The University of the State of New York

The State Education Department
State Review Officer
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No. 13-237

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:
Law Office of Lisa Isaacs, PC, attorneys for petitioner, Lisa Isaacs, Esq., of counsel

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for respondent, Lisa R. Khandhar, 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 the Seton Foundation for Learning (Seton) for the 2013-14 school year. 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 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 May 14, 2013, the CSE convened to conduct the student's annual review and to develop his IEP for the 2013-14 school year (Parent Ex. C at pp. 1, 13-14, 16-17).[1] Finding that the student remained eligible for special education as a student with an intellectual disability, the May 2013 CSE recommended a 12-month school year program in a 12:1+1 special class placement at a

[1] At the time of the May 2013 CSE meeting, the student was attending a 12:1+1 special class at Seton, and he received the following related services: five 30-minute sessions per week of individual speech-language therapy, two 30-minute sessions per week of individual occupational therapy (OT), and five 45-minute sessions per week of individual physical therapy (PT) (see Parent Exs. J at pp. 1-3; K at p.1). The Commissioner of Education has not approved Seton as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

specialized school with related services consisting of five 30-minute sessions per week of individual occupational therapy (OT), five 45-minute sessions per week of individual physical therapy (PT), four 30-minute sessions per week of individual speech-language therapy, and one 30- minute session per week of speech-language therapy in a small group (id.).[2] The May 2013 CSE also recommended that the student participate in adapted physical education, and recommended special transportation services (id. at pp. 13, 15-16).[3] In addition, the May 2013 CSE recommended the use of an assistive technology device and that the student receive the services of a full-time, 1:1 health paraprofessional to assist with his feeding, ambulation and toilet training needs (id. at pp. 4, 14). The May 2013 CSE also developed annual goals with corresponding short-term objectives to address the student's needs in the areas of reading, writing, communication, mathematics, OT, PT, social/emotional skills (including play skills and peer relations), activities of daily living (ADL) (including toileting, dressing, and eating), speech-language development, safety awareness skills, adapted physical education, and the use of an augmentative communication device (see id. at pp. 5-13).

By final notice of recommendation (FNR) dated June 10, 2013, the district summarized the special education and related services recommended in the May 2013 IEP and identified the particular public school site to which the district assigned the student to attend for the 2013-14 school year (see Parent Ex. L).

On June 25, 2013, the parents visited the assigned public school site, and by letter dated June 26, 2013, the parents advised the district that it was not appropriate to meet the student's needs (see Parent Ex. M at p. 1). Based upon a tour of the assigned public school site, the parents listed several reasons for their decision to reject the assigned public school site, including that the students in the observed 12:1+1 classroom were "far higher functioning" than the student, only one other student in the classroom was diagnosed as having Down Syndrome, all of the other students in the classroom were verbal and did not use an assistive communication devices, and all of the other students in the classroom were toilet trained (id.). In addition, the parents indicated that the toilet facilities at the assigned public school site could not accommodate the student's needs, and therefore, he would need to use the nurse's office (id.). Next, the parents expressed concerns that the student would "feel excluded" because the assigned school made "distinctions" between the special education and regular education students, noting for example that a "building wide announcement announced the pledge of allegiance" but she was told by the individual conducting the tour that it was for the "general education students only" (id.). In addition, the parents noted that the therapy rooms were "very small" and had "simultaneous sessions," which would distract the student, there was "no room" for the student to run and do "other therapies," and there were "too many stairs" at the assigned public school site (id. at pp. 1-2). As a result, the parents rejected the assigned public school site, but noted that they "still hop[ed] to secure an appropriate public school program" (id. at p. 2). Finally, the parents notified the district of their intentions to "continue" the student's enrollment at Seton, and to seek public funding (id. at p. 2).

[2] The student's eligibility for special education programs and services as a student with an intellectual disability is not in dispute (see 8 NYCRR 200.1[zz][7]; see also 34 CFR § 300.8[c][6]).

[3] On June 19, 2013, the parties agreed in writing to modify the May 2013 IEP to include a transportation paraprofessional (see Parent Ex. D).

The parents also noted that they "expected all related services and transportation to continue uninterrupted" (id.).

On July 1, 2013, the parents executed an enrollment contract with Seton for the student's attendance during the 2013-14 school year beginning July 1, 2013 (see Parent Ex. O at pp. 1-4).

A. Due Process Complaint Notice

By due process complaint notice dated July 12, 2013, the parents alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2013-14 school year (see Parent Ex. A at p. 1). The parents asserted although the related services annual goals in the May 2013 IEP were "generally in line" with providers' recommendations, the "scant academic goals" did not adequately "describe goals based upon a curriculum" consistent with the student's needs (id. at p. 2). In addition, the parents repeated nearly verbatim the objections and concerns about the assigned public school site set forth in their June 26, 2013 letter to the district (compare Parent Ex. A at pp. 2-3, with Parent Ex. M at pp. 1-2). The parents maintained that Seton was an appropriate unilateral placement for the student in the least restrictive environment (id. at p. 3). As relief, the parents requested reimbursement for the costs of the student's tuition at Seton for the 2013-14 school year, or alternatively, direct payment of the same, and further requested the continued provision of related services, a paraprofessional, and transportation services (id.). Finally, the parents requested pendency services at Seton, including but not limited to, the provision of transportation and related services as recommended in the May 2013 IEP (id. at p. 4).

B. Impartial Hearing Officer Decision

On August 16, 2013, the parties proceeded to an impartial hearing, which concluded on November 12, 2013, after three days of proceedings (see Tr. pp. 1-178). In a decision dated November 21, 2013, the IHO found that the district offered the student a FAPE for the 2013-14 school year, and the parents' unilateral placement of the student at Seton was not appropriate (see IHO Decision at pp. 10-11). Accordingly, the IHO denied the parents' request for tuition reimbursement (id. at p. 11).

As an initial matter, the IHO determined that the May 2013 CSE was properly composed (see IHO Decision at p. 8). The IHO also found that the annual goals in the student's May 2013 IEP were appropriate, that the parents did not express concerns about the annual goals at the May 2013 CSE meeting, and that based upon the parents' testimony, they had not "actually disagree[d]" with the annual goals (id. at pp. 8-9). In addition, the IHO found that based upon the parents' testimony, while they did not object to the recommended 12:1+1 special class placement, the parents requested one additional 30-minute session per week of speech-language therapy for the student (id. at p. 9). Next, the IHO concluded that the "recommended program and the IEP itself" was appropriate, and further, that the "program would have provided [the student with] educational benefits if the [student] attended the public school program" (id.).

Specifically with regard to the assigned public school site, the IHO found that the evidence did not support the parents' assertion that the students in the observed classroom would be "'far higher functioning'" than the student (IHO Decision at pp. 9-10). The IHO also found that while the parents were concerned that the assigned public school site had "too many stairs," the hearing record indicated that an elevator was available at the site and the student's 1:1 health

paraprofessional could assist the student with the stairs (id. at p. 10). Addressing the parents' concern regarding the toilet facilities at the assigned public school site, the IHO noted that there was "no evidence" to indicate that the student "walking to the bathroom"—as all the other students would have done—would have a "detrimental effect on [the student's] education" or be perceived by the student as exclusionary (id.). Regarding the student's need for "1:1 help due to his distractions," the IHO noted that the parents did not provide evidence that the teacher, classroom aide, or his 1:1 health paraprofessional were not sufficient supports to provide the student with the necessary assistance (id.). Finally, turning to the parents' allegations about the delivery of related services at the assigned public school site, the IHO noted that there was "no evidence" that the student would have received his individual therapy sessions simultaneously with other students (id.).

Having determined that the district offered the student a FAPE for the 2013-14 school, the IHO went on to determine that the parents failed to establish that the student's unilateral placement at Seton was appropriate (see IHO Decision at pp. 10-11). Specifically, the IHO found that Seton did not provide the student with any related services, noting further that "such services should take place in the student's educational environment and not outside of school" (id. at p. 10). The IHO also noted that, according to testimony, Seton did not have a reading program for the "first two months or six weeks," consistent with a 12-month school year program (id. at pp. 10-11).

Finally, the IHO found that the district failed to sufficiently justify its decision to not increase the student's speech-language therapy, and ordered the district to "increase the speech services" by adding one 30-minute sessions per week of individual speech-language therapy (IHO Decision at p. 11). In addition, the IHO indicated that because this constituted his "final order," the interim order on pendency was "no longer a valid order" (id.).

IV. Appeal for State-Level Review

The parents appeal, and assert that the IHO erred in concluding that the district offered the student a FAPE for the 2013-14 school year and that the student's unilateral placement at Seton was not appropriate. Generally, the parents assert that the IHO failed to fully review the record; ignored or mischaracterized evidence; misinterpreted, prevented or imagined testimony; and misapplied or shifted the burden of proof. The parents assert that the district did not sustain its burden to establish that it offered the student a FAPE in the LRE for the 2013-14 school year because the district did not present any evidence regarding the assigned public school site, and further, because the district's sole witness had no memory of the May 2013 CSE meeting. The parents allege that the IHO improperly used evidence to bolster his finding, noting in particular that the parents and the director of Seton "did not disagree" with the IEP and that the director of Seton did not "respond to a question about particular academic goals." The parents also generally argue that the IHO's findings were against the weight of the evidence in the hearing record, and did not comport with the law.[4]

[4] The parents submitted a memorandum of law with the petition for review (see Parent Mem. of Law at pp. 1-20). To the extent that the parents or their attorney have incorporated or argued additional grounds upon which to conclude that the district failed to offer the student a FAPE for the 2013-14 school year solely within the memorandum of law, the parents and their attorney are reminded that a memorandum of law is not a substitute for a pleading (see 8 NYCRR 279.4, 279.6; see also Application of the Dep't of Educ., Appeal No. 12-131). State regulations direct that "[n]o pleading other than the petition or answer will be accepted or considered by a State

In an answer, the district responds to the parents' allegations with admissions and denials, and argues to uphold the IHO's decision in its entirety. In addition, the district asserts that equitable considerations should be presumed to be in the district's favor, as the IHO did not rule on the issue of equitable considerations. The district argues that the May 2013 IEP met all statutory requirements, and was appropriate for the student for the 2013-14 school year. The district asserts that the IHO properly found that the annual goals in the May 2013 IEP were appropriate. In regard to the parents' claim in their memorandum of law that the May 2013 CSE's review was incomplete and did not include all of the required evaluative materials, the district asserts that the claim should be dismissed, as it was not raised in their due process complaint notice. In any event, the district asserts that the May 2013 CSE reviewed sufficient information to formulate the May 2013 IEP. In response to the parents' allegations that the assigned public school site could not implement the May 2013 IEP and was otherwise not appropriate for the student, the district asserts that those allegations are speculative. Nonetheless, the district argues that the hearing record did not indicate that the assigned public school site would have deviated from implementing the May 2013 IEP in a material or substantial way. [5]

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 Sch. Dist. 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

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Review Officer except a reply by the petitioner to the answer" (8 NYCRR 279.6). Thus, any arguments included solely within the memorandum of law have not been properly asserted and I decline to consider or address them, except to the extent that they relate to allegations properly set forth in the parents' petition.

[5] On August 20, 2013, the IHO issued an interim order on pendency, which directed the district to provide the following: four 30-minute sessions per week of individual speech-language therapy; one 30-minute session per week of speech-language therapy in a small group; five 45-minute sessions per week of individual PT; four 30-minute sessions per week of individual OT; the services of a full-time, 1:1 health paraprofessional; the full-time use of an assistive technology device; round-trip special transportation; and a transportation paraprofessional (Interim IHO Decision at pp. 2-3). As neither party has appealed the IHO's interim order on pendency, that determination is final and binding, and thus, the underlying merits of that decision will not be addressed (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]).

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 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. May 2013 IEP

In this instance, although the May 2013 IEP present levels of performance and individual student needs are not a disputed issue, a discussion thereof provides context for the discussion of the issue to be resolved—the appropriateness of the academic goals set forth in the May 2013 IEP.

1. Annual Goals

To the extent that the parents assert that the IHO erred in concluding that the district offered the student a FAPE for the 2013-14 school year, their challenge, arguably, is directed at the IHO's finding that the annual goals in the May 2013 IEP were appropriate, as this was the only issued raised in the due process complaint notice and addressed by the IHO that was directly related to the appropriateness of the student's May 2013 IEP. The district rejects the parents' contentions as either not properly raised, or alternatively, the IHO's findings were correct. In this case, it is only out of an abundance of caution that the hearing record has been reviewed on this issue, and as such review supports the IHO's conclusion, the parents' contentions must be dismissed.

An IEP must include a written statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and meet each of the student's other educational needs that result from the student's disability (see 20 U.S.C. § 1414[d][1][A][i][II]; 34 CFR 300.320[a][2][i]; 8 NYCRR 200.4[d][2][iii]). Each annual goal shall include the evaluative criteria, evaluation procedures and schedules to be used to measure progress toward meeting the annual goal during the period beginning with placement and ending with the next scheduled review by the committee (8 NYCRR 200.4[d][2][iii][b]; see 20 U.S.C. § 1414[d][1][A][i][III]; 34 CFR 300.320[a][3]).

According to the May 2013 IEP, the May 2013 CSE relied upon a February 2013 health paraprofessional progress report, an April 2013 psychoeducational evaluation report, an April 2013 speech-language therapy report, a May 2013 quarterly progress report from Seton, undated OT and PT reports, and verbal reports at the May 2013 CSE meeting from the student's teacher at Seton to develop the student's May 2013 IEP (Parent Ex. C at pp. 1-4; see Tr. pp. 48-49, 51-52; Parent Exs. F-K). A review of the information available to the May 2013 CSE shows that the May 2013 IEP contained detailed academic performance and learning characteristics, social/emotional, and health and physical performance characteristics consistent with the information contained in those reports (compare Parent Ex. C at pp. 1-4, with Parent Exs. F-K). Consistent with the results of the April 2013 psychoeducational evaluation report, the May 2013 IEP noted that the student was diagnosed as having Down Syndrome, and indicated that the student's abbreviated battery IQ was within the moderately delayed range (compare Parent Ex. C at pp. 1, 3, with Parent Ex. K at pp. 5, 9). According to the April 2013 psychoeducational evaluation and the May 2013 IEP, the student exhibited global delays in the areas of adaptive functioning, as well as in the areas of academics, communication, daily living skills, socialization, and motor skills (compare Parent Ex. C at pp. 1, 4, with Parent Ex. K at pp. 4-9). The May 2013 IEP indicated that the student exhibited poor safety awareness and a limited attention span, but that he responded to redirections and prompts and was able to return to tasks at hand (see Parent Ex. C at p. 2; see also Parent Ex. K at pp. 4-5). The May 2013 IEP also noted that the student required one-on-one attention in order to retain focus on and perform tasks (see Parent Ex. C at p. 2).

In addition, the May 2013 IEP indicated that the student followed along with classroom activities and daily routines (see Parent Ex. C at p. 1). Academically, the May 2013 IEP reflected that the student could identify primary colors, verbs in pictures, and three letters; recite the alphabet; and recognize his first name in print (id.). According to the May 2013 IEP, the student could also rote count to 25, but inconsistently identified numbers 1 through 10 (id.). The May 2013 IEP also noted that the student required assistance when tracing letters and completing "free form" writing activities (id. at pp. 1-2).

In regard to the student's social/emotional performance, the May 2013 IEP characterized the student as "happy and active;" and who enjoyed interacting, greeting, and spending time with familiar fellow classmates, teachers, and therapists, as well as siblings and family (Parent Ex. C at pp. 1-2). As noted in the May 2013 IEP, the student needed improve his ability to work cooperatively for an extended period of time (id. at p. 2). In the area of communication, the May 2013 IEP indicated that the student used verbal word approximations combined with gestures, pointing, and signs to communicate his wants and needs (id. at p. 1). According to the May 2013 IEP, the student also used a Tech-Talk device to request desired items or answer simple "WH" questions (id.). In addition, the student responded appropriately to yes or no questions by shaking

his head or providing a verbal response (id.). The May 2013 IEP further indicated that the student's speech intelligibility was poor and that his limited expressive vocabulary made conversational interactions difficult (id. at pp. 1-2). Receptively, the May 2013 IEP indicated that the student identified verbs and answered "WH" questions by selecting a picture, and followed two-step directions when given cues (id. at p. 1).

In the areas of health status and physical development, the May 2013 IEP described the student's deficits in all functional areas including graphomotor skills; visual perceptual, processing, and problem solving skills; gross and fine motor skills; and ADL skills (see Parent Ex. C at pp. 2-3). According to the May 2013 IEP, the student worked to improve writing utensil grip and graphomotor skills, and his ability to navigate his environment (id.). At the time of the May 2013 CSE meeting, the student was not yet toilet trained and needed assistance with dressing, and was noted in the May 2013 IEP (id. at p. 1). In the area of feeding, the May 2013 IEP noted that the student could self-feed and use a fork with assistance (id.).

Turning to the disputed issue regarding the parents' allegations regarding the "academic" annual goals in the May 2013 IEP, a review of the May 2013 IEP shows that it included 24 annual goals and approximately 78 short-term objectives to address the student's academic, social/emotional, communication, and physical development needs (see Parent Ex. C at pp. 5-13). The special education teacher who attended the May 2013 CSE meeting testified that the CSE developed the annual goals based upon the student's performance, the teacher progress report, and discussion held at the May 2013 CSE meeting (see Tr. pp. 44-46, 51, 53, 55, 60-61). According to the special education teacher—with the involvement of the parents and the student's teacher—the May 2013 CSE believed the reading, writing, and mathematics annual goals developed at the meeting were what the student needed to address during the upcoming school year (see Tr. pp. 51-53).

Specifically, to improve his reading skills, the annual goal and short-term objectives in the May 2013 IEP targeted the student's ability to increase his reading skills to a kindergarten level by identifying and recognizing letters A-Z, identifying common sight words, sequencing two pictures, and holding a book with correct orientation (see Parent Ex. C at p. 6). Additional short-term objectives were designed to improve the student's ability to select verbally requested letters or numbers from groups of three or greater and to sequence the alphabet and numbers 1 to 10 (id.). The writing annual goal and short-term objectives targeted the student's ability to increase his writing skills to a kindergarten level by tracing the letters of his name, numbers, and all letters of the alphabet (id. at p. 7). The mathematics annual goal and short-term objectives were designed to improve the student's ability to increase his mathematics skills to a kindergarten level by showing he could rote count up to 31, identify numbers 1 to 31, and demonstrate understanding of one-to-one correspondence up to 20 (id.).

The special education teacher testified that she did not recall any disagreement with the annual goals at the May 2013 CSE meeting (see Tr. p. 53). The parents testified that the May 2013 CSE discussed the student's academic levels and that the student would start learning numbers 1 to 10, the alphabet, and identifying his name (see Tr. p. 124). When asked at the impartial hearing about their "impression" of the finalized May 2013 IEP, the parents testified that "[o]verall," they thought it was "okay," but added that after reading it, "some things" appeared "a bit too high" for the student at the time the May 2013 IEP was developed; however, the parents also acknowledged that "in time, eventually [the student] w[ould] hopefully meet those goals" (Tr. pp. 123-24).

Next, although the parents asserted in the due process complaint notice that the related services annual goals in the May 2013 IEP were "generally in line" with providers' recommendations, out of an abundance of caution and for purposes of completeness, the related services annual goals have also been reviewed, as discussed herein (see Parent Ex. A at p. 2). To address the student's gross motor needs, the May 2013 IEP included annual goals and short-term objectives to improve his ability to safely navigate the educational environment, as well as to improve his balance and strength, which the parents indicated were discussed at the May 2013 CSE meeting (see Tr. p. 128; Parent Ex. C at p. 10). To improve the student's fine motor, graphomotor, and ADL skills, the May 2013 IEP included annual goals and short-term objectives in the areas of using classroom tools, writing, toileting, feeding, and dressing (see Parent Ex. C at pp. 5-9, 12-13). In the area of communication, the annual goals and short-term objectives in the May 2013 IEP addressed the student's need to improve his ability to produce verbal utterances, understand word relationships, follow directions, and use an augmentative communication device for a variety of purposes, which the parents testified were also discussed at the May 2013 CSE meeting (id. at pp. 9-11; see Tr. pp. 124, 128). In addition, the May 2013 IEP included annual goals and short-term objectives to improve the student's ability to attend, complete classroom tasks, increase safety awareness, and exhibit appropriate play skills (Parent Ex. C at pp. 5-6, 8-9, 12).

Thus, overall, the hearing record supports a finding that the annual goals in the May 2013 IEP targeted the student's identified areas of need and provided information sufficient to guide a teacher in instructing the student and measuring his progress (see D.A.B. v. New York City Dep't of Educ., 2013 WL 5178267, at *11 [S.D.N.Y. Sept. 16, 2013]; E.F. v. New York City Dep't of Educ., 2013 WL 4495676, at *18-*19 [E.D.N.Y. Aug. 19, 2013]; D.B. v. New York City Dep't of Educ., 2013 WL 4437247, at *13-*14 [S.D.N.Y. Aug. 19, 2013]; S.H. v. Eastchester Union Free Sch. Dist., 2011 WL 6108523, at *8 [S.D.N.Y. Dec. 8, 2011]; W.T. v. Bd. of Educ., 716 F. Supp. 2d 270, 288-89 [S.D.N.Y. 2010]; Tarlowe, 2008 WL 2736027, at *9; M.C. v. Rye Neck Union Free Sch. Dist., 2008 WL 4449338, at *11 [S.D.N.Y. Sept. 29, 2008]; W.S. v. Rye City Sch. Dist., 454 F. Supp. 2d 134, 146-47 [S.D.N.Y. 2006]; Application of the Dep't of Educ., Appeal No. 12-108 [finding annual goals appropriate where the goals addressed the student's areas of need reflected in the present levels of performance]).

B. Challenges to the Assigned Public School Site

As for the next issue, the parents assert that, contrary to the IHO's finding, the assigned public school site was not the student's LRE, and was otherwise not appropriate for the student. The parents further argue that the IHO improperly shifted the burden of proof to the parents regarding the appropriateness of the assigned public school site. The district argues that any inquiry into the appropriateness of the assigned public school site is speculative because the parents unilaterally enrolled the student at Seton prior to the beginning of the 2013-14 school year.

Challenges to an assigned public school site are generally relevant to whether the district properly implemented a student's IEP, which is speculative when the student never attended the recommended placement. Generally, the sufficiency of the district's offered program must be determined on the basis of the IEP itself (R.E., 694 F.3d at 186-88). The Second Circuit has explained that the parents' "[s]peculation that the school district will not adequately adhere to the IEP is not an appropriate basis for unilateral placement" (R.E., 694 F.3d at 195; see F.L. v. New York City Dep't of Educ., 2012 WL 4891748, at *14-*16 [S.D.N.Y. Oct. 16, 2012]; Ganje v. Depew Union Free Sch. Dist., 2012 WL 5473491, at *15 [W.D.N.Y. Sept. 26, 2012] [finding the

parents' pre-implementation arguments that the district would fail to adhere to the IEP were speculative and therefore misplaced], adopted at 2012 WL 5473485 [W.D.N.Y. Nov. 9, 2012]; see also K.L. v. New York City Dep't of Educ., 530 Fed. App'x 81, 87, 2013 WL 3814669, at *6 [2d Cir. July 24, 2013]; Reyes v. New York City Dep't of Educ., 2012 WL 6136493, at *7 [S.D.N.Y. Dec. 11, 2012]; R.C. v. Byram Hills Sch. Dist., 906 F. Supp. 2d 256, 273 [S.D.N.Y. 2012] [explaining that "[g]iven the Second Circuit's recent pronouncement that a school district may not rely on evidence that a child would have had a specific teacher or specific aide to support an otherwise deficient IEP, it would be inconsistent to require evidence of the actual classroom a student would be placed in where the parent rejected an IEP before the student's classroom arrangements were even made"]; Peter G. v. Chicago Pub. Sch. Dist. No. 299 Bd. of Educ., 2003 WL 121932, at *19 [N.D. Ill. Jan. 13, 2003] [noting that the court would not speculate regarding the success of the student's services where the parent removed student from the public school before the IEP services were implemented]).

While several district courts have, since R.E. was decided, continued to wrestle with this difficult issue regarding challenges to the implementation of an IEP made before the student begins attending the school and taking services under the IEP (see D.C. v. New York City Dep't of Educ., 2013 WL 1234864, at *11-*16 [S.D.N.Y. Mar. 26, 2013] [holding that the district must establish that it can implement the student's IEP at the assigned school at the time the parent is required to determine whether to accept the IEP or unilaterally place the student]; B.R. v. New York City Dep't of Educ., 910 F.Supp.2d 670, 677-78 [S.D.N.Y. 2012] [same]; E.A.M. v. New York City Dep't of Educ., 2012 WL 4571794, at *11 [S.D.N.Y. Sept. 29, 2012] [holding that parents may prospectively challenge the adequacy of a "placement classroom" when a child has not enrolled in the school because districts are not permitted to assign a child to a public school that cannot satisfy the requirements of an IEP]), I now find it necessary to depart from those cases. Since these prospective implementation cases were decided in the district courts, the Second Circuit has also clarified that, under factual circumstances similar to those in this case, in which the parents have rejected and unilaterally placed the student prior to IEP implementation, "[p]arents are entitled to rely on the IEP for a description of the services that will be provided to their child" (P.K. v. New York City Dep't of Educ. (Region 4), 526 Fed. App'x 135, 141, 2013 WL 2158587, at*4 [2d Cir. May 21, 2013]), and, even more clearly that "'[t]he appropriate inquiry is into the nature of the program actually offered in the written plan,' not a retrospective assessment of how that plan would have been executed" (K.L., 2013 WL 3814669, at *6 [rejecting as improper the parents claims related to how the proposed IEP would have been implemented]). Thus, the analysis of the adequacy of an IEP in accordance with R.E. is prospective in nature, but the analysis of the IEP's implementation is retrospective. Therefore, if it becomes clear that the student will not be educated under the proposed IEP, there can be no denial of a FAPE due to the failure to implement the IEP (R.E., 694 F.3d at 186-88; see also Grim, 346 F.3d at 381-82 [holding that the district was not liable for a denial of a FAPE where the challenged IEP was determined to be appropriate, but the parents chose not to avail themselves of the public school program]).

As explained more recently, "[t]he Second Circuit has been clear, however, that where a parent enrolls the child in a private placement before the time that the district would have been obligated to implement the IEP placement, the validity of proposed placement is to be judged on the face of the IEP, rather than from evidence introduced later concerning how the IEP might have been, or allegedly would have been, implemented" (A.M. v. New York City Dep't of Educ., 2013 WL 4056216, at *13 [S.D.N.Y. Aug. 9, 2013]; see R.B., 2013 WL 5438605, at *17; E.F., 2013

WL 4495676, at *26; M.R. v. New York City Dep't of Educ., 2013 WL 4834856, at *5 [S.D.N.Y. Aug. 14, 2013] [finding that the argument that the assigned school would not have been able to implement the IEP is "entirely speculative"]; see also N.K. v. New York City Dep't of Educ., 2013 WL 4436528, at *9 [S.D.N.Y. Aug. 13, 2013] [citing R.E. and rejecting challenges to placement in a specific classroom because "'[t]he appropriate inquiry is into the nature of the program actually offered in the written plan'"]). Most recently, the Second Circuit rejected a challenge to a recommended public school site, reasoning that "'[s]peculation that the school district will not adequately adhere to the IEP is not an appropriate basis for unilateral placement,' and '[a] suggestion that some students are underserved' at a particular placement 'cannot overcome the particularly important deference that we afford the SRO's assessment of the plan's substantive adequacy.'" (F.L. v. New York City Dep't of Educ., 2014 WL 53264, at *6 [2d Cir. Jan. 8, 2014], quoting R.E., 694 F.3d at 195). The court went on to say that "[r]ather, the appropriate forum for such a claim is 'a later proceeding' to show that the child was denied a free and appropriate public education 'because necessary services included in the IEP were not provided in practice'" (id., quoting R.E., 694 F.3d at 187 n.3).

In view of the forgoing, the parents cannot prevail on claims that the district would have failed to implement the May 2013 IEP at the assigned public school site because a retrospective analysis of how the district would have executed the student's May 2013 IEP at the assigned school is not an appropriate inquiry under the circumstances of this case (K.L., 2013 WL 3814669 at *6; R.E., 694 F3d at 186; R.C., 906 F. Supp. 2d at 273). In this case, these issues are speculative insofar as the parents did not accept the May 2013 IEP containing the recommendations of the May 2013 CSE or the programs offered by the district and instead chose to enroll the student in a nonpublic school of their choosing (see Parent Ex. O at pp. 1-4). Furthermore, in a case in which a student has been unilaterally placed prior to the implementation of an IEP, it would be inequitable to allow the parents to acquire and rely on information that post-dates the relevant CSE meeting and IEP and then use such information against a district in an impartial hearing while at the same time confining a school district's case to describing a snapshot of the special education services set forth in an IEP (C.L.K. v. Arlington Sch. Dist., 2013 WL 6818376, at *13 [S.D.N.Y. Dec. 23, 2013] [stating that "[t]he converse is also true; a substantively appropriate IEP may not be rendered inadequate through testimony and exhibits that were not before the CSE about subsequent events and evaluations that seek to alter the information available to the CSE]).

However, under the facts presented in this case, the district is confined to defending its IEP in view of R.E. and the subsequent district court cases discussed above and it would be inequitable to allow the parents to challenge the May 2013 IEP through information they acquired after the fact. Therefore, the district was not required to demonstrate the proper implementation of services in conformity with the student's May 2013 IEP at the assigned public school site when the parents rejected it and unilaterally placed the student.[6]

[6] To the extent that the parents generally alleged that the IHO failed to fully review the record; ignored or mischaracterized evidence; misinterpreted, prevented or imagined testimony; misapplied or shifted the burden of proof, and misstated facts, a careful review of the hearing record reveals no evidence to support such allegations (see Tr. pp. 1-178; Parent Exs. A-Q). Rather, an independent review of the hearing record demonstrates that the parents were provided an opportunity to be heard at the impartial hearing, which was conducted in a manner consistent with the requirements of due process (20 U.S.C. § 1415[g]; 34 CFR 300.514[b][2][i], [ii]; Educ. Law § 4404[2]; 8 NYCRR 200.5[j]).

C. Interim Decision

Although not raised by either party, a final issue must be addressed. In the IHO decision dated November 21, 2013, the IHO indicated that because this constituted his "final order," the interim order on pendency was "no longer a valid order" (IHO Decision at p. 11). As discussed more fully below, to the extent that the IHO's missive may have resulted in either an annulment of the student's pendency order or the district's failure to continue to provide pendency services set forth in that interim decision, the IHO had no need or authority upon which to base this statement as a pendency placement either automatically continues or lapses by operation of law, and not by the discretionary determination of an administrative hearing officer.

Both 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]). The pendency provision does not mean that a student must remain in a particular site or location (Concerned Parents and Citizens for the Continuing Educ. at Malcolm X Pub. Sch. 79 v. New York City Bd. of Educ., 629 F.2d 751 [2d Cir. 1980]; Application of a Student with a Disability, Appeal No. 08-107; Application of the Bd. of Educ., Appeal No. 07-125; Application of a Child with a Disability, Appeal No. 07-076; Application of the Bd. of Educ., Appeal No. 05-006; Application of the Bd. of Educ., Appeal No. 99-90), or at a particular grade level (Application of a Child with a Disability, Appeal No. 03-032; Application of a Child with a Disability, Appeal No. 95-16).

As a matter of law, the requirements of pendency during an appeal obligates the district to continue to provide and fund the student's pendency placement through the conclusion of any administrative and/or judicial proceedings (see 20 U.S.C. § 1415[e][3]; Educ. Law § 4404[4]; 34 CFR 300.518[a]; 8 NYCRR 200.5[m]).

In this case, the IHO's unappealed interim decision dated August 20, 2013 established the student's pendency services (see Interim IHO Decision at pp. 2-3). There is no indication by the parties or in the hearing record that the IHO's pendency determination was incorrect. 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 district 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]; see 34 CFR 300.518; 8 NYCRR 200.5[m]). In addition, during the pendency of administrative and judicial proceedings, a student remains at his current educational placement, "unless the State or local educational agency and the parents or guardian otherwise agree" (20 U.S.C. § 1415[e][3]; Educ. Law § 4404[4]; 34 CFR 300.518[a]; 8 NYCRR 200.5[m]). Furthermore, in order to comply with State and federal law pendency provisions, a district's responsibility to maintain a student's pendency placement includes funding that placement (see Murphy v. Arlington Cent Sch. Dist., 297 F.3d 195 [2d Cir. 2002]; Bd. of Educ. v. Schutz, 290 F.3d 476 [2d Cir. 2002], cert. denied, 537 U.S. 1227 [2003]; see also 20 U.S.C. § 1415[j]; 34 CFR 300.518; Educ. Law § 4404[4][a]; 8 NYCRR 200.5[m]). Thus, to the extent that the district complied with the IHO's decision and terminated the provision of the student's pendency services, the district is required by operation of law to provide the student with additional educational services consistent with those directed in the IHO's interim order on pendency from the time period between the IHO's decision effectively terminating the student's pendency services—November 21, 2013—and the date of this decision.

VII. Conclusion

Having determined that the evidence in the hearing record demonstrates that the IHO correctly found that the district sustained its burden to establish that it offered the student a FAPE for the 2013-14 school year, the necessary inquiry is at an end and there is no need to reach the issues of whether the student's unilateral placement at Seton was appropriate or whether equitable considerations support an award of tuition reimbursement (Burlington, 471 U.S. at 370; M.C. v. Voluntown, 226 F.3d 60, 66 [2d Cir. 2000]).

THE APPEAL IS DISMISSED.

IT IS ORDERED that, unless the parties shall otherwise agree and to the extent it has not already done so, the district shall provide the student with: four 30-minute sessions per week of individual speech-language therapy; one 30-minute session per week of speech-language therapy in a small group; five 45-minute sessions per week of individual PT; four 30-minute sessions per week of individual OT; the services of a full-time, 1:1 health paraprofessional; the full-time use of an assistive technology device; round-trip special transportation; and a transportation paraprofessional, for a period of time not to exceed that existing between November 21, 2013 through the date of this decision.

Dated: **Albany, New York**
February 6, 2014

JUSTYN P. BATES
STATE REVIEW OFFICER