The University of the State of New York

The State Education Department
State Review Officer
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No. 14-127

Application of the BOARD OF EDUCATION OF THE KATONAH-LEWISBORO UNION FREE SCHOOL DISTRICT for review of a determination of a hearing officer relating to the provision of educational services to a student with a disability

Appearances:
Thomas, Drohan, Waxman, Petigrow & Mayle, LLP, attorneys for petitioner, James P. Drohan, Esq., of counsel

The Law Office of Deborah A. Ezbitski, attorneys for the respondents, Deborah A. Ezbitski, 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 district) appeals from the decision of an impartial hearing officer (IHO) which found that it failed to offer an appropriate educational program to respondents' (the parents') son and ordered it to reimburse the parents for their son's tuition costs at the Prospect School (Prospect) for the 2012-13 and 2013-14 school years. The appeal must be sustained.

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

The student presents with an extended history of developmental delays and has received multiple diagnoses, including: attention deficit hyperactivity disorder (ADHD); motor-based coordination disorder; mixed receptive-expressive language disorder; cognitive disorder, not otherwise specified (NOS); hypotonia; oral motor and global motor apraxia; and language based learning disorder (Parent Exs. F at pp. 2, 12; AA at pp. 3, 7). In addition, a 2006 neurological evaluation revealed "abnormalities in subcortical structures" and "deep white matter loss" (Parent Exs. F at p. 2; AA at p. 3). With regard to the student's educational history, the hearing record

shows that the student began attending Prospect for the 2011-12 school year, the student's third grade (Tr. p. 967; see Dist. Ex. 2 at p. 1).[1]

On June 14, 2012, the CSE convened to conduct the student's annual review and to develop an IEP for the 2012-13 school year (Dist. Ex. 2 at p. 1). Finding the student eligible for special education as a student with multiple disabilities, the CSE recommended a 12-month extended school year program in a 12:1+2 special class placement in a community school (id. at pp. 1, 17-18; see Tr. pp. 135-36). In addition, the June 2012 CSE recommended the weekly provision of the following related services: one 30-minute small group counseling session; four 30-minute speech-language therapy sessions, two individual and two in a small group of 5:1; and three 30-minute occupational therapy (OT) sessions, one individual, one in a small group of 3:1, and one in a small group of 5:1 (Dist. Ex. 2 at pp. 1, 17). Parent counseling and training was also recommended for a single one-hour session per month (id.). During the summer portion of the school year, the CSE recommended a daily three-hour 12:1+1 special class placement in a public school with the following related services: two weekly small group (5:1) speech-language therapy sessions and one weekly small group (5:1) OT session (id. at pp 1, 18-19). The June 2012 CSE also recommended supplementary aids and program modifications for the student (including modified curriculum, classwork, and homework; refocusing and redirection; alternative format for worksheets and assignments; and access to a word processor), testing accommodations, and 25 annual goals with corresponding short-term objectives (id. at pp. 10-19).

By letter to the parents, dated June 19, 2012, the district "follow[ed] up" on the parents' concerns raised during the June 2012 CSE meeting (see Parent Ex. TTT at pp. 1-2). As to the parents' request that the CSE consider of out-of-district and board of cooperative educational services (BOCES) placement options, the district indicated that, based on information regarding the student's needs, the CSE "recommended a special class in district program as the least restrictive environment [(LRE)] to meet [the student's] needs" (id. at p. 1). The district also indicated that the parents' concerns would be reflected in the meeting minutes (id.). In response to the parents' "comments" that they were uninformed about the summer portion of the 2012-13 school year, the district pointed to previous communications between the parents and the district about the summer program (id. at p. 2). The district also pointed to previous communications from the parents requesting that district evaluations not take place until after June 14, 2012, in response to the parents' statements that the CSE meeting took place too late (id.). The letter also indicated that a profile of the students in the proposed classroom was attached and, further, referred the parents to websites for more information about student performance in the district (id.).

By letter dated August 9, 2012, the parents rejected the June 2012 IEP and notified the district of their intent to unilaterally place the student at Prospect for the 2012-13 school year (see generally Parent Ex. VVV). Specifically, the parents expressed their position that the CSE meeting notes, recorded in the "comments" section of the IEP, were incomplete in that they did not adequately describe, among other things, the parents' disagreement with the student's disability classification category (id. at pp. 1, 6). The parents objected to the CSE's recommendation of a special class and the denial of the parents' request for exploration of out-of-district and BOCES

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

placement options (id. at pp. 1, 2). The parents also specifically objected to the 12:1+2 special class placement ratio, stating that the recommendation was "untenable as an option for [the student]" and was identical to the student's placement during the 2009-10 and 2010-11 school years, wherein the student showed "no progress and some regression" (id. at p. 2). In contrast, the parents noted the student's "significant academic progress" during the 2011-12 school year in his unilateral placement (id. at p. 3). Further, they indicated the student's improved success with "intensive 1:1 therapies" at Prospect, in contrast to the student's success with related services while he attended a district public school, during which time the parents believed that they were required to supplement the services outside of school in order for the student to make progress (id. at p. 4). The parents also asserted objections to the functional grouping of the students in the district public school and, in particular, noted the student's past negative experiences with classmates with "behavioral issues" in a district special class (id. at p. 3). As to the summer portion of the student's 2012-13 school year, the parents indicated that the particulars of such program were not "adequately communicated to [them] in a timely manner" and reiterated their intent to seek reimbursement for the costs of the student's tuition at Prospect for July and August 2012 (id. at p. 1, 7; see id. at pp. 4-5). The parents further denied any implication in a letter from the district that they caused a delay in the scheduling of the June 2012 CSE meeting (id. at p. 1; see id. at pp. 5-6).

On August 20, 2012, the parents signed an enrollment contract with Prospect for the student's attendance during the 2012-13 school year (see Parent Ex. M at pp. 1-2).

Subsequently, on several occasions during the 2012-13 school year, the parents and the district continued to communicate regarding the parents' concerns and the intention to reconvene the CSE in order to consider out-of-district placement options pursuant to the parents' request and to consider privately obtained evaluations, if available (see Parent Exs. WWW-ZZZ).

On March 14, 2013, the parents signed an enrollment contract with Prospect for the student's attendance during the 2013-14 school year (see Parent Ex. BBBB at pp. 1-2; see also Tr. p. 966).

On May 31, 2013, the CSE convened to conduct the student's annual review and to develop an IEP for the 2013-14 school year (Dist. Ex. 1 at p. 1). The "comments" relative to the May 2013 CSE meeting indicated that the "CSE recommend[ed] continuation of all services and programs as per the [June 2012] IEP, except to change the location of the special class to the [m]iddle [s]chool" (id. at p. 2). Consistent with this, the recommendations in the May 2013 IEP for the special class placement, related services, and supports essentially mirrored that of the June 2012 IEP (compare Dist. Ex. 1 at pp. 1, 15-17, with Dist. Ex. 2 at pp. 1, 17-19). Likewise, the annual goals for student also mirrored the IEP for the previous school year (compare Dist. Ex. 1 at pp. 9-15, with Dist. Ex. 2 at pp. 10-17).

By letter dated June 24, 2013, the parents rejected the May 2013 IEP and notified the district of their intent to enroll the student at Prospect for the 2013-14 school year at public expense (see Parent Ex. L at p. 2). The parents asserted that their "concerns and objections" were ignored at the May 2013 CSE meeting and that the CSE did not discuss the student's present levels of performance, annual goals, or the development of the IEP (id. at p. 1). The parents additionally objected to an "insufficient provision of individual support for instruction" in the May 2013 IEP

(id. at p. 1). The parents also objected to the May 2013 CSE's representation that the student would be enrolled in sixth grade for the 2013-14 school year based on chronological age, whereas, at the time, the student was attending a fourth grade classroom at Prospect (id.). In this regard, the parents argued that the student's transition to the sixth grade "would be extremely counter-productive for [the student] academically and . . . inappropriate from a social/emotional perspective" (id.). Finally, the parents asserted that after visiting the proposed classroom on June 13, 2013, the parents believed it was the "same class" the student had previously attended, "too restrictive" and not comprised of students with similar needs (id. at pp. 1-2).

A. Due Process Complaint Notice

In an amended due process complaint notice dated August 23, 2013, the parents alleged that the district failed to offer the student with a FAPE for the 2012-13 and 2013-14 school years (Parents Ex. A at p. 2).

With respect to the June 2012 CSE, the parents asserted that their concerns, although noted, were dismissed by the CSE, thereby depriving them of meaningful participation in the development of the student's IEP (Parent Ex. A at pp. 2-3). Further, they alleged that their requests for the district to consider out-of-district placement options were ignored (id. at p. 4). The parents also claimed that the June 2014 was procedurally defective because the district's evaluation was not sufficient, the CSE did not follow the opinions of professionals with direct knowledge of the student's needs, and an additional parent member was not in attendance (id. at p. 3). The parents claimed that the June 2012 IEP did not accurately reflect the student's performance by failing to indicate the extent and nature of his deficits and needs (id. at p. 3). The parents alleged the annual goals set forth in the June 2012 IEP lacked specificity, were inadequate in scope, failed to indicate a baseline, and failed to address the student's unique needs (id.). The parents also alleged that the recommended 12:1+2 special class placement was too large for the student and offered inadequate instruction, support, supervision, and services for the student (id. at pp. 2, 4). The parents also argued that the 12:1+1 special class did not offer sufficient opportunity for 1:1 instruction or attention (id. at p. 4). The parents alleged further that the public school would not have been able to implement the June 2012 IEP and would not have employed appropriate functional grouping in the proposed classroom, citing their observations that the proposed classroom included students with behavioral issues (id.).

Turning to the 2013-14 school year, the parents alleged that the May 2013 IEP was procedurally and substantively defective (Parent Ex. A at p. 5). The parents claimed that the district did not present them with reports prior to the CSE meeting, no additional parent member and no representative from the student's nonpublic school attended the CSE meeting, and the district deprived the parents of an opportunity to participate in the development of the student's IEP and predetermined the student's placement recommendations (id.). As to the May 2013 IEP, the parents asserted that the proposed recommendations were not supported by the evaluative information available to the CSE (id. at p. 6). They further claimed that the May 2013 IEP did not adequately or sufficiently identify the student's present levels of performance (id. at p. 5). The parents further alleged that the annual goals in the May 2013 IEP were the same as the goals contained in the June 2012 IEP and the "same deficiencies remained" (id.). For reasons similar to those set forth relative to the June 2012 IEP, the parents also contended that the recommended 12:1+2 special class placement was not appropriate for the student (id. at p. 6). The parents also

set forth similar claims with regard to the public school but added their concern that the proposed classroom for the student's 2013-14 school year was too restrictive (id. at p. 7).

Finally, the parents claimed that Prospect constituted an appropriate unilateral placement for the student and asserted that he made progress there (Parent A at p. 7). They further alleged that they made notifications of their intent to unilaterally place the student at Prospect and in no way impeded the district from offering the student a FAPE (id.). For relief, the parents requested reimbursement of the costs of the student's tuition at Prospect for the 2012-13 and 2013-14 school years (id.).

B. Impartial Hearing Officer Decision

An impartial hearing convened on October 30, 2013 and concluded on April 2, 2014, after seven days of proceedings (see Tr. pp. 1-1168). In a decision dated July 7, 2014, the IHO determined that the district failed to offer the student a FAPE for the 2012-13 and 2013-14 school years, that the unilateral placement at Prospect was appropriate for the student for the 10-month portion of the 12-month school year, and that equitable considerations weighed in favor of the parents' request for relief (IHO Decision at pp. 18-24).

Turning first to the June 2012 CSE, the IHO determined that the lack of an additional parent member at the CSE meeting did not rise to the level of a denial of FAPE (IHO Decision at p. 19). In addition, the IHO found that the annual goals set forth in the June 2012 IEP were appropriate (id.). However, the IHO found that the recommended 12:1+2 special class placement with related services of speech language therapy, OT, and counseling for the ten month portion of the school year was insufficient to meet the "significant academic needs" of the student and resulted in a denial of FAPE for the 2012-13 school year (id. at p. 18).[2] The IHO found that the 12:1+2 special class placement was too large a class to meet the student's individual needs (id. at p. 19). The IHO further determined that the student required 1:1 instruction which would not be possible in a 12:1+2 special class (id.).

With respect to the 2013-14 school year, the IHO found that, since the student's progress was slow, it was not necessarily inappropriate for the annual goals set forth in the June 2012 IEP to continue in May 2013 IEP (IHO Decision at p. 20). However, the IHO found that the annual goal could not be implemented in the recommended 12:1+2 special class because "the class was too large to provide [the student] with the necessary one-to-one and small group instruction throughout the day (id.). Thus, the IHO similarly determined that the 12:1+2 special class placement recommended on the student's May 2013 IEP was insufficient for the same reasons set forth under his analysis for the previous school year (id. at pp. 19, 20).

Turning to the particular classrooms for the disputed school years, the IHO found that the student would have been appropriately grouped with the other students in the public school (IHO Decision at p. 20).

[2] The IHO did not address the appropriateness of the 12:1+1 special class placement and related services recommended on the June 2012 IEP for the summer portion of the 2012-13 school year.

As to the student's unilateral placement at Prospect, IHO found that the student made steady progress in reading and slow steady progress in mathematics, along with "significant gains socially" (IHO Decision at p. 22). Further, the IHO reviewed evidence that Prospect delivered the student instruction in mathematics and literacy in a group of two, utilized the Orton-Gillingham and Wilson reading programs, and provided for flexibility in the lessons and opportunities to shift from one activity to another in accordance with the student's focus and receptivity (id.). The IHO determined that Prospect provided the student with a specially designed program to meet his unique needed (id. at p. 23).

On the other hand, the IHO determined that the summer session at Prospect was offered to both regular and special education students and was not specially designed for the student (IHO Decision at p. 23). Further, the IHO noted the testimony of the director of curriculum and assessment at Prospect that the summer session was not intense enough for the student (id.).

The IHO also found that the parents provided the district with the requisite notice of the student's unilateral placement, cooperated with the CSE process by participating in meeting, providing the CSE with copies of private evaluations, and communicating with the district even after the student enrolled at Prospect (IHO Decision at pp. 23, 24). Therefore, the IHO found that the equitable considerations weighed in favor of the parents requested relief (id. at p. 24). Accordingly, the IHO awarded the parents tuition reimbursement for the 2012-13 and 2013-14 school years, with the exception of reimbursement for the summer portions of the 12-month school years (id. at p. 23, 24).

IV. Appeal for State-Level Review

The district appeals, seeking to overturn the IHO's determinations that the district failed to offer the student a FAPE for the 2012-13 and 2013-14 school years, that the unilateral placement at Prospect was appropriate, and that equitable considerations weighed in favor of the parents' requested relief.

The district argues that the recommended placement was reasonably calculated for the student to receive a meaningful education benefit. To support its argument, the district points to progress the student made in a 12:1+1 special class placement during the 2010-11 school year, which was the last school year the student attended a district public school. The district also takes the position that the recommendations of the private evaluators support the 12:1+2 special class placement. Further, the district claims that the IHO ignored critical aspects of the evaluators' reports.

As to the unilateral placement, the district argues that the parents failed to meet their burden to establish Prospect was an appropriate placement for the student. The district cites that none of the student's private school teachers testified at the impartial hearing. Moreover, the district argues that the nonpublic school's administrator only made broad statements with respect to the student's progress. The district contends that the "gap" between the student and his non-disabled peers widened during the time he attended Prospect. Also, the district alleges that the student was not grouped with students of similar needs and abilities.

Finally, the district argues that the equitable considerations do not weigh in favor of the parents' requested relief because the parents failed to cooperate with the district and withheld their evaluator's prognosis that the "gap" between the student and non-disabled peers would widen over time. Moreover, the district alleges that the parents had no intention of placing the student in a district public school for the 2013-14 school year.

In an answer, the parents respond to the district's petition by denying the allegations raised therein and asserting that the IHO correctly determined that the district failed to offer the student a FAPE for the 2012-13 and 2013-14 school years. Specifically, the parents deny the district's allegation that the student was making progress in his prior district public school placement, asserting that the progress he was allegedly making "never translated" to homework or real life applications. The parents deny the allegations that the district would have been able to replicate the activities described at Prospect. The parents further argue that the student would have been inappropriately grouped in the proposed classroom because the other students were "very needy" and that it would have been "very difficult" for a teacher to meet the needs of all the children.

The parents deny the allegations that Prospect was not an appropriate placement for the student, arguing that the private school was tailored to meet the student's need for a small, highly structured classroom for both the 2012-13 and 2013-14 school years. The parents also note that the student received related services in an individual setting, aside from speech-language therapy which was in a small group. The parents also deny that there was no evidence that the private school grouped the students with students of similar needs. The parents deny the allegations that the student was not making progress at Prospect based on the results of standardized testing. The parents assert that the record demonstrates that standardized testing did not accurately measure the student's abilities due to his complicated profile of strengths and weaknesses.

As to equitable considerations, the parents deny that they did not consider a district public school placement. The parents also assert that the hearing record contains evidence of their cooperation with the CSE process. The parents also deny that they did not share the prognosis of their evaluators with the district.

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, 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 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

Initially, the parents do not appeal the IHO's adverse determinations with respect to the composition of the June 2012 CSE, the appropriateness of the annual goals contained in the IEPs at issue, the functional grouping of the students in the proposed classroom, or the appropriateness of the summer program at Prospect. Therefore, these determinations have become final and binding upon the parties and will not be reviewed on appeal (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; see J.F. v New York City Dept. of Educ., 2012 WL 5984915, at *6 [SDNY Nov. 27, 2012]).

A. June 2012 IEP—12:1+2 Special Class Placement

Turning to the June 2012 IEP, while the accuracy of the student's present levels of performance included in the IEP is not in contest, a discussion thereof helps illuminate the issue in dispute—the appropriateness of the recommended 12:1+2 special class placement.

According to the hearing record, the June 2012 CSE considered a variety of updated district evaluation reports, which included April 2012 OT and PT evaluations, a psychological reevaluation and an educational evaluation, both of which were completed in May 2012, and a June 2012 speech-language evaluation (see Tr. p. 47; Dist. Ex. 2 at pp. 2, 4, 6-7; see generally Dist. Exs. 8-10; Parent Exs. N-O).[3, 4] The hearing record also shows the June 2012 CSE considered a progress report prepared by the student's Prospect teacher (Tr. pp. 56-57, 173; Dist. Ex. 2 at p. 7; see generally Parent Ex. H). In addition, the IEP also reflects consideration of two neuropsychological evaluations completed in November/December 2009 and November/December 2010, respectively (Dist. Ex. 2 at pp. 4, 7; Parent Exs. F at p. 15; AA at p. 15).

The June 2012 IEP offers an extensive list of test scores, including a portion of those obtained during the November/December 2009 neuropsychological evaluation (Dist. Ex. 2 at pp. 2-7; see generally Parent Ex. AA). The student's present levels of performance set forth in the June 2012 IEP also present brief descriptions of the student's then-current functioning as reflected in the evaluations before the CSE (see Dist. Exs. 2 at pp. 4, 7-9; see generally Dist. Exs. 8-10; Parent Exs. N-O).[5] Specifically, the June 2012 IEP details the student's performance on the Wechsler Intelligence Scale for Children–Fourth Edition (WISC-IV), the Vineland Adaptive Behavior Scales-Second Edition (Vineland-II), the Woodcock-Johnson III Tests of Achievement (WJ-III ACH), the Clinical Evaluation of Language Fundamentals-4 (CELF-4), and Test of Language Development-Primary: Fourth Edition (TOLD-P: 4) (Dist. Exs. 2 at pp. 4-8; 8 at pp. 2-5; 9; 10 at pp. 3-7). The June 2012 IEP also catalogs the multiple diagnoses offered in the November/December 2010 neuropsychological evaluation report (Dist. Ex. 2 at pp. 4, 7; Parent Ex. F at p. 15). Further, the IEP includes a section entitled "comments" that provides evidence of the CSE meeting proceedings, including summaries of the oral contributions of CSE members (Dist. Ex. 2 at pp. 2-3).[6]

[3] The hearing record also indicates that a social history update was prepared prior to the CSE meeting; however, this report was not included in the hearing record (see Tr. p. 58; Dist. Ex. 2 at p. 4).

[4] According to the district director of special services, the district completed these evaluations in response to feedback from the parents regarding the student's progress at Prospect (Tr. p. 174).

[5] Many of the entries in the present levels of performance are annotated with a set of initials and a date, which appear to correlate with the name of a CSE member and the month and/or year of the CSE meeting during which the information was added to the student's IEP (see Dist. Ex. 2 at pp. 7-9).

[6] The comments section of the June 2012 IEP also noted that, during the preceding year, the student's classification had been changed from speech or language impairment to intellectual disability and documented the parents' disagreement with the latter classification and the CSE's subsequent recommendation to change the student's disability classification to multiple disabilities (Dist. Ex. 2 at p. 3). The comments section also describes the parents' disagreement with the recommended placement for the 2012-13 school year (id.).

Within the category of academic achievement, functional performance, and learning characteristics, the June 2012 IEP states that, during the May 2012 administration of the WISC-IV, the student earned a full scale IQ "within the extremely low range" (Dist. Exs. 2 at pp. 6, 7; 10 at p. 3). In her report, the school psychologist, who authored the psychological reevaluation report, asserted that due to differences "between the composites of the Full Scale IQ, this score should be deemphasized," information that is reflected in the June 2012 IEP (Dist. Exs. 2 at pp. 2, 7; 10 at pp. 3, 6). According to information presented in the comments section of the IEP, the school psychologist described the student as "persistent and compliant with all testing" and highlighted a discussion of inconsistencies related to student's performance on measures of intellectual functioning (Dist. Ex. 2 at p. 2).[7]

The June 2012 IEP also incorporated aspects of the May 2012 psychological reevaluation regarding the student's adaptive functioning as measured by the Vineland-II, which the school psychologist opined reflects "what the student actually *does*, rather than what he or she is *able* to do" (Dist. Ex. 10 at p. 5 [emphasis in the original]; see Dist. Exs. 2 at p. 7). The June 2012 IEP reflects the Vineland-II results, which were based upon input from the parents and the student's teacher, indicating the student's overall adaptive functioning appeared within the "adequate range," with coping, domestic and daily living skills identified as relative personal strengths, and communication as a relative weakness (Dist. Exs. 2 at pp. 2, 5, 7; 10 at p. 5-7).

The June 2012 IEP also draws from the May 2012 educational evaluation to describe the student's academic achievement as assessed with the WJ-III (Dist. Exs. 2 at pp. 4, 6-8; see generally Dist. Ex. 8). In addition, the IEP includes input from the student's teacher at Prospect, as well as information from the student's progress report from Prospect (Tr. pp. 47, 56-58, 139, 291; Dist. Exs. 2 at pp. 7-8; see generally Parent Ex. H). According to the present levels of performance, the student demonstrated significant weaknesses in mathematics (calculations and problem solving), reading decoding and comprehension, and spelling and required "extensive prompting in order to demonstrate basic skills," findings that were presented in the May 2012 educational evaluation (Dist. Exs. 2 at pp. 6-8; 8 at pp. 2-5). The IEP also described challenges the student experienced with regard to distractibility and impulsivity, behaviors noted in the educational evaluation report, as well as in both neuropsychological evaluation reports (Dist. Ex. 2 at p. 8; see Parent Exs. F at pp. 2-4, 11; AA at p. 7). As indicated in the IEP, according to the student's teacher at Prospect, the student continued to work on generating ideas for writing and experienced an ongoing struggle with spelling (Dist. Ex. 2 at p. 8; Parent Ex. H at p. 7). The comments section of the June 2012 IEP indicated that, according to the student's teacher, although the "act of writing [was] cognitively challenging," the student had "a solid base of 50 high

[7] The student's performance during the May 2012 administration of the WISC-IV was significantly lower than the level of success he exhibited during the 2009 and 2010 neuropsychological evaluations (compare Dist. 10, with Parent Exs. F; AA). Specifically, the student's performance on each of the composites scales of the WISC-IV during the 2009 and 2010 evaluations was at or above the level rendered during the May 2012 psychological reevaluation (Dist. Ex. 10 at p. 3; Parent Exs. F at p. 18; AA at p. 15). For example, the 2009 and 2010 neuropsychological evaluations reported a verbal comprehension composite standard score of 87 (19th percentile), which is within the "low average" range, whereas the May 2012 psychological evaluation reported a verbal comprehension composite standard score of 73 (4th percentile), which is in the "borderline" range (id.). Further, both neuropsychological reports indicated the student's perceptual reasoning skills were within the borderline range (standard score of 73) as opposed to being in the "extremely low range" as indicated in the May 2012 psychological reevaluation report (id.).

frequency words he c[ould] spell" (Dist. Ex. 2 at p. 2). The June 2012 IEP also reported information from the student's teacher that the student "participated in [third] grade [general] education classes for social studies, lunch, physical education, recess and specials" (id.).

As outlined in the social development section of the present levels of performance, the student presented as a "happy and social boy," a description that is in keeping with descriptions found in various evaluation reports, as well as the parents' testimony (Dist. Exs. 2 at p. 9; see Tr. pp. 799-800, 808, 827; Dist. Ex. 10 at p. 1; Parent Exs. F at p. 12; H at p. 7; N at p. 1). According to the comments section of the June 2012 IEP, the student's teacher reported to the CSE that the student's strengths were "within the social realm, both with peers and adults" (Dist. Ex. 2 at p. 2).

The physical development section of the present levels of performance repeated some aspects of the April 2012 OT and PT evaluations, as well as additional information that was provided at the CSE meeting, as documented in the comments section of the IEP (Dist. Ex. 2 at pp. 2, 9; Parent Exs. N at p. 1; O at p. 2). Specifically, the present levels of performance detailed the student's difficulties with fine and gross motor skills, below average balance and coordination, and legible but inconsistent handwriting (id.). While the June 2012 IEP stated that the student exhibited deficits in fine and gross motor skills and "need[ed] to improve core strength and . . . dynamic balance and coordination," the comments section of the IEP indicated that "physical therapy services [were] not recommended" at that time (Dist. Ex. 2 at pp. 2, 9; see Parent Ex. O at p. 2).

The student's management needs, as depicted in the June 2012 IEP, indicated the need for a "high degree of extra teacher support due to [the student's] significant weaknesses in the areas of working memory, visual perceptual motor integration, communication, academics, motor skills, attention and coordination" (Dist. Ex. 2 at p. 9). However, the IEP also indicated the student "t[ook] daily medication to enhance attention and focus" and a positive response to the medication was noted (id. at p. 9).

With the evaluative information and resulting description of the student's needs discussed above, the June 2012 CSE received additional input from the participants at the June 2012 CSE meeting, and thereafter recommended that the student receive a 12-month school year program in a 12:1+2 special class placement in a public school, along with the related services outlined above (see Dist. Ex. 2 at pp. 1, 17-19; see Tr. pp. 135-36).

In addition, the June 2012 CSE recommended a modified curriculum with an "alternative worksheet format," refocusing and redirection to help the student remain on task, the provision of graphic organizers, and access to a word processor/computer (Dist. Ex. 2 at pp. 17-18). The June 2012 IEP also recommended access to "co-writer," a computer program to assist the student "generate written language" (Tr. p. 413; Dist. Ex. 2 at p. 17). Test modifications were also recommended, including having directions read and explained, extended time, and access to a word processor/computer (Dist. Ex. 2 at p. 19). The June 2012 IEP also indicated the student would be eligible to participate in the State alternate assessments (id. at p. 19).

A careful review of the hearing record demonstrates the IHO erred in determining the recommended special education program "was insufficient to meet [the student's] significant academic needs" and therefore denied the student's right to a FAPE (IHO Decision at p. 18). State

regulations provide that special classes containing "students whose management needs interfere with the instructional process, to the extent an additional adult is needed within the classroom to assist in the instruction of such students, shall not exceed 12 students" (8 NYCRR 200.6[h][4][i]). Furthermore, state regulations provide that such a classroom would include "one or more supplementary school personnel" (id.). In turn, "management needs" are defined as "the nature of and degree to which environmental modifications and human or material resources are required to enable the student to benefit from instruction" (8 NYCRR 200.1[ww][3][i][d]). A student's management needs shall be determined by factors which relate to the student's (a) academic achievement, functional performance and learning characteristics; (b) social development; and (c) physical development (see 8 NYCRR 200.1[ww][3][i][a]-[d]).

As detailed above, the June 2012 CSE determined that the student presented with significant cognitive, speech-language, academic, and visual/motor delays, which are not in dispute (Dist. Ex. 2 at pp. 2-3; see Dist. Exs. 8-10; Parent Exs. N-O). However, according to the hearing record, the student was also described as a motivated, cooperative, hardworking student with a relative strength in adaptive behavior skills (Dist. Exs. 2 at p. 2; 9 at p. 3; 10 at pp. 2, 5-6). In addition, while multiple evaluators noted the student's difficulties with attention and distractibility, the hearing record also includes multiple references to the student's positive response to prompts and cues to help him refocus, as well a positive response to daily medication for attention and focus (Dist. Exs. 2 at pp. 2, 9; 9 at p. 3; 10 at p. 3). Furthermore, according to information in the comments section of the IEP, the student's private school teacher stated the student was "able to persevere through difficult tasks and d[id] not shut down" and the parents reported that the student was not only able to complete his homework independently, it was his preference to do so (Tr. p. 936; Dist. Ex. 2 at p. 2).

The IHO relied upon the November/December 2009 neuropsychological evaluation report to conclude that the 12:1+2 special class offered the student an insufficient amount of support for the student (IHO Decision at p. 19). Although the evaluation recommends an 8:1+1 special class for the student (Parent Ex. AA at p. 8), the increase in class size is in some respects mitigated because both are options are special class settings and there are an equal ratio of students to adults in the 8:1+1 setting as the recommended 12:1+2 setting (one adult to every four students). This is especially so given the IHO's reasoning, in part, that the larger class size would be inappropriate for the student due to his attention difficulties, whereas, in contrast, the hearing record in this case shows that the student's distractibility was manageable through recommended strategies and medication (see Dist. Exs. 2 at pp. 2, 9; 9 at p. 3; 10 at p. 3).[8]

The IHO also pointed out the recommendation in the November/December 2009 neuropsychological evaluation that the student required small group instruction and 1:1 tutorials and declined to conclude that the student would receive sufficient 1:1 instruction in a 12:1+2 special class (see IHO Decision at pp. 8-9; Parent Ex. AA at p. 8). The IDEA "does not require a [CSE] to adopt the particular recommendation of an expert; it only requires that that recommendation be considered in developing the IEP" (J.C.S. v. Blind Brook-Rye Union Free Sch. Dist., 2013 WL 3975942, at *11 [S.D.N.Y. Aug. 5, 2013]; see T.G. v. New York City Dep't

[8] I do not intend to suggest that the district can require a student to take medication, but a district is required to take into account a student's medication if it has an effect upon the services that the student requires in order to receive a FAPE.

of Educ., 973 F. Supp. 2d 320, 340 [S.D.N.Y. 2013]; G.W. v. Rye City Sch. Dist., 2013 WL 1286154, at *19 [S.D.N.Y. Mar. 29, 2013], aff'd 554 Fed. App'x 56 [2d Cir. Feb. 11, 2014]; C.H. v. Goshen Cent. Sch. Dist., 2013 WL 1285387, at *15 [S.D.N.Y. Mar. 28, 2013]; T.B. v. Haverstraw-Stony Point Cent. Sch. Dist., 933 F. Supp. 2d 554, 571 [S.D.N.Y. 2013]; Watson v. Kingston City Sch. Dist., 325 F. Supp. 2d 141, 145 [N.D.N.Y. 2004] [noting that even if a district relies on a privately obtained evaluation to determine a student's levels of functional performance, it need not adopt wholesale the ultimate recommendations made by the private evaluator], aff'd, 142 Fed. App'x 9, 2005 WL 1791533 [2d Cir. July 25, 2005]). Furthermore, no other more recent information before the June 2012 CSE emphasizes the student's need for an educational setting with such additional supports (see generally Dist. Exs. 8-10; Parent Exs. N-O).

Finally, I do not find the parties' assertions with regard to the student's progress or lack thereof during the 2010-11 school year persuasive either in support of or against the 12:1+2 special class, given that the district program the student attended during that school year was different from that recommended on the June 2012 IEP and another school year had elapsed in-between since the student attended the district program (compare Dist. Ex. 2, with Parent Ex. X).[9]

Based upon the foregoing, evidence in the hearing record demonstrates that the June 2012 CSE's recommendation for a 12:1+2 special class placement, along with a substantial array of related services and other supports, as well as a modified curriculum, was tailored to meet the student's individual special education needs.

B. May 2013 IEP—12:1+2 Special Class Placement

As with the June 2012 IEP, the present levels of performance included in the May 2013 IEP are not at issue. Briefly, according to the hearing record, the May 2013 CSE considered the student's progress reports from Prospect, as well as a classroom observation at the student's nonpublic school conducted by the district special education teacher (see Dist. Ex. 1 at pp. 2-3; see generally Dist. Ex. 13). The hearing record also indicates the parents provided the CSE with a classroom observation report prepared by the neuropsychologist who had evaluated the student in 2010 (see Tr. p. 81; Dist. Ex. 1 at p. 2; see generally Parent Ex. J). The present levels of performance section of the May 2013 IEP includes standardized test results from the Gray Oral Reading Tests-5th Edition and KeyMath-Revised, both of which were administered in May 2013, as well as the test results that had been previously itemized in the June 2012 IEP (Dist. Ex. 1 at p. 3-6).

As with the June 2012 IEP, the May 2013 IEP included a comments section that served to memorialize the May 2013 CSE meeting proceedings, albeit with a significantly truncated level of

[9] The fact that a student has not made progress under a particular IEP does not automatically render that IEP inappropriate, nor does the fact that an IEP offered in a subsequent school year which is the same or similar to a prior IEP render it inappropriate provided it is based upon consideration of the student's current needs at the time the IEP is formulated (see Thompson R2–J Sch. Dist. v. Luke P., 540 F.3d 1143, 1153–54 [10th Cir.2008]; Carlisle Area Sch. v. Scott P., 62 F.3d 520, 530 [3d Cir. 1995]; S.H. v. Eastchester Union Free Sch. Dist., 2011 WL 6108523, at *10 [S.D.N.Y. Dec. 8, 2011]; D.D-S. v. Southold Union Free Sch. Dist., 2011 WL 3919040, at *12 [E.D.N.Y. Sept. 2, 2011], aff'd, 506 Fed. App'x 80, 2012 WL 6684585 [2d Cir. Dec. 26, 2012]; J.G. v. Kiryas Joel Union Free Sch. Dist., 777 F. Supp. 2d 606, 650 [S.D.N.Y. 2011]; Schroll v. Bd. of Educ. Champaign Cmty. Unit Sch. Dist. #4, 2007 WL 2681207, at *3 [C.D. Ill. Aug. 10, 2007]).

detail (Dist. Ex. 1 at p. 2). According to the comments, the district special education teacher, in whose classroom the student would have been enrolled had he attended the district program, described to the CSE the curriculum she offered and noted the incorporation of technology, the differentiation of instruction, and an emphasis on fostering functional life skills (id. at p. 2).

Based upon their consideration of the evaluative information described above, the May 2013 CSE recommended "continuation of all services and programs as per the [June 2012] IEP, except to change the location of the special class to the [m]iddle [s]chool" (Dist. Ex. 1 at p. 2). When queried about the decision to recommend the same services and placement as the preceding school year, the district director of special services asserted that because "the information [they] received from . . Prospect . . . did not indicate that [the student] had changed [academically]" and "in the absence of any new information, [the CSE] continued what [they] had recommended at the last evaluations" (Tr. pp. 174-75). The district director of special services added that the student's needs "were accommodated within the IEP" (Tr. p. 176). Specifically, the May 2013 CSE recommended a 12-month school year program in a 12:1+2 special class (Dist. Ex. 2 at pp. 1, 15, 17). The May 2013 CSE also recommended the weekly provision of a variety of related services, described above (id. at pp. 1, 15-16). Thus, consistent with the testimony of the district director, the evidence in the hearing record does not indicate that the May 2013 CSE had before any new information that would warrant a change in the 12:1+2 special class recommendation.

In light of the foregoing, as well as much of the applicable reasoning set forth above with respect to the June 2012 IEP, the evidence in the hearing record indicates that the May 2013 CSE's recommendation for a 12:1+2 special class placement, coupled with a significant amount of related services, a modified curriculum, and other supports was adequate to enable the student to receive educational benefit.

VII. Conclusion

Having determined that the evidence in the hearing record establishes that the district offered the student a FAPE in the LRE for the 2012-13 and 2013-14 school years, the necessary inquiry is at an end, and there is no need to reach the issue of whether Prospect was an appropriate unilateral placement or whether the equitable considerations support an award of tuition reimbursement.

THE APPEAL IS SUSTAINED.

IT IS ORDERED that that the IHO's decision dated July 7, 2014 is modified by reversing those portions which found that the district failed to offer the student a FAPE for the 2012-13 and 2013-14 school years and which ordered the district to pay for the cost of the student's tuition at Prospect.

Dated: **Albany, New York**
October 9, 2014

JUSTYN P. BATES
STATE REVIEW OFFICER