The University of the State of New York

The State Education Department
State Review Officer
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No. 14-132

Application of the BOARD OF EDUCATION OF THE BEDFORD CENTRAL 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:
Keane & Beane, PC, attorneys for petitioner, Stephanie M. Roebuck, Esq., of counsel

Law Offices of Regina Skyer & Associates, LLP, attorneys for respondents, Jesse Cole Cutler, 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') daughter and ordered it to reimburse the parents for the costs of the student's tuition at the Children's Academy for the 2013-14 school year. 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

During the 2012-13 school year, the student attended a 12:1+3 special class placement ("LEAP I") in a district public school, where she also received adapted physical education and related services consisting of speech-language therapy (individually and in a small group), physical therapy (PT) (individually and in a small group), occupational therapy (OT) (individually and in a small group), and social skills training in a small group (see Dist. Ex. 13 at pp. 1, 12-13).[1]

On March 20, 2013, the CSE convened to conduct the student's annual review and to develop an IEP for the 2013-14 school year (see Dist. Exs. 11 at pp. 2-3; 43 at p 2; see also Dist.

[1] The evidence in the hearing record reveals the student attended a special class placement at the district public school—also referred to as the "LEAP I" program—for the 2009-10, 2010-11, 2011-12, and 2012-13 school years (see Dist. Exs. 13 at p. 1; 15 at pp. 1, 12; 17 at p. 1; 18 at p. 1; 20 at p. 1; 21 at p. 1; 22 at p. 1). Typically, students placed in the LEAP I program attended for "three to four years" (Tr. p. 55). The district's LEAP program offered an "integrated, unified, coordinated, wraparound program for students with global developmental delays and cognitive delays," which spanned kindergarten through fifth grade (see Tr. p. 31).

Ex. 23). At the March 2013 CSE meeting, the CSE discussed the student's progress and began a review of the annual goals (see Dist. Exs. 11 at p. 2; 43 at p. 2). However, the parents requested "access to the proposed goals" for their review and to allow "their private providers" an opportunity to review the same (id.). The CSE chairperson explained how the CSE developed the annual goals and advised the parents that upon receiving the IEP, they could request "another meeting" if they had any concerns about the annual goals (Dist. Ex. 11 at p. 2). Thus, the March 2013 CSE reviewed the annual goals with the parents' input (id.). Based upon the student's present levels of performance and functioning, the March 2013 CSE recommended the "LEAP II" program—i.e., a 12:1+2 special class placement—with related services for the student; however, the parents expressed "concern" about the recommendation and whether the student was "appropriately ready for LEAP II" (Tr. pp. 56-57, 800-01; see Dist. Ex. 11 at pp. 1-3, 13).[2] At that time, the parents perceived that the "LEAP II" program required a "higher level of expectation and performance" (Dist. Ex. 11 at p. 3). The CSE chairperson explained that the "LEAP II" was a "language based life skills program but for older students" (id.). Given the parents' concerns, the March 2013 CSE "tabled" the recommendations to "accommodate the parents" and to allow the parents an opportunity to "visit" the proposed special class placement (Tr. pp. 57, 803; see Dist. Exs. 11 at p. 3).

On May 10, 2013, the CSE reconvened to continue the student's annual review and to develop an IEP for the 2013-14 school year (see Dist. Exs. 11 at pp. 1-2; 12; 44 at pp. 1-2). Finding that the student remained eligible for special education and related services as a student with multiple disabilities, the May 2013 CSE recommended a 12-month school year program in a 12:1+2 special class placement at a community school with the following related services: one 30-minute session per week of individual OT, one 30-minute session per week of social skills training in a small group, three 30-minute sessions per week of individual speech-language therapy, two 30-minute sessions per week of OT in a small group, two 20-minute sessions per week of speech-language therapy in a small group and two 30-minute sessions per week of individual PT (see Dist. Ex. 11 at pp. 1, 13).[3,4] The May 2013 CSE also created annual goals with corresponding short-term objectives to address the student's needs, and recommended adapted physical education, parent counseling and training, and a safety evacuation plan (id. at pp. 8-14, 16). At the meeting, the parents questioned whether the student's distractibility was an "interfering behavior;" the CSE discussed "classroom strategies" used to address the student's distractibility and "it was agreed that the student d[id] not need an individual behavioral intervention plan" (Dist. Ex. 11 at p. 2). The May 2013 CSE also discussed the annual goals and explained the "criteria" for each to the parents, as well as the rationale behind the selected criteria (see id.). The May 2013 CSE also engaged in a "lengthy discussion of an appropriate program" for the student, which included CSE "feedback" about the student's performance in the "LEAP I" program (id.). Although the parents did not "report disagreement at this time," they shared concerns about the "next step" for the student, and questioned whether the "other" related services interfered with time devoted to speech-language therapy (id.). The May 2013 CSE explained the "language experiences of the total program as

[2] At the impartial hearing, the district's director of special education (director) testified that the "LEAP II" program served an "older cohort of students" (Tr. p. 58).

[3] The student's eligibility for special education programs and related services as a student with multiple disabilities is not in dispute (see 34 CFR 300.8[c][7]; 8 NYCRR 200.1[zz][8]).

[4] For July and August 2013, the May 2013 CSE recommended an 8:1+3 special class placement in a community school with related services of individual OT, individual and small group speech-language therapy, and individual PT (see Dist. Ex. 11 at pp. 1, 14-15). Throughout the hearing record, the 8:1+3 special class placement for summer 2013 was also referred to as the "SAIL I" program (id.; see Tr. pp. 88-89).

well as the daily service for the student" (id.). Finally, the May 2013 CSE discussed an assistive technology evaluation of the student for fall 2013, and the parents' associated concerns that assistive technology should not replace "continued goals for verbal communication" (id.).[5]

By letter dated July 20, 2013, the parents informed the district that they continued to have "serious concerns"—as expressed at the "last IEP" meeting—about the "proposed program" for the student for the 2013-14 school year (Dist. Ex. 41). In their opinion, the student did not make "appropriate progress" during the 2012-13 school year, and, thus, the parents did not believe that the student would make "appropriate progress" in the placement recommended for the 2013-14 school year, which they described as "identical" to the student's placement during the 2012-13 school year (id.). The parents indicated that since the May 2013 CSE meeting, they reviewed an "observation" conducted of the student and of the district's "LEAP II program," and provided the district with a copy of the resultant report (id.). According to the parents, the evaluator who conducted the observations—and who also drafted the report (Soifer report)—shared their "concerns" about the placement recommended in the May 2013 IEP, noting that it could not "provide [the student] with the appropriate type and intensity of instruction that she would require in order to benefit educationally" (id.). The parents indicated that they remained "more than willing to discuss any other potential programs," however, at that time, they had "no other choice but to explore private school options for September" (id.).

By letter dated August 19, 2013, the parents notified the district of their intentions to place the student at the Children's Academy for the 2013-14 school year and to seek tuition reimbursement from the district if it did not "cure the procedural and substantive errors in the development" of the May 2013 IEP (see Parent Ex. A at p. 1).[6] Moreover, the parents informed the district that they "reject[ed]" the IEP and "program" recommended at the "last IEP meeting" (id.). The parents indicated that the March 2013 CSE tabled the meeting so they could "visit the LEAP II program," and during the May 2013 CSE meeting, the parents expressed their concerns about the "appropriateness of the LEAP II program" for the 2013-14 school year (id. at p. 2). In addition, the parents noted that they provided the district with a copy of a report detailing an evaluator's "concerns with the appropriateness of this placement," and in response, the district scheduled a CSE meeting for August 21, 2013 to discuss the student's "placement" for the 2013-14 school year (id.). Finally, the parents indicated that they planned to participate at the August 2013 CSE meeting; however, if the district "continue[d] to recommend the LEAP II program" and did not "cure the procedural and substantive defects within the IEP," they would enroll the student at the Children's Academy and seek reimbursement and transportation services from the district (id.).

On August 21, 2013, the CSE reconvened to review the Soifer report and to discuss the parents' "disagreement with the IEP program recommendation" for the 2013-14 school year (see Dist. Exs. 9 at pp. 1-2; 10; 59 at pp. 1-9). After reviewing the Soifer report, the "staff" noted disagreement with the "impressions" in the report, as well as "inaccuracies" in the report (Dist. Ex. 9 at p. 2). Based upon the findings in the Soifer report, the student's father asked the CSE "what more c[ould] the district offer" the student; when asked what they wanted for a program, the parents did not believe they could "describe what another program should look like," but opined

[5] The district provided the parents with prior written notice following the May 10, 2013 CSE meeting (see Dist. Ex. 42 at pp. 1-2).

[6] The Commissioner of Education has not approved the Children's Academy as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

that the "LEAP" program could not address the student's needs (id.). However, the student's mother indicated that the student needed a "quiet setting with intensive repetition," "[s]peech need[ed] to be a continuum of expertise," and further indicated that the "[p]rogram [was] too distracting and lack[ed] intensive speech/language services needed above other students" (id.). At that time, the CSE chairperson "reviewed two questions" with the committee members: whether the recommendation for the "LEAP II" program was an appropriate program to meet the student's needs in the "least restrictive environment" (LRE) or whether the CSE needed to "consider an alternative program" to meet the student's needs as a result of the "parental concerns and report" (id.). Relying upon feedback from "each CSE member," the consensus indicated that the August 2013 CSE should continue to recommend the "LEAP II" program with related services for the student (id.). In addition, CSE members "shared that the student's needs ha[d] been addressed and w[ould] continue to be addressed appropriately through the program" (id.). Moreover, the speech-language provider in attendance spoke to the student's progress in the program (id.). Thus, while acknowledging the parents' disagreement with the "recommendation," the August 2013 CSE ultimately made no revisions to the recommendations previously set forth in the May 2013 IEP, which included a 12:1+2 special class placement ("LEAP II") with related services (compare Dist. Ex. 9 at pp. 1-2, 13-14, with Dist. Ex. 11 at pp. 1-2, 13-14).[7]

On September 10, 2013, the Children's Academy "accepted" the enrollment contract executed by the parents for the student's attendance during the 2013-14 school year (see Parent Ex. U at pp. 1-5).

On September 16, 2013, the CSE reconvened to review the "two private reports"—a November 2012 speech-language evaluation and an OT evaluation—the parents referred to at the August 2013 CSE meeting (see Tr. pp. 79-80; Dist. Exs. 6 at pp. 1-2; 9 at p. 2; 62-63).[8] The parents also indicated that they privately obtained an "additional" speech-language evaluation of the student in April 2012, which the parents indicated they would send to the CSE via facsimile because the speech-language provider attending the CSE meeting could not recall "receiving or seeing" the report (Dist. Ex. 6 at p. 2). Based upon the new information provided in the two reports, the September 2013 CSE reviewed the student's speech-language and motor goals, as well as the services (id.). At that time, the parents expressed that the student's speech-language needs could not be "appropriately met within a twenty minute service period" (id.). The "[t]herapist" attending the CSE meeting explained that "this period of time" had been selected based upon the student's "ability to interact with another peer and practice language skills" and further explained the continued "language activities" throughout the school day within the classroom (id.). After the parents shared that the student met with a "private provider for one hour," the CSE discussed the "classroom instruction and the purpose of the shorter sessions and private service" (id.). Next, the OT provider attending the CSE meeting reported that "sensory activities" had been developed for the student, and the CSE chairperson reviewed the parents' request for an assistive technology

[7] The district provided the parents with prior written notice following the August 21, 2013 CSE meeting (see Dist. Ex. 34 at pp. 1-2).

[8] The parents obtained the November 2012 speech-language evaluation of the student for "insurance purposes" (Dist. Ex. 6 at p. 2). Although titled "Note of Medical Necessity," this document will be referred to as the November 2012 speech-language evaluation report throughout this decision (see Dist. Ex. 63 at p. 1). Similarly, the OT evaluation report reviewed by the September 2013 CSE—while titled "Formal Therapeutic Recommendations"—will be referred to as the November 2012 OT evaluation report throughout this decision (see Dist. Ex. 62 at p. 1).

evaluation of the student as it related to the district's obligations since the student was "parentally placed in a nonpublic school outside the geographical boundaries" (id.). [9, 10, 11]

By letter dated September 24, 2013, the parents responded to the district's September 9, 2013 letter, which inquired about their "plans for the 2014-2015 school year" for the student (Dist. Ex. 25 at p. 1). Initially, the parents indicated that the student had been "unilaterally placed" at the Children's Academy for the 2013-14 school year, rather than "parentally placed," because the district failed to offer the student an appropriate program (id.). Next, the parents reminded the district that they remained "willing to explore other options," however, the district did not present "other options" to them (id.). Finally, in order to obtain a free appropriate public education (FAPE) for the student for the 2014-15 school year, the parents further requested that the district develop an IEP for the student (id.).

A. Due Process Complaint Notice

By due process complaint notice dated October 24, 2013, the parents alleged that the district failed to offer the student a FAPE for the 2013-14 school year (see Dist. Ex. 1 at p. 1). Initially, the parents alleged that the CSE failed to recommend an appropriate "program recommendation" and lacked "information or documentation" to support the "LEAP II program" recommendation (id. at 3). The parents also alleged that the evaluative material available to the CSEs did not support the recommendation for the student to remain in the "LEAP program," and that the August 2013 CSE failed to consider the "observation report" indicating that the "LEAP II" program was "beyond" the student's "learning levels" (id. at pp. 3-4). Next, the parents asserted that although they informed the district of concerns—and requested that the CSE consider "other options" for the student—during the CSE process, the district continued to recommend the "same program" for the 2013-14 school year, which deprived the parents of the right to meaningfully participate in the development of the student's IEP (id. at p. 3). The parents further asserted that the CSEs "made [their] decision prior to the meeting[s]" (id.).

Next, the parents asserted that the student could "not meet the goals" in the "recommended program" because it lacked the "individualized attention, structure, and intensity" the student required (Dist. Ex. 1 at p. 4). The parents also contended that the 12:1+2 special class placement was "too large" for the student, "contain[ed] too many varying functioning levels," and the staffing ratio was not sufficient to provide the student with the "individualized instruction" she required (id.). Moreover, the parents asserted that the speech-language therapy "available" to the student in the "LEAP program" was not appropriate to address her "complex needs" (id.). Further, the

[9] In this case, the term "CSE process" will be used throughout this decision to collectively describe the actions taken by the March, May, August, and September 2013 CSEs, unless otherwise specified.

[10] For the purpose of clarity, the May 2013 IEP was superseded as a result of the August 2013 and September 2013 CSE meetings, and the resulting September 2013 IEP—which slightly modified both the May 2013 and August 2013 IEPs—became the operative IEP for purposes of the impartial hearing and subsequent State-Level Review (see Dist. Exs. 6 at pp. 1-2; 9 at pp. 1-2; 11 at pp. 1-2; see also McCallion v. Mamaroneck Union Free Sch. Dist., 2013 WL 237846, at *8 [S.D.N.Y. Jan. 22, 2013] [finding the later developed IEP to be "the operative IEP"]; see also Application of the Dep't of Educ., Appeal No. 12-215). Consequently, this decision will refer to the September 2013 IEP as the IEP at issue for the 2013-14 school year.

[11] The district provided the parents with prior written notice following the September 16, 2013 CSE meeting (see Dist. Ex. 26 at pp. 1-2).

parents alleged that the IEP lacked appropriate management needs, despite the student's "global delays and complex needs" (id.).

Turning to the unilateral placement, the parents asserted that the Children's Academy appropriately addressed the student's "academic, speech[-]language and social/emotional" needs (Dist. Ex. 1 at pp. 4-5). As relief, the parents requested reimbursement for the costs of the student's tuition at the Children's Academy for the 2013-14 school year (id. at p. 5).

B. Impartial Hearing Officer Decision

On January 28, 2014, the parties proceeded to an impartial hearing, which concluded on April 23, 2014 after six days of proceedings (see Tr. pp. 1-827). In a decision dated July 12, 2014, the IHO found that the district failed to offer the student a FAPE for the 2013-14 school year, the Children's Academy was an appropriate unilateral placement for the student, and that equitable considerations weighed in favor of the parents' request for relief; thus, the IHO ordered the district to reimburse the parents for the costs of the student's tuition at the Children's Academy for the 2013-14 school year (see IHO Decision at pp. 41-48).

Based upon the evidence in the hearing record, initially the IHO found that the September 2013 IEP did not include a "meaningful statement" of the student's management needs and more specifically, the September 2013 IEP failed to address how the student's "distractibility, impulsivity or sensory needs should be addressed in the classroom setting" (IHO Decision at p. 43). Next, the IHO determined that evidence established that the "goals and program did not meet the student's needs and did not enable" the student to make progress (id.). Moreover, the IHO concluded that the CSEs failed to consider the "evaluative and other data" presented, which weighed against recommending the "LEAP program" (id. at p. 44).

Next, the IHO found that the student would not make "meaningful progress" in the "LEAP II class" because it would not address her needs "in terms of intensity, peer grouping and one to one support" (IHO Decision at pp. 45-46). In support of this conclusion, the IHO compared the district's recommended program to the program the student received at the Children's Academy, and found that the Children's Academy provided a "program" to the student that was "far more intensive" and included more OT services and speech-language therapy services (id. at p. 45). Thus, the IHO concluded that the district failed to offer the student a FAPE for the 2013-14 school year (id. at p. 46).

Turning next to the parents' unilateral placement, the IHO found that the hearing record contained "overwhelming support" to conclude that the Children's Academy was an appropriate placement, as the program was "finely-tuned and tailored to meet [the student's] specific education needs" (IHO Decision at pp. 46-47). Finally, the IHO found that equitable considerations weighed in favor of the parents' request for relief (id. at p. 47).

IV. Appeal for State-Level Review

The district appeals, and asserts that the IHO erred in finding that it failed to offer the student a FAPE for the 2013-14 school year and that the Children's Academy was an appropriate unilateral placement. Specifically, the district asserts that the IHO erred in finding that the September 2013 IEP did not include a meaningful statement of the student's management needs and that the annual goals were not appropriate because they would not enable the student to make progress. Next, the district alleges that the IHO did not identify what "'evaluative and other data"'

the CSEs did not consider. The district also asserts that the IHO erred in determining that the "LEAP program" was not appropriate, and in support of that determination, erred in comparing the district's recommended program to the program at the Children's Academy. Finally, the district alleges that the IHO erred in finding that the Children's Academy was an appropriate unilateral placement, as the hearing record established that the student did not make "meaningful" progress.

In an answer, the parents respond to the district's allegations and seek to uphold the IHO's decision in its entirety. In addition, the parents argue that the district's failure to appeal "each" adverse finding or reason in support of the IHO's determination that the 12:1+2 special class placement was not appropriate renders such findings "final." The parents also assert that the IHO failed to address whether the CSEs impermissibly "predetermined" the 12:1+2 special class placement recommendation. The parents allege that the CSEs also ignored their concerns about the duration and frequency of the speech-language therapy recommendations, which infringed upon their right to participate in the development of the student's IEP Next, the parents assert that the district failed to appeal with "any level of specificity" the IHO's finding regarding the appropriateness of the Children's Academy, and also failed to appeal the IHO's finding that equitable considerations weighed in favor of an award of tuition reimbursement.

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

A. CSE Process

1. Predetermination/ Parental Participation

Turning first to the parents' assertions, the IDEA sets forth procedural safeguards that include providing parents an opportunity "to participate in meetings with respect to the identification, evaluation, and educational placement of the child" (20 U.S.C. § 1415[b][1]). Federal and State regulations governing parental participation require that school districts take steps to ensure that parents are present at their child's IEP meetings or are afforded the opportunity to participate (34 CFR 300.322; 8 NYCRR 200.5[d]). Although school districts must provide an opportunity for parents to participate in the development of their child's IEP, mere parental disagreement with a school district's proposed IEP and placement recommendation does not amount to a denial of meaningful participation (see P.K. v. Bedford Cent. Sch. Dist., 569 F. Supp. 2d 371, 383 [S.D.N.Y. 2008] [noting that a "professional disagreement is not an IDEA violation"]; Sch. for Language & Commc'n Dev. v. New York State Dep't of Educ., 2006 WL 2792754, at *7 [E.D.N.Y. Sept. 26, 2006] [finding that "[m]eaningful participation does not require deferral to parent choice"]; Paolella v. Dist. of Columbia, 210 Fed. App'x 1, 2006 WL 3697318, *1 [D.C. Cir. Dec. 6, 2006]).[12]

Moreover, the consideration of possible recommendations for a student, prior to a CSE meeting is not prohibited as long as the CSE understands that changes may occur at the CSE meeting (see T.P., 554 F.3d at 253; Nack v. Orange City Sch. Dist., 454 F.3d 604, 610 [6th Cir. 2006] [noting that "predetermination is not synonymous with preparation"]; Deal v. Hamilton County Bd. of Educ., 392 F.3d 840, 857-60 [6th Cir. 2004]; M.W. v. New York City Dep't of Educ., 869 F. Supp. 2d 320, 333-34 [E.D.N.Y. 2012], aff'd, 725 F.3d 131 [2d Cir. 2013]; D.D-S. v. Southold Union Free Sch. Dist., 2011 WL 3919040, at *10-11 [E.D.N.Y. Sept. 2, 2011], aff'd, 506 Fed. App'x 80, 2012 WL 6684585 [2d Cir. Dec. 26, 2012]; B.O. v. Cold Spring Harbor Cent.

[12] "'[T]he IDEA only requires that the parents have an opportunity to participate in the drafting process'" (D.D-S. v. Southold Union Free Sch. Dist., 2011 WL 3919040, at *11 [E.D.N.Y. Sept. 2, 2011], quoting A.E. v. Westport Bd. of Educ., 463 F. Supp. 2d 208, 216 [D. Conn. 2006]; see E.F v. New York City Dep't of Educ.., 2013 WL 4495676, at *17 [E.D.N.Y. Aug. 19, 2013] [noting that "as long as the parents are listened to," the right to participate in the development of the IEP is not impeded, "even if the [district] ultimately decides not to follow the parents' suggestions"]; see also T.Y. v. New York City Dep't of Educ., 584 F.3d 412, 420 [2d Cir. 2009] [noting that the IDEA gives parents the right to participate in the development of their child's IEP, not a veto power over those aspects of the IEP with which they do not agree]).

Sch. Dist., 807 F. Supp. 2d 130, 136 [E.D.N.Y. 2011]; A.G. v. Frieden, 2009 WL 806832, at *7 [S.D.N.Y. Mar. 26, 2009]; P.K., 569 F. Supp. 2d at 382-83; Danielle G. v. New York City Dep't of Educ., 2008 WL 3286579, at *6-*7 [E.D.N.Y. Aug. 7, 2008]; M.M. v. New York City Dep't of Educ., 583 F. Supp. 2d 498, 506-07 [S.D.N.Y. 2008]; W.S. v. Rye City Sch. Dist., 454 F. Supp. 2d 134, 147-48 [S.D.N.Y. 2006]; Application of the Dep't of Educ., Appeal No. 11-051; Application of the Dep't of Educ., Appeal No. 10-070; see also 34 CFR 300.501[b][1], [3]; 8 NYCRR 200.5[d][1], [2]). A key factor with regard to predetermination is whether the district has "an open mind as to the content of [the student's] IEP" (T.P., 554 F.3d at 253; see D.D-S., 2011 WL 3919040, at *10-*11; R.R. v. Scarsdale Union Free Sch. Dist., 615 F. Supp. 2d 283, 294 [E.D.N.Y. 2009], aff'd, 366 Fed. App'x 239 [2d Cir. Feb. 18, 2010]). In addition, districts are permitted to develop draft IEPs prior to a CSE meeting "'[s]o long as they do not deprive parents of the opportunity to meaningfully participate in the IEP development process'" (Dirocco v. Bd. of Educ., 2013 WL 25959, at *18 [S.D.N.Y. Jan. 2, 2013], quoting M.M., 583 F. Supp. 2d at 506). Districts may also "'prepare reports and come with pre[-]formed opinions regarding the best course of action for the [student] as long as they are willing to listen to the parents and parents have the opportunity to make objections and suggestions'" (Dirocco, 2013 WL 25959, at *18).

Here, the evidence in the hearing record, and in particular, the parents' testimony, established that the parents actively participated throughout the CSE process and were afforded several opportunities to both provide input and present their concerns (see Tr. pp. 57, 73-76, 98-99, 800-02, 806-16). Specifically, the parents testified that they submitted evaluations to the district, and presented their concerns to the CSEs regarding the following: the annual goals and the criteria used to measure the annual goals, the student's lack of progress, the student's use of an augmentative device throughout the school day, the assigned public school site, the "LEAP II" program, the conclusions in the Soifer report, and the frequency and duration of the speech-language therapy recommendations (Tr. pp. 800-02, 806-16). Moreover, the evidence in the hearing record demonstrates that the student's September 2013 IEP was developed through a CSE process that encompassed four CSE meetings—two of which met specifically to address the parents' concerns and to review evaluative information submitted by the parents (see Tr. pp. 74-80; Dist. Exs. 6 at pp. 1-4, 7-8; 59; 62-63). Therefore, the evidence in the hearing record indicates that significant discussions took place during the CSE process regarding the student, the student's needs, and the parents' concerns, which—contrary to the parents' assertions—afforded the parents with the opportunity to meaningfully participate in the development of the student's IEP.

With respect to whether the CSEs impermissibly predetermined the 12:1+2 special class placement ("LEAP II program") recommendation, the evidence in the hearing record reflects the parents raised and expressed their concerns regarding the appropriateness of the 12:1+2 special class placement, and inquired about other options the district could offer (see Tr. pp. 75-76, 100-01, 169-70, 806-07; Dist. Ex. 6 at pp. 2-4). In addition, the evidence in the hearing record reflects that in response to the parents' concerns and inquiries, the CSEs engaged in discussions, considered additional evaluative information, and considered the specific question of whether the CSE needed to "consider an alternative program" for the student (Dist. Ex. 6 at pp. 2-4; see Tr. pp. 75-76, 99-101, 168-71; Dist. Ex. 34 at p. 1; 42-43). Ultimately, however, the CSEs remained committed to the decision to recommend the 12:1+2 special class placement—or LEAP II program—because it was appropriate to meet the student's needs (see Dist. Exs. 6 at pp. 1-4, 14-15; see also Tr. pp. pp. 75-76, 99-101, 168-71; Dist. Ex. 34 at p. 1; 42-43). Therefore, once the district determined that the 12:1+2 special class placement within the district was appropriate, it was under no obligation to consider a more restrictive placement—such as a placement outside of the district (cf. B.K. v. New York City Dep't of Educ., 2014 WL 1330891, at *9 [E.D.N.Y. Mar. 31, 2014] [indicating that "once the CSE determined that a 6:1:1 placement was appropriate for [the student], it was

under no obligation to consider more restrictive programs"]; T.G. v. New York City Dep't of Educ. 973 F. Supp. 2d 320, 341-42 [S.D.N.Y. 2010]; E.F. v. New York City Dep't of Educ., 2013 WL 4495676, at *15 [S.D.N.Y. Aug. 19, 2013] [explaining that "under the law, once [the district] determined that [the public school setting] was the least restrictive environment in which [the student] could be educated, it was not obligated to consider a more restrictive environment, such as [the nonpublic school]"; A.D. v. New York City Dep't of Educ., 2013 WL 1155570, at *8 [S.D.N.Y. Mar. 19, 2013] [finding that "[o]nce the CSE determined that [the public school setting] would be appropriate for the [s]tudent, it had identified the least restrictive environment that could meet the [s]tudent's needs and did not need to inquire into more restrictive options such as nonpublic programs"]). Based upon the foregoing, the parents' assertions are not supported by the evidence in the hearing record and must be dismissed.

2. Evaluative Information

The district asserts that the IHO failed to identify the "evaluative and other data" the CSEs failed to consider, and also failed to identify what "exhaustive amount of information" weighed against the CSEs' decision to recommend a 12:1+2 special class placement.

In developing the recommendations for a student's IEP, the CSE must consider the results of the initial or most recent evaluation; the student's strengths; the concerns of the parents for enhancing the education of their child; the academic, developmental and functional needs of the student, including, as appropriate, the student's performance on any general State or district-wide assessments as well as any special factors as set forth in federal and State regulations (34 CFR 300.324[a]; 8 NYCRR 200.4[d][2]). A CSE must also consider independent educational evaluations obtained at public expense and private evaluations obtained at private expense, provided that such evaluations meet the district's criteria, in any decision made with respect to the provision of a FAPE to a student (34 CFR 300.502[c]; 8 NYCRR 200.5[g][1][vi]). However, consideration does not require substantive discussion, or that every member of the CSE read the document, or that the CSE accord the private evaluation any particular weight (T.S. v. Ridgefield Bd. of Educ., 10 F.3d 87, 89-90 [2d Cir. 1993], citing G.D. v. Westmoreland Sch. Dist., 930 F.2d 942, 947 [1st Cir. 1991]; see Michael P. v. Dep't of Educ., 656 F.3d 1057, 1066 n.9 [9th Cir. 2011]; K.E. v. Indep. Sch. Dist. No. 15, 647 F.3d 795, 805-06 [8th Cir. 2011]; Evans v. Dist. No. 17, 841 F.2d 824, 830 [8th Cir. 1988]; K.E. v. Indep. Sch. Dist. No 15, 2010 WL 2132072, at *19 [D. Minn. May 24, 2010]; James D. v. Bd. of Educ., 642 F. Supp. 2d 804, 818 [N.D. Ill. 2009]). Although a CSE is required to consider reports from privately retained experts, it is not required to adopt their recommendations (see, e.g., G.W. v. Rye City Sch. Dist., 2013 WL 1286154, at *19 [S.D.N.Y. Mar. 29, 2013]; 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, 2005 WL 1791533 [2d Cir. July 25, 2005]; see also Pascoe v. Washingtonville Cent. Sch. Dist., 1998 WL 684583, at *6 [S.D.N.Y. Sept. 29, 1998]; Tucker, 873 F.2d at 567; Application of the Dep't of Educ., Appeal No. 12-165).

In this case, the evidence in the hearing record reflects that the May 2013 CSE considered the following evaluative information to develop the September 2013 IEP: a July 2011 physical examination report (Dist. Ex. 71); an October 2011 PT evaluation report (Dist. Ex. 67 at pp. 1-3); a November 2011 OT evaluation report (Dist. Ex. 68 at pp. 1-4); a November 2011 educational evaluation report (Dist. Ex. 60 at pp. 1-6); a November 2011 speech-language reevaluation report

(Dist. Ex. 66 at pp. 1-11); a November 2011 psychological evaluation and social history update report (Dist. Ex. 70 at pp. 1-13); a November 2012 speech-language evaluation report (Dist. Ex. 63 at pp. 1-4); a November 2012 OT evaluation report (Dist. Ex. 62 at pp. 1-5); the Soifer report (Dist. Ex. 59 at pp. 1-9); a February 2013 report card (Dist. Ex. 51); and March 2013 regression statements (Dist. Exs. 49-50; see Dist. Exs. 6 at pp. 7-8; 11 at pp. 4-5).

As noted, a review of the Soifer report at the August 2013 CSE meeting revealed several "inaccuracies" within the report, and the director testified that CSE members voiced their "disagreements with some of the findings" (Tr. pp. 76-78). The speech-language provider attending the August 2013 CSE meeting—who was the student's then-current speech-language therapy provider and who was present when the evaluator conducted the in-class observation that formed the basis of the Soifer report—testified that the evaluator observed the student's speech-language therapy session in the "LEAP I" classroom and based her "lengthy impression" on a 20-minute observation of the student (Tr. p. 246). In addition, the speech-language provider testified extensively about the inaccuracies in the Soifer report and her disagreement specific to the classroom environment, the student's behavior, particularly related to distractibility, social pragmatics, and the use of technology (see Tr. pp. 240-49; Dist. Ex. 59 at pp. 3-4). Moreover, although the Soifer report indicated that the evaluator preferred direct communication with the speech-language provider rather than the written communication that occurred, the speech-language provider testified that the evaluator neither followed up with her in any manner nor acknowledged receiving her written answers to the questions (see Tr. pp. 244-45, 248; Dist. Ex. 59 at pp. 5-8).

Testimony by the student's "LEAP I" special education teacher (special education teacher) also extensively discussed the inaccuracies in the Soifer report (see Tr. pp. 286-87, 325-30; Dist. Ex. 59 at pp. 1-5, 8-9). The special education teacher indicated that when the evaluator observed the student in the "LEAP I" classroom, she watched the 20-minute speech-language therapy session previously discussed and the student's transition to a 15-minute calendar activity (see Tr. pp. 329-31). During the classroom observation, the evaluator did not observe the student participating in any academic instruction (see Tr. p. 331). Moreover, in contrast to the information contained in the Soifer report, the special education teacher testified that the "LEAP I" classroom provided the student with intensive structure, limited her distractions, provided modifications and accommodations for the student's physical limitations and worked on functional communication, and sign language, along with vocabulary (see Tr. p. 330; Dist. Ex. 59 at p. 9).

In addition, the director testified that the staff from "the LEAP I program" who participated at the September 2013 CSE meeting indicated that they had previously seen the November 2012 speech-language therapy evaluation report and the November 2012 OT evaluation report prior to the September 2013 CSE meeting (Tr. p. 80; see Tr. pp. 250-51; Dist. Exs. 62-63). Further, the director indicated that the September 2013 CSE reviewed the annual goals and recommendations in light of the information presented in the reports, but ultimately determined that no changes to the student's IEP were necessary (see Tr. pp. 80-81).

Contrary to the IHO's conclusion, the evidence in the hearing record reflects that the CSEs considered the evaluative information available throughout the CSE process in this case. Accordingly, the IHO's findings must be reversed.

B. September 2013 IEP

1. Annual Goals

Next, the district asserts the IHO erroneously concluded that the annual goals in the September 2013 IEP would not enable the student to make progress. 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]).[13]

A review of the September 2013 IEP establishes that it included approximately 19 annual goals with 38 corresponding short-term objectives that focused on the student's areas of need related to reading, mathematics, speech-language skills, social/emotional and behavior skills, motor skills, and basic cognitive and daily living skills (see Dist. Ex. 6 at pp. 9-14). In addition, a review of the September 2013 IEP demonstrates that the annual goals and short-term objectives targeted the student's identified areas of need, and consistent with State and federal regulations identified above, included appropriate evaluative criteria (i.e., 3 out of 5 trials, 50 percent success), evaluation procedures (i.e., structured observations of targeted skills), and schedules to measure progress toward meeting the annual goals (i.e., monthly, every two months) (id.). For example, one annual goal targeted the student's need to improve speech production and the ability to initiate movements of the oral musculature, and included two corresponding short-term objectives related to the student's ability to close, round, and retract her lips (id. at pp. 9-10). Similarly, another annual goal—and its two corresponding short-term objectives—targeted the student's basic cognitive skills and her ability to read and match 10 new functional sight words related to items in the environment (home, community, school) (id. at p. 14). A review of the remaining annual goals and corresponding short-term objectives reveals similarities with respect to targeting the student's identified areas of need described in the present levels of performance (id. at pp. 9-14).

[13] In the due process complaint notice, the parents asserted that the student could not meet the annual goals in the September 2013 IEP because the recommended "program" lacked the "individualized attention, structure, and intensity" the student required (see Dist. Ex. 1 at p. 4). However, a determination of the appropriateness of a particular set of annual goals for a student turns, not upon their suitability within a particular classroom setting or student-to-teacher ratio, but rather on whether the annual goals and short-term objectives are consistent with and relate to the identified needs and abilities of the student (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]). To hold otherwise would suggest that CSEs or CPSEs should preselect an educational setting on the continuum of alternative placements and/or related services and then draft annual goals specific to that setting; however, that is, idiomatically speaking, placing the cart before the horse (see generally, "Guide to Quality Individualized Education Program [IEP] Development and Implementation," at pp. 38-39, Office of Special Educ. [Dec. 2010], available at http://www.p12.nysed.gov/specialed/publications/iepguidance/IEPguideDec2010.pdf [stating, among other things that "[t]he recommended special education programs and services in a student's IEP identify what the school will provide for the student so that the student is able to achieve the annual goals and to participate and progress in the general education curriculum (or for preschool students, age-appropriate activities) in the least restrictive environment"] [emphasis added]).

In addition, the director testified that at the May 2013 CSE meeting, the student's special education teacher described the student's basic cognitive skills and the student's need to increase and improve her sorting skills, number awareness, number identification, functional sight word vocabulary, and comprehension skills (Tr. pp. 56-59). Moreover, the speech-language provider discussed the student's need to improve her oral motor skills, as well as her use of sign language and augmentative communication (Tr. p. 59). In regard to the student's social needs, the student's special education teacher and the district school psychologist discussed the student's play skills and indicated that they helped the student maintain personal space boundaries (Tr. pp. 59-60). The director also indicated that at the May 2013 CSE meeting, the student's then-current occupational therapist and physical therapist discussed the student's needs related to fine-motor grasping skills and gross motor difficulties with trunk strength, transitioning from the floor to standing, balance, self-care, and bilateral coordination (Tr. p. 60). Finally, the director testified about each of the annual goals and noted that the May 2013 CSE used a need-based rationale to select the annual goals—and discussed each annual goal as well as the data-based criteria selected for each annual goal—before incorporating each annual goal into the student's IEP (Tr. pp. 60-70; Dist. Ex 11 at pp. 8-9; see Tr. pp. 232-36).

Thus, overall, the evidence in the hearing record supports a finding that the annual goals in the September 2013 IEP targeted the student's identified areas of need, appropriately addressed the student's needs, and were sufficiently specific and measurable to guide instruction and to evaluate the student's progress over the course of the school year (see D.A.B. v. New York City Dep't of Educ., 973 F. Supp. 2d 344, 359-61 [S.D.N.Y. 2013]; E.F., 2013 WL 4495676, at *18-*19; D.B. v. New York City Dep't of Educ., 966 F. Supp. 2d 315, 334-35 [S.D.N.Y. 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., 454 F. Supp. 2d at 146-47; 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]). Accordingly, the IHO's finding that the annual goals in the September 2013 IEP would not allow the student to make progress is not supported by the evidence in the hearing record and must be reversed.

2. 12:1+2 Special Class Placement

The district asserts that the IHO improperly determined that the recommended 12:1+2 special class placement was not appropriate, and in reaching that determination, conducted an improper analysis by comparing the recommended 12:1+2 special class placement to the student's setting at the Children's Academy. In this case, contrary to the IHO's determination, the evidence in the hearing record reveals that the 12:1+2 special class placement was reasonably calculated to enable the student to receive educational benefits.

Initially, the September 2013 IEP noted that the student functioned at a "pre-readiness level in reading, writing and math" (Dist Ex. 6 at p. 8). In addition, the student exhibited deficits in her communicative abilities and she used a "combination of words, gestures, and sign language to make her needs known" (id.). Socially, the student "appear[ed] distractible in the classroom but respond[ed] to classroom interventions such as [the] use of visual and teacher prompts" (id. at p. 5). Moreover, the student "continue[d] to require structure including repetition and visual cueing," and had "difficulty maintaining personal space boundaries;" however, the student continued to work on taking turns and appeared "very happy in school" (id.). With respect to physical development, the student could "snip with scissors," but needed physical prompts in order to

"maintain safety and control" (id.). The student could not "independently turn the paper with her non-dominant hand" (id.). However, she could perform "limited bilateral activities with facilitation," and "participate[d] in dressing and feeding herself with verbal prompts and minimal physical prompts" (id.). Additionally, the student wore a "lift" to accommodate a leg-length difference, and she continued to "need some upper extremity support to transition from [the] floor to standing" (id.).

With respect to management needs, the September 2013 IEP indicated that the student had "significant delays" and required a "small teacher-to-student ratio program with minimal distractions in order to academically progress" (Dist Ex. 6 at p. 6). The September 2013 IEP further noted that although the student required "strategies, including positive behavioral interventions, supports and other strategies" to address behaviors that impeded her learning or that of others, the student did not need a behavioral intervention plan (BIP) (id.). The September 2013 IEP also indicated that the student needed an assistive technology device or service, and thus, included a recommendation for the student to have access to a "[t]ouch screen," an "Ipad," and an "enlarged keyboard" (id. at pp. 6, 15).

To address the student's needs as identified in the September 2013 IEP, the CSE recommended a 12:1+2 special class placement with related services (see Dist. Ex. 6 at pp. 1, 14-15). State regulations provide that the "maximum class size for special classes containing students whose management needs interfere with the instructional process, to the extent that an additional adult is needed within the classroom to assist in the instruction of such students, shall not exceed 12 students, with one or more supplementary school personnel assigned to each class during periods of instruction" (8 NYCRR 200.6[h][4][i]). The director testified that in reaching the decision to recommend a 12:1+2 special class placement, the CSEs considered and discussed the student's evaluative information and input provided by individuals attending that May 2013 CSE meeting (Tr. pp. 59-73). Further, the director testified that the August 2013 CSE considered the Soifer report, and discussed the discrepancies in the Soifer report, as well as the parents' concern that the 12:1+2 special class placement with related services would not appropriately address the student's speech-language needs, but ultimately found that the 12:1+2 special class placement remained appropriate (Tr. pp. 74-78). The director further testified that the September 2013 CSE considered two additional evaluation reports, and, again, ultimately found that the 12:1+2 special class placement remained appropriate (Tr. pp. 79-81). According to the director, the 12:1+2 special class placement with related services "address[ed] the unique needs" of the student and would enable the student to make "meaningful progress, receive educational benefit and be in the least restrictive program with typical peers" (Tr. p. 82).

The hearing record also reveals that the student attended similar special class placements during the 2009-10, 2010-11, 2011-12, 2012-13 school years (see Tr. pp. 33-34, 37-38, 54-55; Dist. Exs. 13 at p. 1; 15 at p. 1; 18 at p. 1; 21 at p. 1). Contrary to the parents' assertions, the evidence in the hearing record also reflects that the student made progress commensurate with her abilities during those school years (see Tr. 118-19, 126-27, 134-40, 150, 206, 209-10, 214-17, 237). The district's department coordinator for elementary special education (coordinator) testified that given the progress the student made during the prior four school years in placements similar to a 12:1+2 special class placement, she believed that a 12:1+2 special class placement would adequately "meet her needs, with the supports of all of the related services as well" (Tr. p. 150). Similarly, the student's speech-language provider throughout the student's placement in the "LEAP I" program testified that the student made progress, and the recommended placement—as well as the frequency and duration of speech-language therapy recommended in the September 2013 IEP—would enable the student to make meaningful progress during the 2013-14 school year (Tr.

201-05, 239, 252). In addition, the student's special education teacher testified that the student could make "meaningful progress" in a 12:1+2 special class placement (Tr. pp. 296-99, 304-05, 334). Further, the district school psychologist who worked with the student throughout the past four years testified that given what she knew about the student, the student could make meaningful progress towards her social/emotional goals in a 12:1+2 special class placement (see Tr. pp. 446-47). In addition to the 12:1+2 special class placement, the September 2013 IEP also included recommendations for related services of speech-language therapy, PT, OT, as well as adapted physical education, to address her speech-language delays and fine and gross motor needs (Dist. Ex. 6 at pp. 1, 14; see Tr. pp. 237-38).

Based upon the foregoing, the evidence in the hearing record supports the district's assertion that the September 2013 IEP—and more specifically, the 12:1+2 special class placement together with the recommended supports and related services—was reasonably calculated to enable the student to receive educational benefits, and thus, offered the student a FAPE for the 2013-14 school year.

3. Management Needs

The district also asserts that the IHO erred in determining that the September 2013 IEP did not contain a meaningful statement of the student's management needs. State regulation and guidance documents define management needs 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]; see "Guide to Quality Individualized Education Program [IEP] Development and Implementation," at p. 20, Office of Special Educ. [Dec. 2010], available at http://www.p12.nysed.gov/specialed/publications/iepguidance/IEP guideDec2010.pdf [providing examples of environmental modifications (i.e., consistency in routine, limited visual or auditory distractions, adaptive furniture), human resources (i.e., assistance in locating classes, following schedules, and note taking), and material resources (i.e., instructional materials in alternative formats)]).[14] A student's management needs must be developed in accordance with the factors identified in the areas of academic achievement, functional performance and learning characteristics; social development; and physical development, and reported in the student's IEP (see 8 NYCRR 200.1[ww][3][i][d], 200.4[d][2][i]; see also "Guide to Quality Individualized Education Program [IEP] Development and Implementation," at p. 20, Office of Special Educ. [Dec. 2010], available at http://www.p12.nysed.gov/specialed/publications/iepguidance/ IEPguideDec2010.pdf).

As noted above, the September 2013 IEP included a statement within the management needs section of the IEP, which indicated that the student had "significant delays" and required a "small teacher-to-student ratio program with minimal distractions in order to academically progress" (Dist. Ex. 6 at p. 6). In addition to this specific statement, however—and contrary to the IHO's finding—a review of the entire September 2013 IEP reveals that the student's need for environmental modifications and human or material resources to enable the student to benefit from instruction—particularly with regard to academics and communication—was a consistent theme embedded throughout the IEP (see id. 1-15). Further, many of the strategies and supports recommended in the student's September 2013 IEP required some level of direct implementation or assistance from classroom staff: teacher prompting, help opening snack or lunch containers, use

[14] Additional examples of management needs can be found in the general directions for the use of the State's model IEP form (see "General Directions to Use the State's Model IEP form," Office of Special Educ. Mem. [Revised Mar. 2010], available at http://www.p12.nysed.gov/specialed/formsnotices/IEP/directions.htm).

of visuals, physical assistance, vestibular and proprioceptive input, physical facilitation and prompts, small teacher-to-student ratio program (id. at pp. 5-6, 8). In particular, most of the annual goals and short-term objectives incorporated management techniques and strategies of tactile, visual, verbal, and physical prompts and cues (id. at pp. 9-14).

Therefore, based on the foregoing, the evidence in the hearing record reveals that contrary to the IHO's conclusion, the September 2013 IEP included an adequate statement of the student's management needs.

C. Challenges to the Assigned Public School Site

The district asserts that the IHO erroneously concluded that the students in the proposed classroom at the assigned public school site were "academically too advanced for the student." Generally, challenges to an assigned public school site are relevant to whether the district properly implemented a student's IEP, which is speculative when the student never attended the recommended placement. 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., 553 Fed. App'x 2, 9 [2d Cir. Jan. 8, 2014]; see also K.L. v. New York City Dep't of Educ., 530 Fed. App'x 81, 87 [2d Cir. July 24, 2013]; 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"]).

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., 526 Fed. App'x 135, 141 [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., 530 Fed. App'x at 87, quoting R.E., 694 F.3d at 187; see C.F., 746 F.3d at 79). 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]).[15] When the Second Circuit spoke recently with regard to the topic of assessing the district's offer of an IEP versus later acquired school site information obtained and rejected by the parent as inappropriate, the Court disallowed a challenge to a recommended public school site, reasoning 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'" (F.L., 553 Fed. App'x at 9, quoting R.E., 694 F.3d at 187 n.3).

In view of the foregoing, the parents cannot prevail on claims raised in the due process complaint notice regarding implementation of the September 2013 IEP because a retrospective analysis of how the district would have implemented the student's September 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 parents rejected the assigned public school site that the student would have attended and instead chose to enroll the student in a nonpublic school of their choosing prior to the time the district became obligated to implement the September 2013 IEP (see Dist. Ex. 41). Therefore, the issues raised and the arguments asserted by the parents with respect to the assigned public school site are speculative. 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 in addition to districts not being permitted to rehabilitate a defective IEP through retrospective testimony, "[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"]). Based on the foregoing, the district was not obligated to present retrospective evidence at the impartial hearing regarding the execution of the student's program or to refute the parents' claims (K.L., 530 Fed. App'x at 87; R.E., 694 F.3d at 186; R.C., 906 F. Supp. 2d at 273). Accordingly, contrary to the IHO's conclusion, the parents cannot prevail

[15] While the IDEA and State regulations provide parents with the opportunity to offer input in the development of a student's IEP, the assignment of a particular school is an administrative decision that must be made in conformance with the CSE's educational placement recommendation (T.Y. v. New York City Dep't of Educ., 584 F.3d 412, 420 [2d Cir. 2009]; see K.L.A. v. Windham Southeast Supervisory Union, 371 Fed. App'x 151, 154 [2d Cir. Mar. 30, 2010]). A school district "may have two or more equally appropriate locations that meet the child's special education and related services needs and school administrators should have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group determining placement" (Placements, 71 Fed. Reg. 46588 [Aug. 14, 2006]). Once a parent consents to a district's provision of special education services, such services must be provided by the district in conformity with the student's IEP (20 U.S.C. § 1401[9][D]; 34 CFR 300.17[d]; see 20 U.S.C. § 1414[d]; 34 CFR 300.320). The Second Circuit recently reiterated that while parents are entitled to participate in the determination of the type of placement their child will attend, the IDEA confers no rights on parents with regard to school site selection (C.F., 746 F.3d at 79). However, the Second Circuit has also made clear that just because a district is not required to place implementation details such as the particular public school site or classroom location on a student's IEP, the district is not permitted to choose any school and provide services that deviate from the provisions set forth in the IEP (see R.E., 694 F.3d at 191-92; T.Y., 584 F.3d at 420 [the district does not have carte blanche to provide services to a child at a school that cannot satisfy the IEP's requirements]). The district has no option but to implement the written IEP and parents are well within their rights to compel a non-compliant district to adhere to the terms of the written plan.

on claims that student would not have been functionally grouped at the assigned public school site.[16]

However, even assuming for the sake of argument that the parents could make such speculative claims or that the student had attended the district's recommended program at the assigned public school site, the evidence in the hearing record does not support the conclusion that the district would have violated the FAPE legal standard related to IEP implementation—that is, that the district would have deviated from the student's IEP in a material or substantial way (A.P. v. Woodstock Bd. of Educ., 370 Fed. App'x 202, 205, 2010 WL 1049297 [2d Cir. Mar. 23, 2010]; Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 [9th Cir. 2007]; Houston Indep. Sch. Dist. v. Bobby R., 200 F.3d 341, 349 [5th Cir. 2000]; see D. D-S., 2011 WL 3919040, at *13; A.L. v. New York City Dep't of Educ., 812 F. Supp. 2d 495, 502-03 [S.D.N.Y. 2011]).

1. Functional Grouping

With regard to the district's specific contention, State regulations require that in special classes, students must be suitably grouped for instructional purposes with other students having similar individual needs (8 NYCRR 200.1[ww][3][ii]; 200.6[a][3], [h][3]; see Walczak, 142 F.3d at 133). State regulations further provide that determinations regarding the size and composition of a special class shall be based on the similarity of the individual needs of the students according to: levels of academic or educational achievement and learning characteristics; levels of social development; levels of physical development; and the management needs of the students in the classroom (8 NYCRR 200.6[h][2]; see 8 NYCRR 200.1[ww][3][i][a]-[d]). The social and physical levels of development of the individual students should be considered to ensure beneficial growth to each student, although neither should be a sole basis for determining placement (8 NYCRR 200.6[a][3][ii], [iii]). Further, while the management needs of students may vary, the modifications, adaptations and other resources are to be provided to students so that they do not detract from the opportunities of the other students in the class (8 NYCRR 200.6 [a][3][iv]). Upon review of the hearing record, assuming that the student had attended the assigned public school site, the evidence indicates that the district was capable of implementing the student's IEP with

[16] While some district courts have found that parents have a right to assess the adequacy of a particular school site to meet their children's needs, the weight of the relevant authority supports the approach taken here (see B.K. v. New York City Dep't of Educ., 2014 WL 1330891, at *20-*22 [E.D.N.Y. Mar. 31, 2014]; M.L. v. New York City Dep't of Educ., 2014 WL 1301957 [S.D.N.Y. Mar. 31, 2014]; M.O. v. New York City Dept. of Educ., 2014 WL 1257924, at *2 [S.D.N.Y. Mar. 27, 2014]; E.H., 2014 WL 1224417, at *7; R.B. v. New York City Dep't of Educ., 2013 WL 5438605, at *17 [S.D.N.Y. Sept. 27, 2013]; E.F., 2013 WL 4495676, at *26; M.R. v New York City Bd. of Educ., 2013 WL 4834856, at *5 [S.D.N.Y. Aug. 14, 2013]; A.M, 964 F. Supp. 2d at 286; N.K., 961 F. Supp. 2d 577, 588-90 [S.D.N.Y. 2013]; Luo v. Baldwin Union Free Sch. Dist., 2013 WL 1182232, at *5 [E.D.N.Y. Mar. 21, 2013], aff'd, 556 Fed. App'x 1 [2d Cir Dec. 23, 2013]; A.D. v. New York City Dep't of Educ., 2013 WL 1155570, at *13 [S.D.N.Y. Mar. 19, 2013]; J.L. v. City Sch. Dist. of New York, 2013 WL 625064, at *10 [S.D.N.Y. Feb. 20, 2013]; Reyes v. New York City Dep't of Educ., 2012 WL 6136493, at *7 [S.D.N.Y. Dec. 11, 2012]; Ganje v. Depew Union Free Sch. Dist., 2012 WL 5473491, at *15 [W.D.N.Y. Sept. 26, 2012], adopted, 2012 WL 5473485 [W.D.N.Y. Nov. 9, 2012]; see also N.S. v. New York City Dep't of Educ., 2014 WL 2722967, at *12-*14 [S.D.N.Y. June 16, 2014] [holding that "[a]bsent non-speculative evidence to the contrary, it is presumed that the placement school will fulfill its obligations under the IEP"]; but see V.S. v. New York City Dep't of Educ., 2014 WL 2600313, at *4 [E.D.N.Y. June 10, 2014]; C.U. v. New York City Dep't of Educ., 2014 WL 2207997, at *14-*16 [S.D.N.Y. May 27, 2014]; Scott v. New York City Dep't of Educ., 2014 WL 1225529, at *19 [S.D.N.Y. Mar. 25, 2014]; D.C. v. New York City Dep't of Educ., 950 F. Supp. 2d 494, 508-13 [S.D.N.Y. 2013]; B.R. v. New York City Dep't of Educ., 910 F.Supp.2d 670, 676-78 [S.D.N.Y. 2012]; E.A.M. v. New York City Dep't of Educ., 2012 WL 4571794, at *11 [S.D.N.Y. Sept. 29, 2012]).

suitable grouping for instructional purposes in the 12:1+2 special class at the assigned school for the 2013-14 school year.

In this instance, the evidence in the hearing record reflects that the student was able to count objects up to eight, and was working on "reading words and marching them to pictures" (see Dist. Ex. 6 at p. 8). During the 2013-14 school year, the recommended 12:1+2 special class placement consisted of 9 students, who ranged in age between 8 to 12 years old and who exhibited global development delays, multiple disabilities, and intellectual disabilities (see Tr. pp. 391-92, 420-21, 423).[17] Some students were verbal and some students were nonverbal; however, none of the students exhibited behavioral issues (see Tr. p. 392). In addition, the students' reading levels in the 12:1+2 special class placement during the 2013-14 school year ranged from "nonreaders to a second grade level," and similarly, the students' mathematics levels ranged from identifying numbers and counting sets to a second grade level (Tr. p. 420). The teacher of the 12:1+2 special class placement for the 2013-14 school year testified that based upon her review of the student's IEP, the student demonstrated related services' needs "similar" to those of the students in the classroom (Tr. p. 401). Moreover, the teacher testified that based upon a review of the annual goals in the student's IEP, the student's goals were similar to the other students' annual goals in the classroom (see Tr. pp. 402-06). Finally, the teacher testified that the student would have been appropriately grouped at the assigned public school site had she attended during the 2013-14 school year (see Tr. pp. 400-01, 406). Consequently, the evidence in the hearing record does not support a conclusion that the student was denied a FAPE based on the grouping of the student at the assigned school site by peer group or function level.

VII. Conclusion

Having determined that the evidence in the hearing record establishes 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 Children's Academy was an appropriate unilateral placement or consider whether equitable factors weighed in favor of an award of tuition reimbursement (see Burlington, 471 U.S. at 370; M.C. v. Voluntown, 226 F.3d 60, 66 [2d Cir. 2000]; D.D-S., 2011 WL 3919040, at *13).

THE APPEAL IS SUSTAINED.

IT IS ORDERED that the IHO's decision dated July 12, 2014 is modified by reversing that portion which determined that the district failed to offer the student a FAPE for the 2013-14 school year; and,

IT IS FURTHER ORDERED that the IHO's decision dated July 12, 2014 is modified by reversing that portion which directed the district to reimburse the parents for the costs of the student's tuition at the Children's Academy for the 2013-14 school year.

Dated: **Albany, New York**
October 15, 2014

CAROL H. HAUGE
STATE REVIEW OFFICER

[17] The student did not turn 12 years old until February 2014 (see Tr. p. 423).