The University of the State of New York

The State Education Department
State Review Officer
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No. 14-054

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

Appearances:
Weil, Gotshal & Manges LLP, Timothy DeMasi, Esq., of counsel, attorneys for petitioner

Advocates for Children of New York, Inc., Michera Brooks, Esq., and Rebecca C. Shore, Esq., of counsel, attorneys for petitioner

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, Alexander M. Fong, Esq., of counsel, attorneys for respondent

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 his request to be reimbursed for his son's tuition costs at the Rebecca School for the 2013-14 school year. The appeal must be dismissed.

II. Overview—Administrative Procedures

The decision of an IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]). A party aggrieved by the decision of an IHO may appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings,

conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were 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]).

III. Facts and Procedural History

The parties' familiarity with the detailed facts and procedural history of the case and the IHO's decision is presumed and they will not be recited here. The Committee on Special Education (CSE) convened on April 11, 2013, to formulate the student's individualized education program (IEP) for the 2013-14 school year (see generally Dist. Ex. 4). Having determined that the student remained eligible for special education and related services as a student with autism, the April 2013 CSE recommended a 12-month school year program in a 6:1+1 special class placement in a specialized school (id. at pp. 9, 11-12). In addition, the April 2013 CSE recommended related services consisting of: two individual 30-minute counseling sessions per week; two individual 30-minute occupational therapy (OT) sessions and one 30-minute group OT session per week; two individual 30-minute physical therapy (PT) sessions per week; three individual 30-minute speech-language therapy and two 30-minute group speech-language therapy sessions per week; and one 60-minute parent counseling and training session per month (id. at p. 9).

By letter to the district, dated June 17, 2013, the parent asserted that the district failed to offer the student an appropriate placement for the 2013-14 school year and, as a result, advised the district of his intent to unilaterally place the student at the Rebecca School and seek tuition "payment" from the district (Parent Ex. E). On June 18, 2013, the district provided the parent with a final notice of recommendation in which it summarized the special education and related services recommended in the April 2013 IEP and identified the particular public school site to which the district assigned the student to attend for the 2013-14 school year (Dist. Ex. G). Subsequently, in a due process complaint notice dated September 13, 2013, the parent alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2013-14 school year on both procedural and substantive grounds and requested an impartial hearing (see Parent Ex. A).

An impartial hearing convened on November 7, 2013 and concluded on January 23, 2014 after 6 days of proceedings (Tr. pp. 1-694).[1] For reasons more fully described in his decision dated March 18, 2014, the IHO determined that the district offered the student a FAPE for the 2013-14 school year (IHO Decision at pp. 10-14). Accordingly, the IHO denied the parent's request for tuition reimbursement (id. at pp. 13-14).

IV. Appeal for State-Level Review

The parties' familiarity with the particular issues raised for review on appeal in the parent's petition and the district's answer thereto is presumed and they will not be recited here. The essence of the parties' dispute on appeal is (a) whether the recommended placement in a 6:1+1 special class

[1] On November 12, 2013, the IHO issued an interim decision, which found that the Rebecca School constituted the student's pendency (stay-put) placement and ordered the district to pay the student's tuition at the Rebecca School upon proof of services having been rendered (see Interim IHO Decision; Parent Ex. B).

offered sufficient adult support to meet the student's identified needs, and (b) whether the assigned school could implement the student's April 2013 IEP.

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 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 [2d Cir. 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 [2d Cir. 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 [2d Cir. 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 [2d Cir. 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. 6:1+1 Special Class Placement

Turning to the issue of whether the recommended 6:1+1 special class placement was appropriate, the essence of the parties' dispute on appeal is whether the student required more adult support than a 6:1+1 special class could provide. Specifically, the parent asserts that the student frequently "dysregulates" during the day, requiring 1:1 adult support. The parent also alleges that, during periods when the student is regulated, he requires 2:1 adult support in order to make progress. Although the IHO relied on information not available to the April 2013 CSE in making his determination, the hearing record supports his ultimate conclusion that the district offered the student a FAPE for the 2013-14 school year.[2] The evidence in the hearing record shows that the recommended 6:1+1 special class placement in a specialized school, with related services, was designed to confer educational benefits on the student.

The April 11, 2013 CSE consisted of the district school psychologist, who also participated as the district representative, a district special education teacher, an additional parent member, the parent and the Rebecca School social worker (Dist. Ex. 5 at p. 1). The student's Rebecca school classroom teacher participated by telephone (id.). In developing the April 2013 IEP the CSE considered the student's December 2012 interdisciplinary report of progress provided by the Rebecca School that included performance updates and reports of progress from the student's teacher, occupational therapist, speech-language pathologist, and psychologist (Tr. pp. 216-17, 224, 255, 603-04; Parent Ex. M). In addition, the parent testified that he verbally presented information from a privately-obtained February 2013 neuropsychological evaluation to the April 2013 CSE, although the evaluation report was not physically available at the time of the meeting (Tr. pp. 253-55, 600-02; Parent Ex. P).[3] A careful review of the December 2012 Rebecca School

[2] The IHO found that, although the April 2013 IEP did not specify that the student would receive 1:1 support, the "private school teacher conceded that the student [did] not need 1:1 support all the time" (IHO Decision at p. 13). To further support his finding, the IHO noted that, according to the hearing record, the student "[was] remaining regulated for longer periods of time and [was] showing an emerging ability to monitor his own regulation" (id.). The IHO also found, as per the student's private school reports, that the student made progress while attending the private school and showed an increased ability to remain regulated (id.). In this instance, the IHO cited a private school December 2011 progress report, a December 2012 update report, a June 2013 progress report, a December 2013 progress report, and a February 2013 neuropsychological report to support his determination (id.; Parent Exs. K; M-P). Although these exhibits were included in the hearing record, the April 2013 CSE only considered the December 2012 update report provided by the Rebecca School and the parent's verbal presentation of the February 2013 neuropsychological evaluation, completed by a private psychologist, in the development of the April 2013 IEP (Tr. pp. 216-18, 224, 253-55, 600-04; Parent Exs. M at pp. 1-2, P at pp. 1-5). In addition, the IHO relied on evidence regarding the student's performance during the 2013-14 school year, which was also not available to the April 2013 CSE (see IHO Decision at p. 13).

[3] The district school psychologist stated that the February 2013 neuropsychological evaluation report was received by the district after the April 2013 CSE meeting and that she reviewed the report and circulated it to other CSE members prior to finalizing the student's 2013 IEP (Tr. pp. 238-41, 253-54). She acknowledged that the CSE did not reconvene to discuss the report and could not recall if any changes were made to the IEP as a result of the report (Tr. pp. 241; 254).

progress report and the April 2013 IEP shows that the April 2013 IEP accurately identified the student's present levels of performance, identified the resources necessary to address the student's management needs, and included annual goals consistent with the information provided by the student's then-current providers (compare Dist. Ex. 4 at pp. 1-9, with Parent Ex. M at pp. 1-12).

The April 2013 IEP noted that the student communicated his wants and needs verbally, showed an increased ability to stay regulated for longer periods throughout the day, and engaged in longer and richer back and forth interactions with preferred adults and peers (Dist. Ex. 4 at p. 1). The April 2013 IEP indicated the student required co-regulating strategies such as "deep pressure squeezes" and adult support to maintain modulation (id.). The April 2013 IEP also reported that the student's reading instruction was provided in short intervals to reduce the student's frustration, maintain the student's regulation, engagement, and sustained attention (id.). The April 2013 IEP noted that, according to the parent, the student advocated more and "tantrumed" less, but required reminders to remain seated when he had food in his mouth (id.). The April 2013 IEP also indicated the student required verbal or gestural redirection during group reading to attend or re-join the group but the frequency of this support had decreased (id.). Socially, the April 2013 IEP indicated the student needed moderate adult support to sustain interactions with his peers and to negotiate during turn-taking activities (id. at p. 2). The April 2013 IEP also noted the student struggled with maintaining self-regulation over a wide range of emotion (id.). Regarding the student's physical needs, among other things, the April 2013 IEP indicated that the student continued to struggle to maintain self-regulation and may require assistance with his grasp and clothing fasteners (id.).

To address the student's management needs the April 2013 IEP identified the necessary human and/or material resources, including providing the student with processing time, a small class setting, scaffolding and cuing, sensory breaks, a structured predictable class setting, repetition of skills and concepts, and reminders for attention (Dist. Ex. 4 at p. 2). Additionally, the April 2013 IEP recommended verbal and gestural redirection for the student, sensory input throughout the day, modeling, adult support for peer interactions and use of movement activities to support student engagement (id. at p. 3). Further, the district school psychologist stated that in a 6:1+1 special class placement, the teacher or the paraprofessional in the room could provide the sensory interventions the student required during the student's periods of "dysregulation" (Tr. pp. 247-48).

The April 2013 IEP also established 13 goals to address the student's needs, such as increasing his regulation throughout the day, sustaining longer interactions, and increasing his literacy and math skills (Dist. Ex. 4 at pp. 4-6). Additionally, the April 2013 IEP included goals to support the student's independent life skills and safety awareness (id.). The April 2013 IEP identified OT goals to facilitate the student's need to integrate sensory information, improve motor planning skills, increase organizational skills, and develop more independence (id. at p. 6). The April 2013 IEP addressed the student's communication needs with goals targeting his pragmatic skills, comprehension of language in various contexts, effectiveness of his verbal communication, and normalization of his oral motor sensory processing (id. at pp. 7-8). To further meet the student's needs, the April 2013 CSE recommended that he be provided with related services including individual counseling two times per week, one group and two individual OT sessions per week, two group and three individual speech-language therapy sessions per week, two individual PT sessions per week and parent counseling and training once per month (id. at p. 9).

Although the April 2013 IEP does not explicitly provide for 1:1 adult support of the student, State regulations provide that a 6:1+1 special class placement is designed for students "whose management needs are determined to be highly intensive, and requiring a high degree of individualized attention and intervention" (8 NYCRR 200.6[h][4][ii][a] [emphasis added]). The district school psychologist, who participated in the April 2013 CSE meeting, indicated that the CSE recommended a 6:1+1 special class placement because one of the issues raised at the CSE meeting was the student's need for adult support and a 6:1+1 special class would provide that support (Tr. pp. 231-32). The district school psychologist testified that in a 6:1+1 special class placement the teacher as well as the paraprofessional would be able to provide the sensory inputs the student required under the direction of the occupational therapist and that the occupational therapist would work with the classroom staff as well as with the student (Tr. p 232).

The hearing record shows that during the 2012-13 school year the student attended an 8:1+3 special class at the Rebecca School (see Parent Ex. M). According to the December 2012 Rebecca School progress report, within the 8:1+3 ratio the student showed an "increased ability to maintain regulation during challenging moments such as when he is upset or when an adult sets a limit" (Parent Ex. M at p. 1). Further, the December 2012 Rebecca School progress report noted that "[n]ow when he is upset, [the student] may express how he is feeling by saying phrases such as 'I'm mad,' 'Go away,' or 'Leave me alone' rather than running out of the classroom or knocking over objects such as chairs" (id.). The December 2012 Rebecca School progress report indicated that the student required an adult to provide co-regulating strategies such as modeling deep breathing, using soothing affect and "deep pressure squeezes" to help the student maintain regulation and communicate during challenging situations (id.). When "dysregulated", the Rebecca School progress report indicated the student benefited from increased processing time, decreased verbal language, additional space, calm and soothing affect and sensory support such as "deep pressure squeezes" or "brushing" (id. at pp. 1-2). As noted in the December 2012 Rebecca School progress report the student showed an increase in his ability to remain regulated in the classroom during semi-structured activities, transitional times and during challenging or less familiar times requiring less adult support to remain engaged in activities (id. at p. 2). Further, the December 2012 Rebecca School progress report noted the student showed an increase in his ability to "remain regulated and engaged for a greater part of the day" while more consistently "opening and closing circles of communication" (id.).

The April 2013 CSE meeting minutes reflect that the CSE discussed the student's progress and his needs in relation to peer interactions, sensory regulation, and motor skills, as well as the parent's concerns for the student (Parent Ex. J at p. 1-5). Noting the student's need for highly intensive management needs, individualized attention and intervention, the district recommended a 6:1+1 special class placement with related services for the student for the 2013-14 school year (id. at p. 1,3, 7).[4,5]

[4] To the extent that the parent remains concerned regarding the level of adult support the student requires they are free to raise it for discussion at the next CSE meeting. Once, having done so, the district is required to provide the parent with prior written notice explaining why the CSE's proposed or refused to take action and a description of each evaluation or report upon which the decision was based.

[5] Having recommended a 6:1+1 special class placement there is nothing to preclude the district from providing

Based on the foregoing, the evidence in the hearing record demonstrates that, in light of the student's needs as identified in the April 2013 IEP, including his need for individual support for self-regulation, the April 2013 CSE's decision to recommend a 12-month school program in a 6:1+1 special class placement in a specialized school with strategies to address the student's management needs, goals to address the identified weaknesses, and related services, was reasonably calculated to enable the student to receive educational benefits for the 2013-14 school year. As such the hearing record contains no basis for disturbing the IHO 's finding that the district offered the student a FAPE for the 2013-14 school year.

B. Assigned Public School Site

In this case the parent alleges that the assigned school could not implement the student's April 2013 IEP because: it could not provide the student with sensory inputs throughout the day; the school did not have a sensory gym as specified in the April 2013 IEP; the "program" used at the assigned school involved a significant amount of independent work the student was not capable of doing; the environment at the assigned school provided "significant visual stimuli" which would overstimulate the student; and the designated 6:1+1 classroom would not provide the student with enough adult support (Parent Ex. A at pp. 3-4). The IHO determined that the parent's allegations regarding the assigned school were speculative and as such were "barred" by Second Circuit precedent (IHO Decision at p. 13). On appeal, the parent asserts the IHO erred in failing to consider whether the assigned public school site was capable of implementing the April 2013 IEP.

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 R.B. v. New York City Dep't of Educ., 2014 WL 5463084, at *4 [2d Cir. Oct. 29, 2014]; F.L. v. New York City Dep't of Educ., 553 Fed. App'x 2, 9 [2d Cir. 2014] [holding that "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'"], quoting R.E., 694 F.3d at 187 n.3; K.L. v. New York City Dep't of Educ., 530 Fed. App'x 81, 87 [2d Cir. 2013] [holding 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"], quoting R.E., 694 F.3d at 187; P.K. v. New York City Dep't of Educ., 526 Fed. App'x 135, 141 [2d Cir. 2013] [holding that "[p]arents are entitled to rely on the IEP for a description of the services that will be provided to their child"]; 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"]; see also C.F. v. New York City Dep't of Educ., 746 F.3d 68, 79 [2d Cir. 2014] [holding that while parents are entitled to participate in the

additional adult support to the student if it is determined to be appropriate to meet the student's needs.

determination of the type of educational placement their child will attend, the IDEA confers no rights on parents with regard to school site selection]; 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]; C.L.K. v. Arlington Sch. Dist., 2013 WL 6818376, at *13 [S.D.N.Y. Dec. 23, 2013]).

In view of the foregoing, the IHO's determination that the parent's claims regarding the assigned public school site are barred as speculative should not be disturbed because a retrospective analysis of how the district would have implemented the student's April 2013 IEP at the assigned public school site is not an appropriate inquiry under the circumstances of this case (K.L., 530 Fed. App'x at 87; R.E., 694 F.3d at 186; R.C., 906 F. Supp. 2d at 273). Here, it is undisputed that the parent rejected the assigned public school site—which the student never attended—and instead chose to enroll the student in a nonpublic school of his choosing without giving the district the opportunity to implement the student's IEP at the assigned school (see Parent Exs. E at p. 1; Q). Therefore, the district is correct that the issues raised and the arguments asserted by the parent with respect to the assigned public school site are speculative.

VII. Conclusion

In summary, I find that after a thorough review of the hearing record and due consideration, there is no reason to disturb the finding of the IHO that the district established that it offered the student a FAPE for the 2013-14 school year. Having determined that the district 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 Rebecca School was an appropriate unilateral placement or whether equitable considerations weighed in favor of the parent's request for relief.

I have considered the parties' remaining contentions and find it is unnecessary to address them in light of my determinations above.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
January 9, 2015

JUSTYN P. BATES
STATE REVIEW OFFICER