The University of the State of New York

The State Education Department
State Review Officer
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No. 13-168

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

Appearances:
Law Office of Erika L. Hartley, attorneys for petitioner, Erika L. Hartley, Esq., of counsel

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for petitioner, Ilana A. Eck, 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 the decision of an impartial hearing officer (IHO) which denied her requests for compensatory additional services, interim home instruction, and independent educational evaluations (IEEs). The appeal must be sustained in part.

II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (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 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]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 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

On July 30, 2012, a CSE convened to conduct the student's annual review and to develop her IEP for the 2012-13 school year (Parent Ex. I at pp. 1, 10). Finding the student eligible for special education and related services as a student with a learning disability, the CSE recommended placement in a general education classroom with 10 weekly sessions of integrated co-teaching (ICT) services in English language arts (ELA), four weekly group sessions of push-in special education teacher support services (SETSS) in math, and four weekly individual sessions of push-in SETSS in writing (id. at pp. 1, 7). The CSE also recommended the following related services: two 30-minute sessions per week of group speech-language therapy in a regular education classroom, one 30-minute session per week of individual speech-language therapy in a separate location, one 30-minute session per week of counseling in a group of three in a separate location,

and one 30-minute session per week of individual counseling in a separate location (id. at pp. 6-7). The student was additionally provided with 1:1 crisis management paraprofessional services for half of the school day (id. at p. 7). During the CSE meeting, the district also conducted a functional behavioral assessment (FBA) and developed a behavioral intervention plan (BIP) (Dist. Exs. 1; 2).

During the 2012-13 school year, while attending a district public school the student exhibited behavioral difficulties including missing class, not attending class when in attendance at school, wandering the halls, leaving school grounds, and becoming verbally aggressive with adults at the school (see, e.g., Parent Exs. K; Y at pp. 4-5).[1] Because the parent believed that the services the student received did not adequately meet her cognitive, behavioral, emotional, and social needs, the parent requested a "complete reevaluation" of the student by letter dated December 5, 2012 (Parent Ex. D). The district subsequently conducted a neuropsychological evaluation and an FBA (Dist. Ex. 3; Parent Ex. V).

On February 21, 2013, a CSE reconvened to review the student's program and consider the recommendations from the February 2013 neuropsychological evaluation (Parent Ex. E at pp. 1, 3-10, 22). At the February 2013 meeting, the CSE changed the student's eligibility classification from a learning disability to an other health-impairment (compare Parent Ex. E at p. 1, with Parent Ex. I at p. 1). The February 2013 CSE determined that the student was eligible for a 12-month program and services and recommended placement in a 6:1+1 special class in a specialized school (Parent Ex. E at pp. 16-17, 19). The IEP indicated that the 6:1+1 special class was an interim placement while an application was made for the student's placement at the Lifeline Center for Development (Parent Ex. E at p. 22; see also Tr. pp. 35-36).[2] The February 2013 CSE added three weekly sessions of adapted physical education, but otherwise continued the related services recommended in the July 2012 IEP in the same frequency and duration (Parent Ex. E at p. 16). The CSE also continued its recommendation of 1:1 crisis management paraprofessional services for half of the school day (id.).

In a final notice of recommendation (FNR) dated February 22, 2013, the district summarized the special education and related services recommended by the February 2013 CSE but did not identify the particular public school site to which the district assigned the student to attend for the remainder of the 2012-13 school year (Parent Ex. F at p. 1). The parent signed the FNR on February 22, 2013 indicating that she agreed with the recommended services (id. at p. 2). Shortly after that, according to a district school psychologist for the public school at which the student began the 2012-13 school year, the public school site contemplated by the February 2013

[1] The vast majority of the exhibits introduced into evidence at the impartial hearing were not consecutively paginated. Furthermore, as several exhibits consist of unrelated documents that are themselves not consecutively paginated, references to these exhibits will be to the pages in the order they were in when received by the Office of State Review. Counsel for the parent is requested in future to paginate documents in order to assist in review and permit greater precision in citation to exhibits.

[2] The Lifeline Center for Development has been approved by the Commissioner of Education as a preschool program with which district may contract to provide special education programs and services to preschool students with disabilities but has not been approved by the Commissioner of Education as a school with which school districts may contract to instruct students with disabilities (see Educ. Law § 4410[9][a]; 8 NYCRR 200.1[d], [nn]; 200.7; 200.20)

CSE indicated that it could not accept the student because it only accepted students with autism (Tr. pp. 35, 39). After a series of failures to find a public school placement for the student (Tr. pp. 31-40), the school psychologist referred the student to the district's central based support team (CBST) to locate a State-approved nonpublic school placement for the student (Tr. pp. 34, 39-40, 69-70).

During the search for an appropriate school for the student, it appears that the student continued to receive the services specified in the July 2012 IEP (see Tr. pp. 74-75). Following a March 11, 2013 incident where the student left the school grounds, the parent removed the student from school (Tr. pp. 165-66, 214;). On March 17, 2013, the parent sent by facsimile to the district a request that it provide home instruction to the student (Parent Ex. C).

A. Due Process Complaint Notice

In an amended due process complaint notice dated March 20, 2013, the parent requested an impartial hearing and alleged that the district failed to offer the student a FAPE for the 2012-13 school year (Parent Ex. B).[3]

With regard to implementation of the student's IEPs while she attended the public schools, the parent asserted that the district denied the student a FAPE by failing to properly identify and implement appropriate accommodations to address her needs (Parent Ex. B at p. 1). The parent further alleged that the district did not follow mandated manifestation determination review regulations in engaging in a pattern of class removals exceeding ten days, constituting an impermissible change in placement (id.). The parent also alleged that the district failed to conduct an appropriate FBA and implement an appropriate BIP (id. at pp. 1-2).

The parent also raised several allegations directly relating to the February 2013 CSE meeting and resulting IEP (Parent Ex. B at p. 2). The parent alleged that: (1) the CSE was improperly composed, and impeded the parent's participation; (2) the CSE did not consider all relevant data in developing its recommendation and did not possess current evaluative data in all areas of deficit; (3) the IEP did not address the student's reading deficits;(4) the recommended 6:1+1 special class in a specialized school placement was not appropriate to meet the student's needs; and (5) the parent was requested to accept the public school site recommendation by signing the FNR at the conclusion of the CSE meeting without first being provided a copy of the February 2013 IEP (id.).

For relief, the parent requested an interim order for home instruction, deferral to the CBST for a nonpublic school placement at public expense, annulment of the February 2013 IEP and its recommendations, and for the CSE to reconvene and recommend deferral to the CBST on the student's IEP (Parent Ex. B at p. 2). The parent also requested several IEEs at public expense, including a complete neuropsychological evaluation, an auditory processing evaluation, an occupational therapy (OT) evaluation, a physical therapy (PT) evaluation, a vision skills evaluation, a visual perceptual evaluation, and an "evaluation for dyslexia" (id.). The parent also requested compensatory services including special education tutoring, counseling, and speech-language therapy (id. at p. 3). The parent further requested that a private neutral behavioral

[3] The parent initially filed a due process complaint notice with the district on March 18, 2013 (Parent Ex. A).

specialist conduct an FBA and develop a BIP at public expense (id.). Finally, if the student were to receive a diagnosis of dyslexia pursuant to the requested IEEs, the parent requested an award of Orton-Gillingham remediation (id. at p. 3).[4]

B. Impartial Hearing Officer Decision

On May 10, 2013, an impartial hearing convened and, following three nonconsecutive days of proceedings, concluded on June 10, 2013 (Tr. pp. 1-344). On the first day of the impartial hearing, the district conceded that it had not offered the student a FAPE (Tr. p. 6). By decision dated August 1, 2013, the IHO denied the parent's requests for relief, ordered the district to conduct a psychiatric evaluation, and ordered the district to convene a CSE meeting to develop a program for the student (IHO Decision at p. 12).

Regarding the parent's request for compensatory education, the IHO found that contemporaneous text messages between the parent and district employees indicated that the student did not receive services not because she was improperly removed from class but because she "refused to attend class" (IHO Decision at pp. 9-10). The IHO further found that the student was "non-compliant with the school schedule despite having a one to one paraprofessional" (id. at 10). The IHO additionally found that there was no evidence that the school would not have provided the student with all the recommended services if the student had complied with "basic school based rules" (id. at pp. 10-11). The IHO next found that the hearing record did not support the parent's request for compensatory education subsequent to her removal of the student from the public school (id. at pp. 10-11). Specifically, the IHO found "no evidence" that the student was in danger at school (id.). Accordingly, the IHO denied the parent's request for compensatory education (id. at p. 12).[5]

Considering the parent's request for an FBA, the IHO noted the parent's testimony that she did not participate in the development of the FBA and the student's teachers were not aware of the BIP and found that the parent was in "daily contact with the student's paraprofessional" by way of text messages and a "daily behavior log" (IHO Decision at p. 11). The IHO denied the remainder of the parent's claims without further analysis (id. at p. 12). The IHO ordered the district to conduct a "complete psychiatric evaluation" and, once this evaluation was complete, the IHO ordered the district to provide the evaluation to the parent and convene a CSE meeting to develop an IEP in accordance with the evaluations and provide the student "with additional academic services as required" (IHO Decision at p. 12).

IV. Appeal for State-Level Review

The parent appeals, asserting that the IHO erred in denying her claims and in ordering the district to conduct a psychiatric evaluation of the student. At the outset, the parent alleges that the IHO's decision was based on erroneous findings of fact unaccompanied by citations to the hearing

[4] The requested forms of relief for deferral to the CBST and for an auditory processing evaluation were withdrawn during the course of the impartial hearing (Tr. pp. 166-68).

[5] The IHO also found that the parent's testimony was not credible and that the parent withheld "[i]mportant information" from the district, including information relating to the student's social/emotional and behavioral needs and a privately obtained psychiatric evaluation (IHO Decision at pp. 8-11).

record. Specifically, the parent alleges that the IHO's decision: incorrectly implied that the student received full day one-to-one paraprofessional support during the 2012-13 school year; misidentified the school the student attended for the 2012-13 school year; stated that the parent did not request that a private evaluator assess the student for dyslexia; and improperly found that the parent withheld information from the district, was not justified in removing the student from her public school placement, and failed to establish that the student did not receive services during the 2012-13 school year.

The parent also contends that the IHO erred in denying her request for compensatory relief. The parent argues that the only evidence suggesting that services were provided to the student is a document indicating that the student received 387 minutes of speech-language therapy. The parent requests compensatory additional services totaling 51 hours and 15 minutes hours of speech-language therapy, 37 hours of counseling, and 222 hours of SETSS.

The parent additionally contends that the IHO failed to address her claims that the manner in which the district conducted an FBA and developed a BIP in February 2013 was improper and, further, whether the district is obligated to conduct a new FBA and BIP due to this alleged procedural violation. The parent also argues that the February 2013 FBA and BIP were completed without parental consent as required by State regulations. Thus, the parent reiterates her request for an FBA and BIP to be conducted by a private neutral behavioral specialist at public expense.

The parent also objects to the IHO's order requiring the district to conduct a psychiatric evaluation, arguing that this examination is unnecessary and that no evidence in the hearing record supports this order. The parent further requests IEEs in the areas of OT, PT, vision skills, visual perceptual skills, and "dyslexia" at public expense. Finally, the parent argues that the IHO erred in denying the parent's request for home instruction, as this request was supported by the evidence in the hearing record.[6]

In an answer, the district argues that the IHO's decision should be upheld. The district argues that the IHO correctly found that there is no evidence the district was unable or unwilling to provide educational instruction and related services to the student. The district also contends that the IHO correctly determined that the reason the student did not receive educational services was because she refused to attend class, and eventually, because the parent removed the student from school. In any event, the district argues, the hearing record does not indicate that the student requires compensatory services.

The district also argues that the student is not entitled to IEEs at public expense because, in response to the parent's December 2012 letter requesting a "complete reevaluation", the district conducted assistive technology and neuropsychological evaluations and, following the completion of these evaluations, the parent did not indicate disagreement with either. With regard to the parent's request for a privately-conducted FBA and BIP at public expense, the district contends that this is unnecessary because the district conducted FBAs and developed BIPs in July 2012 and February 2013. Finally, the district asserts that the parent's request for home instruction is moot

[6] The parent clarifies on appeal that she has withdrawn her requests for deferral to the CBST, a CSE meeting to develop an IEP reflecting deferral to the CBST, a neuropsychological evaluation, and an auditory processing evaluation. Accordingly it is not necessary to further address these issues.

because the student is now attending a State-approved nonpublic school for the 2013-14 school year.[7]

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]).

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., 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], aff'd, 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, 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]).

[7] The parent submitted a reply to the district's answer. Pursuant to State regulations, a reply is limited to responding to any procedural defenses interposed by a respondent or to any additional documentary evidence served with the answer (8 NYCRR 279.6). In this case, the district did not interpose any procedural defenses in, or submit additional evidence with, its answer; therefore, consistent with the practice regulations, the parent was not permitted to submit a reply to the district's answer and her reply will not be considered.

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, 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).

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

A. Conduct of Impartial Hearing

During the impartial hearing, the district objected to the IHO's efforts to compile a complete record (see, e.g., Tr. pp. 38-39, 199, 301-03). Upon review of the hearing record, I find that the IHO acted well within her discretion in attempting to facilitate the development of a complete record. Such efforts are of particular significance in cases such as this where compensatory education is sought as a remedy and where the district fails to produce evidence that it provided the services recommended in the student's IEP.[8] The district's argument that the IHO was prohibited from eliciting such evidence is tantamount to inhibiting development of the hearing record. The district is not permitted to evade an IHO's attempts to develop a complete hearing record on the issues in dispute or appropriate equitable relief, especially on a matter for which the Legislature has placed the burden of production for compliance with the IDEA on the district (Educ. Law 4404[1][c]; see 8 NYCRR 200.5[j][3][vii]).[9]

B. Request for Independent Educational Evaluations

On appeal, the parent requests several IEEs at public expense. The parent requests IEEs in the areas of OT, PT, vision skills, visual perceptual, and "dyslexia." The IDEA as well as State and federal regulations guarantee parents the right to obtain an IEE (see 20 U.S.C. § 1415[b][1]; 34 CFR 300.502; 8 NYCRR 200.5[g]). IEEs are defined by State regulation as "an individual evaluation of a student with a disability or a student thought to have a disability, conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student" (8 NYCRR 200.1[z]; see 34 CFR 300.502[a][3][i]). Parents have the right to have an IEE conducted at public expense if the parent expresses disagreement with an evaluation conducted by the district and requests that an IEE be conducted at public expense (34 CFR 300.502[b]; 8 NYCRR 200.5[g][1]; see K.B. v Pearl Riv. Union Free Sch. Dist., 2012 WL 234392 at *5 [S.D.N.Y. Jan. 13, 2012] ["a prerequisite for an IEE is a disagreement with a specific evaluation conducted by the district"]; R.L. v. Plainville Bd. of Educ., 363 F. Supp. 2d. 222, 234-35 [D. Conn. 2005] [finding parental failure to disagree with an evaluation obtained by a public agency defeated a parent's claim for an IEE at public expense]). If a parent requests an IEE at public expense, the school district must, without unnecessary delay, ensure that either an IEE is provided at public expense or initiate an impartial hearing to establish that its evaluation is appropriate or that the evaluation obtained by the parent does not meet the school district criteria (34 CFR 300.502[b][2][i]-[ii]; 8 NYCRR 200.5[g][1][iv]; see also Letter to Anonymous, 56 IDELR 175 [OSEP 2010] [stating that the phrase "without unnecessary delay" permits school districts "a reasonably flexible, though normally brief, period of time that could accommodate good faith discussions and negotiations between the parties over the need for, and arrangements for, an

[8] Similarly, the district objected to the introduction of evidence relevant to the services provided to the student during the 2012-13 school year (see, e.g., Tr. pp. 11, 85-86, 89, 214). These objections were similarly improper for the reasons described above.

[9] Notwithstanding this, parents remain responsible for timely identifying the remedy they seek in the context of developing appropriate equitable relief, and IHOs may consider a parent's failure to timely identify their requested relief in reaching their determinations (M.R. v. S. Orangetown Cent. Sch. Dist., 2011 WL 6307563, at *12-*13 [S.D.N.Y. Dec. 16, 2011]).

IEE"]). If a school district's evaluation is determined to be appropriate by an IHO, the parent may still obtain an IEE, although not at public expense (34 CFR 300.502[b][3]; 8 NYCRR 200.5[g][1][v]).

On December 5, 2012, the parent wrote to the CSE requesting a "complete reevaluation" of the student (Parent Ex. D). The parent testified that two days later she sent a follow-up e-mail to a district employee requesting that specific tests, including the "TOWRE" and "WRAML", be conducted as part of a neuropsychological examination (Tr. pp. 191, 194).[10] The parent testified that this e-mail the only time she "was that specific" regarding her reevaluation request (Tr. p. 194). The parent also testified that, during a telephone conversation with a district staff member in January 2013 she informed the district of "all of the things that [she] wanted for [the student] in terms of the re-evaluation and the request" (Tr. pp. 192-93). However, there is no evidence in the hearing record indicating that the parent disagreed with any existing district evaluations or requested an IEE during this conversation.

A neuropsychological evaluation was conducted by the district over three days in January 2013, culminating in an evaluation report dated February 2, 2013 (Parent Ex. V at pp. 1, 12). The parent testified at the impartial hearing that she agreed with the February 2013 evaluation "on [the] whole", but disagreed "in part" because it did not "make a firm recommendation for what [the student] needed" (Tr. pp. 249-51). However, there is no evidence in the hearing record that the parent communicated this disagreement to the district prior to the date of the impartial hearing, or that she made specific requests for the IEEs she now seeks. To the contrary, the district school psychologist testified that none of the participants in the February 2013 CSE meeting requested that any additional evaluations be conducted (Tr. p. 62). Thus, it appears that the district honored the parent's request for a reevaluation of the student by conducting the neuropsychological evaluation and that the parent failed to communicate her disagreement with any aspect of the evaluation conducted by the district as required by federal and State regulations until the impartial hearing was already underway (34 CFR 300.502[a], [b]; 8 NYCRR 200.5[g][1]; see R.L., 363 F. Supp. 2d at 234-35).

Additionally, a CSE convened and developed a new IEP for the student in June 2013 (Pet. Ex. A). This IEP indicates that the student will attend The Karafin School (Karafin), a State-approved nonpublic school, for the 2013-14 school year and there is no indication that the parent objects to this recommendation (id. at p. 18). Therefore it is not clear whether there remains any disagreement regarding the student's needs or the need for further evaluations. Any parental disagreement with future evaluations should be communicated to the district, and the district, should it determine that further evaluative data is unnecessary to determine the student's educational needs, is reminded of its obligation to provide prior written notice consistent with State and federal regulations of that determination, the reasons for the determination, and the parent's right to request additional assessments (8 NYCRR 200.5[a]; see 34 CFR 300.305[d], 300.503; see http://www.p12.nysed.gov/specialed/formsnotices/PWN/home.html). Accordingly, the parent's

[10] Although not indicated in the hearing record, it appears that the parent was referring to the Test of Word Reading Efficiency (TOWRE), and the Wide Range Assessment of Memory and Learning (WRAML). This e-mail was not admitted into evidence at the impartial hearing, although a December 17, 2012 text message sent by the parent to the student's 1:1 paraprofessional references an e-mail consistent with this description (Parent Ex. K. at p. 13).

requests for IEEs at public expense in the areas of OT, PT, vision skills, visual perceptual, and for dyslexia, are denied (see 8 NYCRR 200.5[g][1]).

The parent also appeals the IHO's order requiring the district to arrange for a psychiatric evaluation and to reconvene a CSE to incorporate the results, arguing that this relief was not requested by either party and is not supported by the evidence in the hearing record. The parent correctly notes that this relief was not requested by either party (see Parent Ex. B). Further, the district does not dispute the parent's request that this portion of the IHO's decision be overturned on appeal (Answer at p. 6, n. 8). While I can understand why the IHO would be concerned that the student has psychiatric issues requiring care, the hearing record reflects that a psychiatric evaluation was conducted in January 2013 and provided to the district prior to the impartial hearing (Tr. pp. 53-54, 247). Thus, the IHO's conclusion that this evaluation was withheld from the district is not supported by the hearing record. Accordingly, because the parties appear to agree that this evaluation was completed and the district is in possession of it, there is no need to conduct an additional evaluation and that portion of the IHO's decision will be reversed.[11]

1. Functional Behavioral Assessment

One of the requested IEEs requires further discussion. The parent requests that the district pay for a private evaluator to conduct an FBA and develop a BIP because she was excluded from the development of the February 2013 FBA in contravention of State regulations (8 NYCRR 200.22[a][2]).[12] With regard to the parent's request for an FBA, the district has conceded that it denied the student a FAPE for the 2012-13 school year (see, e.g., Tr. pp. 6, 11, 27, 28). Thus, even assuming that the parent did not provide input into the February 2013 FBA and that this constituted a procedural violation of the IDEA, the district has already conceded the conclusion the parent urges—that the district denied the student a FAPE (see 8 NYCRR 200.5[j][4][ii]). Thus, the only remaining question is what remedy, if any, is warranted.

The student is now attending a nonpublic school at public expense and it is unclear whether she requires an FBA in this educational environment or whether a new FBA has already been conducted. Therefore, I decline to order an FBA in this matter.[13] If the parent continues to seek an FBA conducted in conformity with State regulations, she may make a written request to the district or nonpublic school or make such a request at a CSE meeting. As mentioned previously, the district should then provide the parent with prior written notice after considering such a request by a parent.

[11] I note that this was not a situation where an evaluation was requested by the IHO "as part of [the] hearing" pursuant to State regulations (8 NYCRR 200.5[g][2]).

[12] The parent also argued that her exclusion from the development of the February 2013 FBA violated the IDEA; however, this is unsupported by reference to any section of the IDEA or its implementing regulations. Indeed, it is not clear that the IDEA addresses this situation (see Letter to Janssen, 51 IDELR 253 (OSEP 2008) [observing that Part B of the IDEA and its implementing regulations "do not specifically explain what an FBA is . . . [nor] specify which individuals must conduct [an] FBA"]).

[13] Given this finding, the parent's request for a BIP must be denied as premature because a BIP is created following the development of an FBA (8 NYCRR 200.22[b]; see 8 NYCRR 200.1[mmm]).

C. Compensatory Education

Compensatory education is an equitable remedy that is tailored to meet the unique circumstances of each case and may be awarded to a student with a disability who no longer meets the eligibility criteria for receiving instruction under the IDEA (Wenger v. Canastota, 979 F. Supp. 147, 150-51 [N.D.N.Y. 1997]; see 20 U.S.C. §§ 1401[3], 1412[a][1][B]; Educ. Law §§ 3202[1], 4401[1], 4402[5]). Within the Second Circuit, compensatory education has been awarded to students who are ineligible for special education services by reason of age or graduation if there has been a gross violation of the IDEA resulting in the denial of, or exclusion from, educational services for a substantial period of time (see Somoza v. New York City Dep't of Educ., 538 F.3d 106, 109 n.2, 113 n.6 [2d Cir. 2008]; Mrs. C. v. Wheaton, 916 F.2d 69, 75-76 [2d Cir. 1990]; Burr v. Ambach, 863 F.2d 1071, 1078 [2d Cir. 1988]; Cosgrove v. Bd. of Educ., 175 F. Supp. 2d 375, 387 [N.D.N.Y. 2001]; Application of a Child with a Disability, Appeal No. 03-078 [awarding two years of instruction after expiration of IDEA eligibility as compensatory education]).

Compensatory relief may also be awarded to a student with a disability who remains eligible for instruction under the IDEA (see 20 U.S.C. §§ 1401[3], 1412[a][1][B]; Educ. Law §§ 3202[1], 4401[1], 4402[5]). Within the Second Circuit, compensatory relief in the form of supplemental special education or related services has been awarded to such students if there has been a denial of a FAPE (see Newington, 546 F.3d at 123 [stating that "[t]he IDEA allows a hearing officer to fashion an appropriate remedy, and . . . compensatory education is an available option under the Act to make up for denial of a [FAPE]"]; Student X v. New York City Dep't of Educ., 2008 WL 4890440, at *24 [E.D.N.Y. Oct. 30, 2008] [finding that compensatory education may be awarded to students under the age of twenty-one]; see generally R.C. v. Bd of Educ., 108 LRP 49659 [S.D.N.Y. Mar. 6, 2008], adopted by 50 IDELR 225 [S.D.N.Y. July 7, 2008]). Likewise, SROs have awarded compensatory "additional services" to students who remain eligible to attend school and have been denied appropriate services, if such deprivation of instruction could be remedied through the provision of additional services before the student becomes ineligible for instruction by reason of age or graduation (Bd. of Educ. v. Munoz, 16 A.D.3d 1142, 1143-44 [4th Dep't 2005] [finding it proper for an SRO to order a school district to provide "make-up services" to a student upon the school district's failure to provide those educational services to the student during home instruction]; see, e.g., Application of the Dep't of Educ., Appeal No. 12-135; Application of the Dep't of Educ., Appeal No. 11-132; Application of a Student with a Disability, Appeal No. 11-091).

The purpose of an award of additional services is to provide an appropriate remedy for a denial of a FAPE (see Newington, 546 F.3d at 123 [holding that compensatory education is a remedy designed to "make up for" a denial of a FAPE]; see also Reid v. Dist. of Columbia, 401 F.3d 516, 524 [D.C. Cir. 2005] [holding that, in fashioning an appropriate compensatory education remedy, "the inquiry must be fact-specific, and to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place"]; Parents of Student W. v. Puyallup Sch. Dist., 31 F.3d 1489, 1497 [9th Cir. 1994] [holding that "(a)ppropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA"]; Application of the Dep't of Educ., Appeal No. 11-075; Application of a Student with a Disability, Appeal No. 10-052). Accordingly, an award of additional services should aim to place the student in the position he or she would have been in had the district

complied with its obligations under the IDEA (see Newington, 546 F.3d at 123 [holding that compensatory education awards should be designed so as to "appropriately address[] the problems with the IEP"]; see also Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1289 [11th Cir. 2008] [holding that "(c)ompensatory awards should place children in the position they would have been in but for the violation of the Act"]; Bd. of Educ. v. L.M., 478 F.3d 307, 316 [6th Cir. 2007] [holding that "a flexible approach, rather than a rote hour-by-hour compensation award, is more likely to address [the student's] educational problems successfully"]; Reid, 401 F.3d at 518 [holding that compensatory education is a "replacement of educational services the child should have received in the first place" and that compensatory education awards "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA"]; Puyallup, 31 F.3d at 1497 ["There is no obligation to provide a day-for-day compensation for time missed"]; Application of the Dep't of Educ., Appeal No. 12-135; Application of the Dep't of Educ., Appeal No. 11-132; Application of a Student with a Disability, Appeal No. 11-091).

The district conceded at the impartial hearing that it failed to provide the student with a FAPE for the 2012-13 school year (see, e.g., Tr. pp. 6, 11, 27, 28). Additionally, the district does not dispute the parent's allegations that the student frequently missed class instruction. While the district argues that the parent failed to identify the precise times that the student did not receive instruction in the public school, the district's argument amounts to nothing more than an impermissible attempt to shift the burden of proof to the parent when it is allocated to the district under State law (Educ. Law. 4404[1][c]). Accordingly, under the circumstances of this case an award of compensatory additional services is appropriate to remedy the denial of a FAPE to the student.

The hearing record contains evidence of text messages between the parent and district personnel indicating that the district failed to ensure that the student remained in class (Parent Ex. K).[14] For example, a text message from the student's 1:1 paraprofessional to the parent dated November 7, 2012 indicated that the student "decided to walk around" during a class period and was found "w[a]ndering" on the first floor (id. at p. 6). A message from the special education coordinator sent to the parent on November 27, 2012 reported that the student was "running around the building all day" and only attended four classes (id. at p. 22). A January 2, 2013 text message from the student's paraprofessional indicated that the student "was walking around the building all morning" (id. at p. 14). The student was found and returned to class twice but "did not attempt to do any work," and was "still w[a]ndering" after lunch (id.).

Furthermore, the hearing record contains evidence indicating that the district was unable to keep the student in the school building. A text message from the special education coordinator dated October 24, 2012 noted that the student "came up to the door[,] saw us[,] and ran out of the court yard" (Parent Ex. K at p. 19). A series of messages between the parent and the special education coordinator on January 29, 2013 indicate that the student left the school building with

[14] The parent testified that the text messages introduced at the impartial hearing were exchanged between her and the student's 1:1 paraprofessional or the public school's special education coordinator (Tr. pp. 221-24, 256). The parent also testified that "there may be a few [text messages] with [the student's] math teacher", but it does not appear that any such messages were introduced (Parent Ex. K). Additionally, I note that the hearing record contains a single text message from the district principal (id. at p. 50).

two other students in the morning and never returned (id. at pp. 34-37). The parent testified that the student also left the school building on March 11, 2013 and that the parent only learned of this when she telephoned the school (Tr. p. 214; Parent Ex. AA at p. 3).

Also included in the hearing record is a series of text messages from the student's paraprofessional, dated November 16, 2012, informing the parent that the student "had a fight in the lunch room", that the student was "afraid of being attacked again," and that the assailant "knows where [the student] lives" (Parent Ex. K at p. 8). The only action the district took in response, according to the hearing record, was to warn the parent that "[y]ou might want to keep an eye on that situation" (id.). The portrait depicted by these messages illustrates that the district was unable to ensure that the student remained in class and received the services specified on her IEPs.

Not withstanding this evidence, the district argues, and the IHO agreed, that no evidence in the hearing record suggested that the district was unable or unwilling to provide special education and related services to the student. I do not find this argument, which essentially blames the student for the district's failure to implement her IEP, persuasive. It is particularly objectionable in light of the district's concession that it denied the student a FAPE for the 2012-13 school year. The district failed to establish by way of documentary or direct testimonial evidence that it provided SETSS and counseling services to the student, and it offered only limited evidence of the speech-language therapy it provided to the student during the 2012-13 school year (Tr. pp. 272-74, 279-82; Parent Ex. Z). Thus, without sufficient evidence in the hearing record, I cannot infer that the district delivered the services recommended in the student's July 2012 IEP.

The IHO made two additional findings as to why the student was not entitled to an award of compensatory additional services. First, the IHO found that the student's failure to attend classes barred a compensatory award.[15] While the hearing record reflects that the student had a large number of unexcused absences from school, the IHO did not indicate why she believed these absences were attributable to the student's willful non-attendance and not to the district failing to provide the student with an appropriate program (IHO Ex. A). Because the IHO's conclusion was not supported by the weight of the evidence in the hearing record and in light of the district's concession that it did not provide the student a FAPE for the 2012-13 school year, the student's failure to maintain a perfect attendance record, under these circumstances, does not support a complete denial of a remedy for the district's failure to provide the student with the services mandated by her IEP.

Second, the IHO found that the parent's removal of the student from school was unwarranted. The hearing record indicates that the parent removed the student from school on March 11, 2013 following the incidents described above and faxed a "Home Instruction Referral Form" to the district on March 17, 2013 (Parent Ex. C at pp. 1-2; see Tr. pp. 74-75, 214; Parent Ex. AA at p. 3). It appears, and the district does not dispute, that this was a district-generated form used to request home instruction. The form appears to have been fully completed (Parent Ex. C at

[15] On appeal, the parent notes that the student's July 2012 IEP mandated a 1:1 paraprofessional for half of the day. The parent argues that the IHO assumed that the paraprofessional was provided for the whole day, and that this error affected the IHO's determination. While it is unclear whether this was the case, this factual clarification is noted. I have considered the parent's remaining claims for relief regarding factual clarification and find it unnecessary to address them.

pp. 2-4). The evidence in the hearing record suggests that the district received the parent's home instruction request, and the request was faxed to the number for the home instruction office covering the student's home (id. at pp. 1-3). Although the principal at the student's school testified that she did not receive "a particular request for home instruction," she indicated that she was aware the parent removed the student from school on March 12, 2013 and further testified that she received a "notice from the parent saying that the child w[ould] remain at home" (Tr. pp. 75-76). However, other than delivering two State examinations requested specifically by the parent, the hearing record does not indicate that the district otherwise responded to this form or attempted to address the student's special education needs during the period of her nonattendance from March 12, 2013 until the end of the school year (Tr. pp. 75-76, 214-16). While the district may not have been required to simply accede to the parent's request for home instruction, inaction was not a permissible option. Accordingly, I am not persuaded by the district's argument and find that the parent's removal of the student from school does not bar a compensatory award.

Having determined that the student is entitled to some compensatory relief, it is necessary to determine what remedy is required to redress the harm to the student. The parent requests 51 hours and 15 minutes of speech-language therapy, 37 hours of counseling services, and 222 hours of SETSS for a total of 310 hours and 15 minutes of compensatory services. The district does not contest this calculation, other than to note that it was not specified in the parent's due process complaint notice.[16] It appears that the parent reached these amounts by extrapolating the amount of SETSS, counseling, and speech language-therapy services that the student would have received pursuant to the July 2012 IEP by 37 weeks. Assuming that this or a similar calculation was employed, I find that such a calculation requires a slight adjustment of the figures given that the student was eligible for special education and related services for a 10-month, or 180-day, school year.[17] I have revised the calculus accordingly, resulting in 216 hours of SETSS, 49 hours of speech-language therapy, and 36 hours of counseling, a total of 301 hours.[18]

Thus, as calculated above, the hearing record supports an award to the student of 301 hours of additional services to be provided by the district and in addition to the services provided in the student's current IEP. Given the student's enrollment in a full day, 12-month program located a significant distance from her home, the district is directed to confer with the parent to determine a time at which it may provide these services that is reasonably convenient to the student's schedule. In an attempt to give sufficient time for the district to provide these services without disrupting the

[16] Although the parent did not indicate how many hours she sought in her due process complaint notice, she explicitly requested an award of compensatory education, thus properly preserving this issue for consideration on appeal (see M.R., 2011 WL 6307563, at *12-13 [party barred from seeking compensatory education when mentioned for the first time in a brief submitted at the close of the impartial hearing]).

[17] Although the February 2013 IEP recommended a 12-month program, the parent does not contend on appeal that the student should have received educational services from the district during summer 2013 (Parent Ex. E at p. 17).

[18] The student should have received 54 hours of speech-language therapy pursuant to the July 2012 IEP; the hearing record indicates that the student received approximately five hours of speech-language therapy between September 2012 and February 2013, which has been deducted from the amount that was to have been provided (Parent Ex. Z).

student's current school schedule, the district shall have 24 months from the date of this decision to provide the additional services outlined above.

D. Home-Based Instruction

Finally, I address the parent's request for an interim order for home-based instruction. This request appears to be moot given the student's current enrollment in Karafin. 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). However, a claim may not be moot despite the end of a school year for which the student's IEP was written, if the conduct complained of is "capable of repetition, yet evading review" (see Honig v. Doe, 484 U.S. 305, 318-23 [1988]; Lillbask, 397 F.3d at 84-85; Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1040 [5th Cir. 1989]; Application of a Child with a Disability, Appeal No. 04-038).

On appeal, the parent seeks an award of home instruction on an interim basis until the student began attending Karafin in September 2013 at Karafin. Thus, as the hearing record indicates that the student was to begin attending Karafin on September 3, 2013 (Pet. Ex. A at pp. 1, 18), the parent's request has now been rendered moot. Furthermore, the hearing record reflects that the circumstances leading to the parent's request for home instruction are not subjet to the exception to mootness, capable of repetition yet evading review. The parent removed the student from her classroom and subsequently requested home instruction because of the district's failure to address the student's behaviors and provide her with the required academic instruction. Even before the date of the impartial hearing, the hearing record indicates that district staff recognized that the student required a more supportive educational setting (see Parent Exs. E; K at pp. 27-29). The student is currently enrolled in a 6:1+1 special class placement at Karafin, a State-approved nonpublic school recommended by a June 2013 CSE (Pet. Ex. A at p. 18-19, 22; see Tr. pp. 218-19). This 6:1+1 program will provide greater support than the ICT classroom the student attended during the 2012-13 school year. Thus, because the parent's request is moot by and because the hearing record reflects that the exception to mootness does not apply, there is no basis appearing in the record to grant the parent's request for home-based instruction on an interim basis. To the extent the parent was requesting this instruction to continue the student's educational program after her withdrawal from school, the equitable relief of additional services made above is adequate redress the student for the FAPE deprivation during the time she received no services.

VII. Conclusion

Given the district's concession that it denied the student a FAPE for the 2012-13 school year and upon consideration of the evidence in the hearing record, I find that the student is eligible for an award of 301 hours of compensatory additional services and reverse the IHO's findings in this regard. Additionally, the IHO's order mandating a psychiatric examination and subsequent CSE meeting must be reversed as contrary to the evidence in the record. Further, the parent's requests for IEEs are denied given her failure to express disagreement with any aspect of the

evaluations conducted by the district. Finally, the parent's request for home instruction is denied as moot.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

IT IS ORDERED that the IHO's decision dated August 1, 2013 is modified, by reversing those portions which denied the parent's request for compensatory additional services and directed the district to conduct a psychiatric evaluation of the student; and

IT IS FURTHER ORDERED that the district provide the student with 301 hours of compensatory additional services, as outlined in the body of this decision, within 24 months of the date of this decision.

Dated: **Albany, New York**
November 20, 2013

JUSTYN P. BATES
STATE REVIEW OFFICER