The University of the State of New York

The State Education Department
State Review Officer
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No. 14-175

Application of a STUDENT WITH A DISABILITY, by his parents, for review of a determination of a hearing officer relating to the provision of educational services by the Brewster Central School District

Appearances:
Law Offices of Gerry McMahon, LLC, attorneys for petitioners, Gerry McMahon, Esq., of counsel

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

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioners (the parents) appeal from the decision of an impartial hearing officer (IHO) which denied their request to be reimbursed for their son's tuition costs at the Eagle Hill School (Eagle Hill) for the 2012-13 and 2013-14 school years and to be awarded compensatory additional services. The appeal must be dismissed.

II. Overview—Administrative Procedures

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 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]).[1]

III. Facts and Procedural History

The parties' familiarity with the detailed facts and procedural history of the case and the IHO's decision is presumed and will not be recited here. Briefly, the Committee on Special Education (CSE) convened on June 8, August 8, and August 28, 2012, and May 22, 2013 to formulate the student's individualized education programs (IEPs) for the 2012-13 and 2013-14 school years, respectively (see generally Parent Exs. 18; 20; 21; 22). The parents disagreed with the recommendations contained in the June 2012 IEP and, as a result, notified the district of their intent to unilaterally place the student at Eagle Hill (see Parent Exs. 53; 54).[2] In a due process complaint notice dated December 11, 2013, the parents alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2012-13 and 2013-14 school year (see Parent Ex. 67 at pp. 9-10).

An impartial hearing convened on January 22, 2014 and concluded on September 3, 2014 after seven days of proceedings (see Tr. pp. 1-778). In a decision dated November 3, 2014, the IHO determined that the district offered the student a FAPE for the 2012-13 and 2013-14 school years (IHO Decision at pp. 14-18). In addition, the IHO made alternative findings that the parents did not meet their burden to establish that Eagle Hill was an appropriate unilateral placement and that equitable considerations did not weigh in favor of the parents' requests for relief (id. at pp. 19-20).

IV. Appeal for State-Level Review

The parties' familiarity with the particular issues for review on appeal in the parents' petition and the district's answer is also presumed and will not be recited here in detail. Briefly, the parents assert that the IHO erred in finding that the recommendation for integrated co-teaching services (ICT) was appropriate based on the student's progress in such a setting in years prior and based on the evaluative information before the CSEs. The parents also argue that the IHO erred in failing to review the appropriateness of speech-language therapy services recommended in the August 28, 2012 IEP and determining whether the district owed the student compensatory additional services in the form of speech-language therapy due to the district's alleged failure to provide such services during school years preceding the 2012-13 school year. In addition, the

[1] The administrative procedures applicable to the review of disputes 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 are well established and described in broader detail in previous decisions issued by the Office of State Review (e.g., Application of the Dep't of Educ., 12-228; Application of the Dep't of Educ., Appeal No. 12-087; Application of a Student with a Disability, Appeal No. 12-165; Application of the Dep't of Educ., Appeal No. 09-092).

[2] The district director of special education stated that the CSE reconvened on August 8, 2012 in response to the parents' notification that they would place the student in Eagle Hill for the 2012-13 school year (Tr. pp. 110-12, see Parent Ex. 53). The director of special education further stated that the CSE reconvened, once again, on August 28, 2012 after it had obtained speech-language and assistive technology evaluations, which were conducted over the summer (Tr. p. 112).

parents allege that the IHO erred in finding that the parents failed to meet their burden to establish the appropriateness of Eagle Hill and that equitable considerations did not weigh in favor of the parents' requests for relief. In an answer, the district denies the parents' material allegations and asserts that the IHO's decision should be upheld in all respects.

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 least restrictive environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 CFR 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see Newington, 546 F.3d at 114; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132; G.B. v. Tuxedo Union Free Sch. Dist., 751 F. Supp. 2d 552, 573-80 [S.D.N.Y. 2010], aff'd, 486 Fed. App'x 954, 2012 WL 4946429 [2d Cir. Oct. 18, 2012]; E.G. v. City Sch. Dist. of New Rochelle, 606 F. Supp. 2d 384, 388 [S.D.N.Y. 2009]; Patskin v. Bd. of Educ., 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]).

An appropriate educational program begins with an IEP that includes a statement of the student's present levels of academic achievement and functional performance (see 34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]; Tarlowe v. New York City Bd. of Educ., 2008 WL 2736027, at *6 [S.D.N.Y. July 3, 2008] [noting that a CSE must consider, among other things, the "results of the initial evaluation or most recent evaluation" of the student, as well as the "'academic, developmental, and functional needs'" of the student]), establishes annual goals designed to meet the student's needs resulting from the student's disability and enable him or her to make progress in the general education curriculum (see 34 CFR 300.320[a][2][i], [2][i][A]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (see 34 CFR 300.320[a][4]; 8 NYCRR 200.4[d][2][v]; see also Application of the Dep't of Educ., Appeal No. 07-018; Application of a Child with a Disability, Appeal No. 06-059; Application of the Dep't of Educ., Appeal No. 06-029; Application of a Child with a Disability, Appeal No. 04-046; Application of a Child with a Disability, Appeal No. 02-014; Application of a Child with a Disability, Appeal No. 01-095; Application of a Child Suspected of Having a Disability, Appeal No. 93-9).

A board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents, if the services offered by the board of education were inadequate or inappropriate, the services selected by the parents were appropriate, and equitable considerations support the parents' claim (Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 [1993]; Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369-70 [1985]; R.E., 694 F.3d at 184-85; T.P., 554 F.3d at 252). In Burlington, the Court found that Congress intended retroactive reimbursement to parents by school officials as an available remedy in a proper case under the IDEA (471 U.S. at 370-71; see Gagliardo, 489 F.3d at 111; Cerra, 427 F.3d at 192). "Reimbursement merely requires [a district] to belatedly pay expenses that it should have paid all along and would have borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148).

The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see R.E., 694 F.3d at 184-85; M.P.G. v. New York City Dep't of Educ., 2010 WL 3398256, at *7 [S.D.N.Y. Aug. 27, 2010]).

VI. Discussion

Upon careful review, the hearing record reflects that the IHO, in a well-reasoned and well-supported decision, correctly reached the conclusion that the district did not deny the student a FAPE for the 2012-13 or 2013-14 school years (see IHO Decision at pp. 14-18). The IHO accurately recounted the facts of the case, addressed the specific issues identified in the parents' due process complaint notice, set forth the proper legal standard to determine whether the district offered the student a FAPE for the 2012-13 and 2013-14 school years, and applied that standard to the facts at hand (id. at pp. 4-18). The decision shows that the IHO carefully considered the testimonial and documentary evidence presented by both parties, and further, that she weighed the evidence and properly supported her conclusions (id.).[3] Furthermore, an independent review of the entire hearing record reveals that the impartial hearing was conducted in a manner consistent with the requirements of due process and that there is no reason appearing in the hearing record to modify the determinations of the IHO (see 20 U.S.C. § 1415[g][2]; 34 CFR 300.514[b][2]). Thus, the conclusions of the IHO are hereby adopted.

In particular, on appeal, the parents argue that the student failed to make progress in an ICT setting during the school years leading up to the 2012-13 school year. A student's progress under a prior IEP is a relevant area of inquiry for purposes of determining whether an IEP has been appropriately developed, particularly if the parents express concern with respect to the student's rate of progress (see H.C. v. Katonah-Lewisboro Union Free Sch. Dist., 528 Fed. App'x 64, 66, 2013 WL 3155869 [2d Cir. June 24, 2013]; Adrianne D. v. Lakeland Cent. Sch. Dist., 686 F.Supp.2d 361, 368 [S.D.N.Y. 2010]; M.C. v. Rye Neck Union Free Sch. Dist., 2008 WL 4449338, *14-*16 [S.D.N.Y. Sept. 29, 2008]; see also "Guide to Quality Individualized Education Program (IEP) Development and Implementation," at p. 18, Office of Special Educ. [December 2010], available at http://www.p12.nysed.gov/specialed/publications/iepguidance/IEPguideDec2010.pdf). 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]). Conversely, "if a student had failed to make any progress under an IEP

[3] Although the section of the IHO's decision setting forth her findings does not contain any references to the hearing record and, therefore, does not comply with State regulations (IHO Decision at pp. 14-20; see 8 NYCRR 200.5[j][5][v]), the remainder of the IHO's decision contains ample citation to the evidence in the hearing record (see IHO Decision at pp. 4-13).

in one year," at least one court has been "hard pressed" to understand how the subsequent year's IEP could be appropriate if it was simply a copy of the IEP which failed to produce any gains in a prior year (Carlisle Area Sch., 62 F.3d at 534 [noting, however, that the two IEPs at issue in the case were not identical as the parents contended]).

Here, for purposes of evaluating the appropriateness of the disputed IEPs, the student's May 2011 IEP recommended a similar but not identical placement consisting of ICT services in English language arts (ELA), mathematics, science, and social studies, as well as one individual counseling session per week and one small group (5:1) occupational therapy (OT) session per week (Parent Ex. 16 at pp. 1, 15-16). The June 2012 IEP added direct (every other day) and indirect (twice monthly) consultant teacher services and reduced the frequency of the student's related services to one individual counseling session per month and two small group OT sessions per month (Parent Ex. 18 at pp. 1, 13). The August 28, 2012 IEP added two small group (5:1) speech-language therapy sessions per week to the student's program (Parent Ex. 21 at pp. 1, 10). Finally, the May 2013 IEP did away with the recommendation for consultant teacher services and OT but added a special class (academic support lab) every other day (Dist. Ex. 22 at pp. 1, 9). Given the variations in the recommended placement and services, the student's rate of progress during the 2011-12 school year does not provide a clear indicator of the appropriateness of the subsequent IEPs.

Notwithstanding the weakness in the approach of comparing the IEPs, contrary to the parents' assertions, the IHO nevertheless correctly determined that the student made progress during the 2011-12 school year, thus further undermining the argument. According to benchmark testing conducted during the 2011-12 school year, although the student's performance generally remained in the below average ranges, he demonstrated progress in all areas tested, including: reading words, reading comprehension, mathematics concepts and applications, and mathematics computation (Parent Exs. 18 at pp. 2-3; 41 at pp. 1-2). The June 2012 progress report indicated that, at the conclusion of the 2011-12 school year, the student had achieved the majority of the annual goals in the May 2011 IEP—including goals related to the student's organization, reading, written language, and mathematics—and was making satisfactory progress toward achieving the remainder of the goals (Parent Ex. 32 at pp. 1-6; see Parent Ex. 16). In addition, the OT report dated March 23, 2012 noted that the student had shown improvement in visual memory, visual perception and sustained attention, and that the student was more visually organized and had acquired strategies to assist in breaking down visual information (Parent Ex. 109 at pp. 1-2). The annual counseling report dated April 16, 2012 indicated that the challenges that proved stressful for the student in the previous academic year were handled and strategies were implemented to help the student cope and thrive (Dist. Ex. B). The student's report card for the 2011-12 school year reflected the following grades: reading 85; writing 80; mathematics 88; science 100; and social studies 98 (Dist. Ex. P at p. 4). Further, as reflected in the June 2012 IEP and through her own testimony, the parent indicated that the student had made improvement socially, emotionally, and in his confidence level during the 2011-12 school year (Tr. pp. 423-24, 455; Parent Ex. 18 at p. 2).

While the parents focus on the student's below grade level abilities as evidence of a lack of progress, on the contrary, the hearing record shows that the student demonstrated meaningful progress during the 2011-12 school year commensurate with his abilities (Mrs. B., 103 F.3d at 1121 [noting that a "child's academic progress must be viewed in light of the limitations imposed by the child's disability"]; H.C. v. Katonah-Lewisboro Union Free Sch. Dist., 2012 WL 2708394,

at *13-*14 [S.D.N.Y. May 24, 2012], aff'd, 528 Fed. App'x 64, 2013 WL 3155869 [2d Cir. June 24, 2013]). Although I sympathize with the parents' concern about the student's rate of progress in the district program, the IDEA guarantees access to an appropriate public education, not specific results (see Rowley, 458 U.S. at 192; M.H., 685 F.3d at 245; Cerra, 427 F.3d at 195; Walczak, 142 F.3d at 132).

Moreover, the evidence supports a finding that, based on the evaluative information before the June and August 2012 CSEs, as well as the May 2013 CSE, a general education placement with ICT services, along with the recommended related services, was appropriate for the student. According to State regulation, ICT services are defined as the "provision of specially designed instruction and academic instruction provided to a group of students with disabilities and nondisabled students" (8 NYCRR 200.6[g]). In addition, State regulation requires that personnel assigned to each class "shall minimally include a special education teacher and a general education teacher," and each class "shall not exceed 12 students" with disabilities (8 NYCRR 200.6[g][1]-[2]).

Regarding the IEPs for the 2012-13 school year, the hearing record shows that the June 2012 CSE considered the August 2011 summary report of private testing, which included recommendations that the student remain in an ICT class, receive speech-language therapy, continue OT services, receive a number of accommodations, and have his anxiety and attention monitored (Parent Exs. 18 at p. 3; 46 at p. 4, see Parent Exs. 44; 45).[4] A review of the IEPs developed for the 2012-13 school year reveals that they included services, annual goals and accommodations to address the private evaluators' recommendations (compare Parent Ex. 46 at p. 4, with Parent Ex. 21 at pp. 1-12; see also Parent Exs. 18; 20).

Turning to the May 2013 IEP, consistent with the IHO's determinations, review of the updated cognitive and achievement testing available to the May 2013 CSE does not suggest that the student's level of functioning and needs had changed significantly for the 2013-14 school year, thus necessitating a placement other than a general education class placement with ICT and related services (IHO Decision at p. 18; see Parent Ex. 22 at p. 9). A comparison of the student's April 2012 teacher report with the Eagle Hill December 2012 advisor report shows a student whose abilities and needs were relatively unchanged, as both reports indicated that the student worked well with his peers, required review of directions and checks for understanding, was attentive and displayed positive work habits, and consistently completed homework assignments (compare Parent Ex. 110 at p. 1, with Parent Ex. 56 at p. 1). The December 2012 psychoeducational reevaluation report—which was available to the May 2013 CSE—indicated that, over the course of a number of years, the student had consistently demonstrated low average general cognitive ability on three administrations of the same measure of intelligence (Parent Ex. 51 at p. 2; see Parent Ex. 22 at p. 3). The examiner also noted that the student's current cognitive testing results were similar to previous results and placed the student's functioning in the low average range (Parent Ex. 51 at pp. 2-5). Further, the May 2013 IEP's comment section indicated that the March

[4] Although the parent testified that she did not recall if or when she provided the summer 2011 private evaluations to the district (Tr. p. 440), the June 2012 IEP specifically references the August 2011 team conference summary of the private evaluations (Dist. Ex. 18 at p. 3).

2013 classroom observation described a motivated and academically engaged student (Parent Ex. 22 at p. 2; see Parent Ex. 70).[5]

In this case, given the CSE's obligation to balance the IDEA's requirement to place the student in the LRE with the importance of providing an appropriate educational program that addressed the student's needs (see M.W. v. New York City Dep't of Educ., 725 F.3d 131, 143 [2d Cir. 2013]), a review of the evidence in the hearing record supports a finding that the recommended ICT services—together with the related services and modifications and accommodations—recommended by the June and August 2012 and May 2013 CSEs was supported by the evaluative information and was reasonably calculated to enable the student to receive educational benefits for both the 2012-13 and 2013-14 school years.

Finally, although the parents requested compensatory additional services in the form of speech-language therapy in their due process complaint notice, on appeal, the parents specify that such relief related to the district's alleged failure to offer the student speech-language therapy in the school years leading up to the 2012-13 school year (see Pet. ¶ 73). Since the parents did not assert in the due process complaint notice that the district failed to offer the student a FAPE for the 2011-12 school year or any time prior (see generally Parent Ex. A), relief related to such previous periods was outside the scope of the impartial hearing and the IHO correctly declined to address such issue (20 U.S.C. § 1415[c][2][E][i], [f][3][B]; 34 CFR 300.508[d][3]; 8 NYCRR 200.5[i][7][i], [j][1][ii]; see, e.g., R.E., 694 F.3d at 187 n.4 ["The parents must state all of the alleged deficiencies in the IEP in their initial due process complaint in order for the resolution period to function."]).[6] Further, contrary to the parents' arguments in the memorandum of law, the IHO did not err by omitting from her decision a discussion of "compensatory education in the form of remedial services," (Parent Ex. A at p. 10) as, given the determination that the district did not deny the student a FAPE, no relief was warranted.

VII. Conclusion

Having determined that the evidence in the hearing record establishes that the district sustained its burden to establish that it 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 issues of whether Eagle Hill constituted an appropriate unilateral placement or whether equitable considerations weigh in favor of the parents' request for relief.

[5] In addition, the comments section of the subsequent September 2013 IEP reflect that the classroom observation conducted in March 2013 at the student's private school "warranted no concerns" and the student's then-current teacher indicated that, except for being less talkative than usual, the student exhibited typical behavior during the observation (Dist. Ex. A at p. 2; see Parent Ex. 70).

[6] As the IHO recognized, allegations relating to the 2011-12 school year and before also largely fell outside of the two year statute of limitations (IHO Decision at p. 16; see 20 U.S.C. § 1415[f][3][C]; see also 20 U.S.C. § 1415[b][6][B]; Educ. Law § 4404[1][a]; 34 CFR 300.511[e]; 8 NYCRR 200.5[j][1][i]).

I have considered the parties' remaining contentions and find them to be without merit.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
January 8, 2015

JUSTYN P. BATES
STATE REVIEW OFFICER