 2012, the parties proceeded to an impartial hearing, which concluded on August 2, 2012, after two days of proceedings (see Tr. pp. 1-252). By decision dated August 28, 2012, the IHO found that the district offered the student a FAPE for the 2011-12 school year, and accordingly, denied the parents' request for relief (IHO Decision at pp. 11-14).

² The administrative procedures applicable to the review of disputes 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 are well established and described in broader detail in previous decisions issued by the Office of State Review (e.g., Application of the Dep't of Educ., 12-228; Application of the Dep't of Educ., Appeal No. 12-087; Application of a Student with a Disability, Appeal No. 12-165; Application of the Dep't of Educ., Appeal No. 09-092).

³ Any additional facts necessary to the disposition of the parties' arguments will be set forth below as necessary to resolve the issues presented in this appeal.

⁴ The student's eligibility for special education programs and related services as a student with autism is not in dispute in this appeal (see 34 CFR 300.8[c][1]; 8 NYCRR 200.1[zz][1]).

IV. Appeal for State-Level Review

The parties' familiarity with the particular issues for review on appeal in the parents' petition for review and the district's answer thereto is also presumed and will not be recited here. The gravamen of the parties' dispute relates to the sufficiency of the BIP attached to the April 2011 IEP.

V. Applicable Standards

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; R.E. v. New York City Dep't of Educ., 694 F.3d 167, 189-90 [2d Cir. 2012]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 [2d Cir. 2012]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). "[A]dequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP" (Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998], quoting Rowley, 458 U.S. at 206; see T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 253 [2d Cir. 2009]). While the Second Circuit has emphasized that school districts must comply with the checklist of procedures for developing a student's IEP and indicated that "[m]ultiple procedural violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not" (R.E., 694 F.3d at 190-91), the Court has also explained that not all procedural errors render an IEP legally inadequate under the IDEA (M.H., 685 F.3d at 245; 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 procedural violations are 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]; R.E., 694 F.3d at 190; M.H., 685 F.3d at 245; A.H. v. Dep't of Educ., 394 Fed. App'x 718, 720, 2010 WL 3242234 [2d Cir. Aug. 16, 2010]; E.H. v. Bd. of Educ., 2008 WL 3930028, at *7 [N.D.N.Y. Aug. 21, 2008], aff'd, 361 Fed. App'x 156, 2009 WL 3326627 [2d Cir. Oct. 16, 2009]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007], aff'd, 293 Fed. App'x 20, 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, 142 F.3d at 130; 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 T.P., 554 F.3d at 254; P. v. Newington Bd. of Educ., 546 F.3d 111, 118-19 [2d Cir. 2008]; Perricelli, 2007 WL 465211, at *15). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]; see Rowley, 458 U.S. at 192). The student's recommended program must also be provided in the least restrictive environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 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; G.B. v. Tuxedo Union Free Sch. Dist., 751 F. Supp. 2d 552, 573-80 [S.D.N.Y. 2010], aff'd, 486 Fed. App'x 954, 2012 WL 4946429 [2d Cir. Oct. 18, 2012]; 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 includes a statement of the student's present levels of academic achievement and functional performance (see 34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]; Tarlowe v. New York City Bd. of Educ., 2008 WL 2736027, at *6 [S.D.N.Y. July 3, 2008] [noting that a CSE must consider, among other things, the "results of the initial evaluation or most recent evaluation" of the student, as well as the "'academic, developmental, and functional needs'" of the student]), establishes annual goals designed to meet the student's needs resulting from the student's disability and enable him or her to make progress in the general education curriculum (see 34 CFR 300.320[a][2][i], [2][i][A]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (see 34 CFR 300.320[a][4]; 8 NYCRR 200.4[d][2][v]; see also 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).

A board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents, if the services offered by the board of education were inadequate or inappropriate, the services selected by the parents were appropriate, and equitable considerations support the parents' claim (Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 [1993]; Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369-70 [1985]; R.E., 694 F.3d at 184-85; T.P., 554 F.3d at 252). In Burlington, the Court found that Congress intended retroactive reimbursement to parents by school officials as an available remedy in a proper case under the IDEA (471 U.S. at 370-71; see Gagliardo, 489 F.3d at 111; Cerra, 427 F.3d at 192). "Reimbursement merely requires [a district] to belatedly pay expenses that it should have paid all along and would have borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148).

The final criterion for a reimbursement award is that the parents' claim must be supported by equitable considerations. Equitable considerations are relevant to fashioning relief under the IDEA (Burlington, 471 U.S. at 374; R.E., 694 F.3d at 185, 194; M.C. v. Voluntown Bd. of Educ., 226 F.3d 60, 68 [2d Cir. 2000]; see Carter, 510 U.S. at 16 ["Courts fashioning discretionary

equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable"). The IDEA also provides that reimbursement may be reduced or denied when parents fail to challenge the appropriateness of an IEP in a timely manner, fail to make their child available for evaluation by the district, or upon a finding of unreasonableness with respect to the actions taken by the parents (20 U.S.C. § 1412[a][10][C][iii]; 34 CFR 300.148[d]; see S.W. v. New York City Dep't of Educ., 646 F. Supp. 2d 346, 362-64 [S.D.N.Y. 2009]; Thies v. New York City Bd. of Educ., 2008 WL 344728 [S.D.N.Y. Feb. 4, 2008]; M.V. v. Shenendehowa Cent. Sch. Dist., 2008 WL 53181, at *5 [N.D.N.Y. Jan. 2, 2008]; Bettinger v. New York City Bd. of Educ., 2007 WL 4208560, at *4 [S.D.N.Y. Nov. 20, 2007]; Carmel Cent. Sch. Dist. v. V.P., 373 F. Supp. 2d 402, 417-18 [S.D.N.Y. 2005], aff'd, 192 Fed. App'x 62, 2006 WL 2335140 [2d Cir. Aug. 9, 2006]; Werner v. Clarkstown Cent. Sch. Dist., 363 F. Supp. 2d 656, 660-61 [S.D.N.Y. 2005]; see also Voluntown, 226 F.3d at 69 n.9; Wolfe v. Taconic Hills Cent. Sch. Dist., 167 F. Supp. 2d 530, 533 [N.D.N.Y. 2001]).

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 R.E., 694 F.3d at 184-85; 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

Upon careful review, the hearing record reflects that the IHO correctly reached the conclusion that the district offered the student a FAPE for the 2011-12 school year, and properly denied the parents' request for relief (see IHO Decision at pp. 12-14). The IHO accurately recounted the facts of the case, addressed specific issues identified in the parents' due process complaint notice, set forth the proper legal standard to determine whether the district offered the student a FAPE for the 2011-12 school year, and applied that standard to the facts at hand (id. at pp. 2-14). The decision shows that the IHO considered the testimonial and documentary evidence presented by both parties, and further, that she weighed the evidence in reaching her conclusions (id.). Furthermore, an independent review of the entire hearing record reveals that the impartial hearing was conducted in a manner consistent with the requirements of due process and that there is no reason appearing in the hearing record to modify the determinations of the IHO (see 20 U.S.C. § 1415[g][2]; 34 CFR 300.514[b][2]). Thus, while my reasoning may have differed from the IHO's in some respects, except where otherwise indicated, the majority of the conclusions of the IHO are hereby adopted with the additional elaborations and modifications set forth herein.

Turning to the parties' dispute, the IHO found that the April 2011 CSE appropriately developed the BIP at the time of the CSE meeting based upon information provided by the parents and RFTS personnel. Under the IDEA, a CSE may be required to consider special factors in the development of a student's IEP. Among the special factors in the case of a student whose behavior impedes his or her learning or that of others, the CSE shall consider positive behavioral interventions and supports, and other strategies, to address that behavior (20 U.S.C. § 1414[d][3][B][i]; 34 CFR 300.324[a][2][i]; see 8 NYCRR 200.4[d][3][i]; see also E.H. v. Bd. of Educ., 2009 WL 3326627, at *3 [2d Cir. Oct. 16, 2009]; A.C., 553 F.3d at 172; J.A. v. East Ramapo Cent. Sch. Dist., 603 F. Supp. 2d 684, 689 [S.D.N.Y. 2009]; M.M. v. New York City Dep't of Educ., 583 F. Supp. 2d 498, 510 [S.D.N.Y. 2008]; Tarlowe, 2008 WL 2736027, at *8; W.S. v. Rye

City Sch. Dist., 454 F. Supp. 2d 134, 149-50 [S.D.N.Y. 2006]). To the extent necessary to offer a student an appropriate educational program, an IEP must identify the supplementary aids and services to be provided to the student (20 U.S.C. § 1414[d][1][A][i][IV]; 34 CFR 300.320[a][4]; 8 NYCRR 200.4[d][2][v][a], [b][3]; Piazza v. Florida Union Free Sch. Dist., 777 F. Supp. 2d 669, 673 [S.D.N.Y. 2011]; Gavrity v. New Lebanon Cent. Sch. Dist., 2009 WL 3164435, at *30 [N.D.N.Y. Sept. 29, 2009] [discussing the student's IEP which appropriately identified program modifications, accommodations, and supplementary aids and services]; P.K. v. Bedford Cent. Sch. Dist., 569 F. Supp. 2d 371, 380 [S.D.N.Y. 2008]).

However, although State regulations call for the procedure of using a functional behavioral assessment (FBA) when developing a BIP, the Second Circuit has explained that, when required, "[t]he failure to conduct an adequate FBA is a serious procedural violation because it may prevent the CSE from obtaining necessary information about the student's behaviors, leading to their being addressed in the IEP inadequately or not at all" (R.E., 694 F3d at 190). The Court also noted that "[t]he failure to conduct an FBA will not always rise to the level of a denial of a FAPE," but that in such instances particular care must be taken to determine whether the IEP addresses the student's problem behaviors (id.).

In this case, it is undisputed that the district did not conduct an FBA of the student prior to developing the student's BIP. However, at the time of the April 2011 CSE meeting, the student was attending RFTS, and conducting an FBA of the student at that time to determine how the student's behavior related to that environment has diminished value where, as here, the CSE did not have the option of recommending that the student be placed at RFTS and was charged with identifying an appropriate publicly funded placement for the student (see 8 NYCRR 200.1[r]). Regardless, the evidence in the hearing record supports a finding that the April 2011 CSE obtained and considered information sufficient to identify the student's interfering behaviors, the reasons why he engaged in the behaviors, and the strategies to address the behaviors, which resulted in a BIP that was sufficient to meet the student's needs.

While the hearing record is equivocal regarding whether RFTS shared the student's BIP with the April 2011 CSE, the hearing record suggests that there was sufficient information shared at the April 2011 CSE meeting to enable the CSE to develop a BIP that identified the student's behaviors that interfered with his learning and to enable the CSE to recommend interventions or strategies designed to decrease their occurrence (Tr. pp. 17-18, 104-05; Dist. Exs. 1 at pp. 4, 20; 3). According to the district representative, the April 2011 CSE gathered information from RFTS personnel regarding the student's "unwanted" behaviors, specifically the events that preceded the behaviors, the antecedents to the behaviors, the results of the student's interfering behaviors, what needed to be changed, and how the district could change the student's interfering behaviors (Tr. p. 17; Dist. Ex. 1 at p. 20).⁵

Here, the April 2011 CSE determined that the nature and severity of the student's behaviors seriously interfered with instruction and recommended the services of a full-time, 1:1 crisis

⁵ While irrelevant to the determinations herein, the RFTS special education teacher testified at the impartial hearing, that after the April 2011 CSE meeting, RFTS initiated the use of a behavior plan with the student in May 2012, and prior to that time, the student's behavior was managed in a way that "did not require a really specific plan" (Tr. pp. 164-65).

management paraprofessional (Tr. pp. 16, 38; Dist. Ex. 1 at pp. 2, 4). Specifically, the April 2011 CSE determined that the student could benefit from the services of a full-time, 1:1 crisis management paraprofessional to help redirect the student and "block" his self-stimulating and self-injurious behaviors (Tr. p. 38; Dist. Ex. 3). According to the district representative, the April 2011 CSE further determined that the provision of 1:1 paraprofessional services could help the student focus and experience better success in the recommended 6:1+1 special class placement (Tr. p. 38). In addition, the April 2011 CSE developed the BIP attached to the April 2011 IEP that described the student's behaviors that interfered with his learning as high anxiety, self-injurious actions (such as the student hitting his head with his hand), difficulty with transitions and changes in routines, self-stimulating behaviors (such as exposing himself, hand flapping, verbal protesting, tantrums, aggression towards others and impulsivity) (Dist. Ex. 1 at p. 20).⁶ The expectations in providing the student with a BIP were that the student would develop an increased attention span and an ability to focus to complete tasks in a timely manner, and that the student would demonstrate cooperative social behaviors towards adults and peers through modeling, prompting, and reinforcement (*id.*). Strategies recommended in the BIP to change the student's behavior included the use of prompt modeling, reinforcement of positive behaviors, and training the student in self-calming and coping techniques (*id.*). Finally, the BIP identified the supports to be employed to help the student change his behavior, including the provision of a crisis management paraprofessional, establishing contact between the parent and school, and the provision of positive reinforcement and/or praise for task completion throughout the day in addition to building the student's self-esteem (*id.*). Furthermore, the April 2011 CSE recommended management needs in the IEP, such as the provision of positive reinforcement of appropriate behaviors, close supervision, participation in short/high interest activities, and the use of a visual schedule (*id.* at p. 4).

Based on the foregoing, the April 2011 IEP and BIP provided an adequate description of the student's interfering behaviors and recommended appropriate strategies and supports to adequately address the student's behavior problems; thus, the April 2011 CSE's failure to conduct an FBA in this case prior to developing a BIP does not support a finding that the district failed to offer the student a FAPE for the 2011-12 school year.

With respect to the parents' claims relating to the assigned public school site, which the parties continue to argue on appeal, in this instance, similar to the reasons set forth in other decisions issued by the Office of State Review (e.g., Application of the Dep't of Educ., Appeal No. 14-025; Application of the Dep't of Educ., Appeal No. 12-090; Application of a Student with a Disability, Appeal No. 13-237), the parents' assertions are without merit. The parents' claims regarding the provision of related services and the functional grouping of the students in the proposed classroom (*see* Parent Ex. A at p. 3), turn on how the April 2011 IEP would or would not have been implemented, and as it is undisputed that the student did not attend the district's assigned public school site (*see* Parent Ex. C), the parents cannot prevail on such speculative claims (R.E., 694 F.3d at 186-88; *see F.L. v. New York City Dep't of Educ.*, 553 Fed. App'x 2, 9,

⁶ To the extent that the parent relies on Application of Student with a Disability, Appeal No. 11-101, to demonstrate that the BIP attached to the April 2011 IEP was inappropriate, that case is distinguishable from the instant case, because in that matter, the district failed to properly consider special factors regarding the student's behaviors and did not develop a BIP for that student, which resulted in a denial of a FAPE to that student (Application of a Student with a Disability, Appeal No. 11-101).

2014 WL 53264 [2d Cir. Jan. 8, 2014]; K.L. v. New York City Dep't of Educ., 530 Fed. App'x 81, 87, 2013 WL 3814669 [2d Cir. July 24, 2013]; P.K. v. New York City Dep't of Educ., 526 Fed. App'x 135, 141, 2013 WL 2158587 [2d Cir. May 21, 2013]; see also C.F. v. New York City Dep't of Educ., 746 F.3d 68, 79 [2d Cir. Mar. 4, 2014]; C.L.K. v. Arlington Sch. Dist., 2013 WL 6818376, at *13 [S.D.N.Y. Dec. 23, 2013]; R.C. v. Byram Hills Sch. Dist., 906 F. Supp. 2d 256, 273 [S.D.N.Y. 2012]).

VII. Conclusion

Having determined that the evidence in the hearing record supports the IHO's determinations that the district offered the student a FAPE for the 2011-12 school year, the necessary inquiry is at an end and it is not necessary to reach the issues of whether RFTS was an appropriate unilateral placement for the student or whether equitable considerations supported the parents' request for relief (Burlington, 471 U.S. at 370; M.C. v. Voluntown, 226 F.3d 60, 66 [2d Cir. 2000]).

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
 November 20, 2014

CAROL H. HAUGE
STATE REVIEW OFFICER