



The University of the State of New York

The State Education Department

State Review Officer

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No. 15-084

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

Appearances:

Law Offices of Adam Dayan, attorneys for petitioner, Adam Dayan, Esq., of counsel

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for respondent, Theresa Crotty, 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 parent) appeals from the decision of an impartial hearing officer (IHO) which denied her request to be reimbursed for her daughter's (the student's) tuition costs at Gesher Yehuda for the 2014-15 school year as well as for the cost of an independent educational evaluation. Respondent (the district) cross-appeals from that portion of the IHO decision which directed the district to consider providing the student with the services of a 1:1 paraprofessional in the future. The appeal must be sustained in part. The cross-appeal must be dismissed.

II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law § 4402; *see* 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[l]).

New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding "any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student" (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][6]-[7]; 34 CFR 300.503[a][1]-[2], 300.507[a][1]). First, after an opportunity to engage in a resolution process, the parties appear at an impartial hearing conducted at the local level before an IHO (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j]). An IHO typically conducts a trial-type hearing regarding the matters in dispute in which the parties have the right to be accompanied and advised by counsel and certain other individuals with special knowledge or training; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed five business days before the hearing; and obtain a verbatim record of the proceeding (20 U.S.C. § 1415[f][2][A], [h][1]-[3]; 34 CFR 300.512[a][1]-[4]; 8 NYCRR 200.5[j][3][v], [vii], [xii]). The IHO must render and transmit a final written decision in the matter to the parties not later than 45 days after the expiration period or adjusted period for the resolution process (34 CFR 300.510[b][2], [c], 300.515[a]; 8 NYCRR 200.5[j][5]). A party may seek a specific extension of time of the 45-day timeline, which the IHO may grant in accordance with State and federal regulations (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5]). The decision of the IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]).

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

With regard to the student's educational history, the hearing record reflects that the student received special education and related services since the age of two through early intervention and the Committee on Preschool Special Education (Dist. Ex. 6 at p. 1). At the time of the events giving rise to this proceeding, the student exhibited delays in academic, language, pragmatic, social, and fine and gross motor skills (Dist. Exs. 1 at pp. 1-5; 5; 6; 7; 8; 9; 10; Parent Ex. G).¹ Additionally, the student received diagnoses of an attention deficit hyperactivity disorder (ADHD),

¹ The hearing record contains duplicate copies of the report of a June 2014 neuropsychological evaluation (Dist. Ex. 4; Parent Ex. G). For the purposes of this decision, only Parent Exhibit G will be cited when referring to this report.

combined type; specific learning disorders with impairments in reading, writing, and mathematics; a language disorder; and a developmental coordination disorder (Parent Ex. G at pp. 11-12).

On March 12, 2014, a CSE convened to conduct the student's annual review and to develop the student's IEP for the 2014-15 school year (Dist. Ex. 2 at pp. 1, 11). Finding that the student remained eligible for special education and related services as a student with a speech or language impairment, the March 2014 CSE recommended a 12:1+1 special class placement in a community school along with related services of counseling, occupational therapy (OT), and speech language therapy (id. at pp. 7-8, 11). The CSE also recommended supports to address the student's management needs (id. at p. 3). During the March 2014 CSE meeting, the parent indicated that the student required a small classroom setting (id. at p. 2).

By letter dated March 17, 2014, the parent conveyed to the district her concern that a 12:1+1 special class would not be sufficiently supportive for the student and further indicated that she would be obtaining a private psychological evaluation of the student and seeking reimbursement from the district (Parent Ex. C). In a school location letter and prior written notice dated July 22, 2014, the district summarized the special education program and related services recommended by the CSE for the 2014-15 school year and notified the parent of the public school site to which the district had assigned the student to attend (District Ex. 3). On or about July 30, 2014, the parent provided the district with a copy of a privately obtained June 2014 neuropsychological evaluation report and requested that the district consider the findings contained therein in making a recommendation for the 2014-15 school year (Parent Ex. E; see Parent Ex. G). The parent further notified the district that if it did not recommend an appropriate public school program and placement, she would enroll the student at Gesher Yehuda and seek reimbursement for the cost of her tuition (Parent Ex. E at p. 2).²

In a letter dated September 29, 2014, the parent notified the district that she had visited the assigned public school site, observed a 12:1+1 special class, and would be unilaterally placing the student at Gesher Yehuda (Dist. Ex. F at pp. 1-3). Among her concerns, the parent asserted that both the proposed 12:1+1 special class and the assigned school would be too large and overwhelming for the student and could not provide the student with sufficient individualized attention and support (id. at pp. 1-2). The parent also contended that the assigned school did not use the methodologies which had proven effective with the student or a multisensory approach, which the student required to learn (id.). In addition, the parent indicated that she was concerned the student would not be appropriately functionally grouped, as some of the students in the classroom she observed appeared to be higher functioning than the student (id. at 2). Because of these deficiencies, the parent indicated her intent to maintain the student at Gesher Yehuda and seek reimbursement for the cost of her tuition (id. at pp. 2-3).

The CSE reconvened on September 30, 2014, to consider the independently obtained June 2014 neuropsychological evaluation (Dist. Ex. 1 at pp. 1, 13; Parent Ex. G). The CSE included the findings from the June 2014 evaluation in the present levels of performance section of the September 2014 IEP, recommended additional supports to address the student's management needs and developed additional annual goals in the areas of speech and counseling, but recommended

² The parent asserted that she had not yet received the school assignment from the district at the time she sent this letter (Parent Ex. E at p. 1; see Parent Ex. A at pp. 8-9).

the same special education program and related services as did the March 2014 CSE (compare Dist. Ex. 1 at pp. 1-10, with Dist. Ex. 2 at pp. 1-8).

A. Due Process Complaint Notice

By due process complaint notice dated October 13, 2014, the parent alleged that the district failed to offer the student a FAPE for the 2014-15 school year (Parent Ex. A at pp. 1-12). With regard to the March 2014 CSE, the parent alleged that the CSE failed to adequately evaluate the student and required her to obtain an independent educational evaluation (IEE) at her own expense (id. at pp. 6-7). The parent also asserted that the March 2014 CSE ignored her concerns regarding the recommended program, thereby denying her the opportunity to participate in the development of the student's IEP (id. at p. 5).

In addition, the parent alleged that the March 2014 IEP "failed to address critical components of the recommended program" such as the type of curriculum, manner of instruction, teacher credentials, functional grouping, and appropriate school size (Parent Ex. A at p. 5). The parent also asserted that the present levels of performance section of the IEP did not accurately reflect the student's current academic performance and learning characteristics because it did not indicate that the student required individualized instruction (id.). Turning next to the annual goals in the March 2014 IEP, the parent alleged that the goals were immeasurable, inappropriate, inadequate in number and scope, and failed to include short-term objectives (id.). Furthermore, the parent argued that while the IEP indicated that the student required transition support services prior to entering a public school environment, the CSE failed to recommend any transition support services (id. at pp. 5-6). The parent also argued that the 12:1+1 special class recommended in the March 2014 IEP would not provide sufficient individualized instruction and support for the student and was based on program availability rather than the unique needs of the student (id. at pp. 4-6, 9). The parent also contended that the assigned public school site was not appropriate to meet the student's needs on the basis that the staff were insufficiently qualified, the student would receive insufficient individualized support, the school could not implement a multisensory approach as required by the IEP, the student would not be appropriately functionally grouped, and the school was too large and overwhelming (id. at pp. 8-9).

Concerning the unilateral placement, the parent contended that the student's unilateral placement at Geshar Yehuda was appropriate and that equitable considerations supported her request for tuition reimbursement (Parent Ex. A at p. 10). As relief, the parent requested tuition reimbursement and/or prospective funding for the costs of the student's attendance at Geshar Yehuda for the 2014-15 school year, reimbursement for the IEE obtained by the parent, and transportation and reimbursement for transportation costs (id. at p. 11).³

B. Impartial Hearing Officer Decision

An impartial hearing convened on January 29, 2015, and after two days of proceedings concluded on February 5, 2015 (Tr. pp. 1-249). In a decision dated June 25, 2015, the IHO found that the district offered the student a FAPE for the 2014-15 school year (IHO Decision). Initially,

³ The parent also argued that the CSE was not properly constituted because the members were not sufficiently qualified to develop a recommendation for the student or sufficiently familiar enough with the available resources to address her needs (id. at p. 6). This argument has not been raised on appeal and is deemed abandoned.

the IHO held that the district demonstrated that it had fully evaluated the student and that the evaluative information relied on by the March 2014 CSE was consistent with the private neuropsychological evaluation considered by the September 2014 CSE (*id.* at pp. 51-53). The IHO also held that the program recommended in the March 2014 and September 2014 IEPs was consistent with the evaluative information and appropriate to meet the articulated needs of the student (*id.* at pp. 53-54). Further, the IHO held that while the parent argued a number of deficits in the recommended program, including the type of curriculum, method of instruction, credentials of school staff, and functional grouping, "none of these are essential components of an IEP" (*id.* at p. 54). The IHO next held that the district properly determined that the specific transition services to be provided the student would be "situation-specific" and left them to the discretion of the assigned school (*id.* at p. 55). With regard to the assigned public school site, the IHO held that the hearing record established that the district made a placement offer consistent with the student's March 2014 IEP, the parent's concerns were speculative, and the record contained no evidence to indicate that the student's needs could not have been addressed at the assigned school (*id.*).

Turning to the parent's request for reimbursement for the independently obtained neuropsychological evaluation, the IHO found that there was no evidence in the hearing record that the parent notified the district of her disagreement with the district assessments or that she requested an IEE from the district (IHO Decision at p. 52). Accordingly, the IHO held that since the parent failed to comport with the federal and state regulatory requirements in this regard, and the information provided by the IEE was not essential to his determination, reimbursement for the costs of the IEE was not warranted (*id.* at p. 53). While denying the parent's request for reimbursement for the costs of the student's tuition at Gesher Yehuda, the IHO directed subsequent CSEs to consider "whether a 1:1 paraprofessional to aid in refocusing and other management needs would not be beneficial, and it should further consider the assignment of such a paraprofessional, separately, for transitional purposes if the student were to accept the district's offer" (*id.* at pp. 55-56).

IV. Appeal for State-Level Review

The parent appeals, arguing that the IHO erred in finding that the district offered the student a FAPE for the 2014-15 school year. Specifically, the parent argues that the district failed to consider the privately-obtained neuropsychological evaluation and ignored her concerns regarding the appropriateness of a 12:1+1 special class, impeding her ability to participate in the development of the student's IEP. The parent next alleges that the IHO erred in finding that the recommended 12:1+1 special class provided the student with sufficient individualized support and instruction. The parent asserts that the IEPs failed to provide sufficient detail with regard to the provision of multisensory instruction and contained no information regarding staff qualifications, functional grouping, and school size. In addition, the parent contends that the IHO improperly shifted the burden of proof to the parent. The parent further argues that the IHO erred by holding the district adequately addressed the issue of transition support services and directing the district to consider the provision of additional transition support and paraprofessional services in the future. The parent also asserts that although her due process complaint notice challenged the March 2014 IEP, the district presented no evidence at the impartial hearing with respect to that IEP, and the September 2014 IEP was developed after the beginning of the 2014-15 school year.

Concerning the assigned school, the parent contends the IHO erred by not requiring the district to prove that it could meet the student's needs. The parent asserts that the size of both the

assigned school and the proposed 12:1+1 special class were too large and overwhelming for the student and could not provide the student with sufficient support. Next, the parent argues that the student would not have been appropriately functionally grouped. Further, the parent alleges that the staff at the assigned school did not possess adequate training or credentials and would not be able to provide the multisensory instructional approach necessary for the student to make educational progress. The parent also contends that the district did not establish that the assigned school could implement the student's IEP.

The parent argues that the IHO failed to address the appropriateness of the unilateral placement and equitable considerations, that Gesher Yehuda met the student's needs, and that equitable considerations favored the parent. Finally, the parent alleges that the IHO incorrectly determined that she was not entitled to reimbursement for the IEE.⁴

In an answer, the district responds and alleges that the parent's petition is procedurally deficient as it consists of conclusory statements without any substantive argument. Accordingly, the district contends that the SRO should disregard any arguments asserted in the memorandum of law that are not raised in the petition. Nevertheless, and despite the petition's alleged deficiencies, the district argues that the offered program was appropriate to meet the student's needs and that the parent's allegations concerning the assigned school are speculative. The district also interposes a cross-appeal asserting that the IHO erred in directing that subsequent CSEs consider whether the student required the services of a 1:1 paraprofessional.

In a reply and answer to the cross appeal, the parent responds to the district's request that an SRO disregard arguments made only in her memorandum of law, arguing that the petition and accompanying memorandum comport with the regulatory requirements detailed in 8 NYCRR 279.4.⁵

V. Applicable Standards

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see generally Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 239 [2009]; Bd. of Educ. v. Rowley, 458 U.S. 176, 206-07 [1982]).

⁴ The parent has abandoned her challenges to the annual goals on appeal by failing to identify them in any way.

⁵ State regulations require that a petition "shall clearly indicate the reasons for challenging the [IHO's] decision, identifying the findings, conclusions and order to which the exceptions are taken, and shall indicate what relief should be granted" by an SRO (8 NYCRR 279.4[a]). Furthermore, a party may not seek to incorporate additional arguments or raise additional issues in a memorandum of law that have not been articulated in the petition (see 8 NYCRR 279.6; Application of a Student with a Disability, Appeal No. 08-053). Here, while the parent's petition leaves much to be desired, it is not so ambiguous as to preclude the district from formulating an answer responsive to the claims raised in the petition and memorandum of law and there is no indication that the district has been prejudiced in any way. Accordingly, the merits of the challenges raised by the parent are addressed herein. Nevertheless, I remind the parent's attorney that standard legal practice dictates, and the practice regulations require, that the petition should specify the factual bases for each of the parent's particular arguments.

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]). Under the IDEA, if procedural violations are alleged, an administrative officer may find that a student did not receive a FAPE only if the procedural inadequacies (a) impeded the student's right to a FAPE, (b) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 [2007]; R.E., 694 F.3d at 190; M.H., 685 F.3d at 245; A.H. v. Dep't of Educ., 394 Fed. App'x 718, 720 [2d Cir. Aug. 16, 2010]).

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]). 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).

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]).

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).

VI. Discussion

A. 12:1+1 Special Class

On appeal, the parent alleges that the IHO erred in finding that a 12:1+1 special class in a community school was sufficiently supportive and would provide the student with individualized instruction. The district responds and argues that the March 2014 CSE's recommendation for a 12:1+1 special class, in conjunction with the recommended related services, program accommodations, and management strategies, sufficiently addressed the student's needs. As explained more fully below, a review of the evidence in the hearing record supports the district's contentions.

While the adequacy of the evaluative information available to the March 2014 CSE and the student's present levels of performance as described in the March 2014 IEP are not in dispute, a discussion thereof provides context for the issues to be resolved—namely, whether the 12:1+1 special class recommendation was appropriate.⁶ A review of the hearing record indicates that the March 2014 CSE had available to it and considered an August 2013 psychoeducational evaluation and progress reports from Geshar Yehuda including a December 2013 student progress report, a February 2014 speech therapy progress report, a February 2014 OT progress report, and a March

⁶ To the extent the parent contends that the IEP was required to include information regarding qualifications of teachers, functional grouping, and school size, those arguments are addressed below.

2014 counseling progress report (Dist. Exs. 2 at pp. 1-3; 5; 7 at pp. 1-2; 8 at p. 1; 9 at pp. 1-2; 10 at p. 1).

The March 2014 IEP indicated that, according to an August 2013 psychoeducational evaluation, the student's overall intellectual functioning fell within the extremely low range (compare Dist. Ex. 5 at p. 2, with Dist. Ex. 2 at p. 1). The March 2014 IEP reported the results from an administration of cognitive testing which indicated that the student's ability to reason, comprehend and conceptualize (verbal IQ) fell within the borderline range, her fluid reasoning and perceptual organization involving adaptive and new learning capabilities (perceptual IQ) fell within the extremely low range, her ability to attend, concentrate, and short-term working memory (working memory IQ) fell within the extremely low range, and her speed of mental and graphomotor processing fell within the extremely low range (Dist. Exs. 2 at p. 1; 5 at p. 2). The March 2014 IEP also reported that the August 2013 psychoeducational evaluation indicated that the student's oppositional behavior impacted her test performance, high potential was indicated, and the student's scores may not reflect her true abilities (compare Dist. Ex. 2 at p. 1 with Dist. Ex. 5 at p. 2). The March 2014 IEP further reflected, in accordance with the August 2013 psychoeducational evaluation, that there was a significant difference between the student's verbal reasoning and nonverbal reasoning scores, "with verbal reasoning better developed and a better indicator of her abilities" (id.).

The March 2014 IEP also indicated, in accordance with a December 2013 student progress report, that the student was functioning at an early first grade level in decoding and reading comprehension, she could name letter sounds, and she was able to decode words containing the "short vowel a" (compare Dist. Ex. 2 at p. 1, with Dist. Ex. 7 at p. 1). Furthermore, consistent with the December 2013 student progress report, the March 2014 IEP indicated that the student was able to identify initial consonants when presented with pictures and/or words, had a sight word vocabulary of approximately 25 words and could identify specific setting and characters in a story (id.). With regard to reading skills, the March 2014 IEP, consistent with the December 2013 student progress report, described the student's difficulty identifying the main idea and answering "wh" questions from a story (id.). Furthermore, the March 2014 IEP indicated that the student could write 15 letters and CVC words with the short "a" vowel; however she could not write sentences independently and had difficulty linking ideas together (Dist. Ex. 2 at p. 2). Additionally, consistent with the December 2013 student progress report, the March 2014 IEP indicated that the student was functioning at approximately an early first grade level in math, and was able to identify numbers one to 20, count using 1:1 correspondence, and identify greater than and less than (compare Dist. Ex. 2 at pp. 1-2, with Dist. Ex. 7 at p. 1). The March 2014 IEP indicated that the student was functioning at the beginning of first grade in calculation and at a "high kindergarten" level in word problems, and was able to compute addition problems (Dist. Ex. 2 at pp. 1-2).

Consistent with the December 2013 student progress report, the March 2014 IEP described that the student benefitted from a small class size and that she had difficulty processing information (compare Dist. Ex. 2 at p. 1, with Dist. Ex. 7 at p. 2). The March 2014 IEP also indicated that the student's then-current teacher reported the student had difficulty processing information auditorily, "typically needs 2 minutes to process information," required chunking of information, and should be in a class with a maximum of seven to eight children (Dist. Ex. 2 at p. 1). The teacher further reported that the student used incorrect grammar, often repeated words she did not understand, and needed "multi-sensory [instruction] to master new information" (id.).

With regard to related services and in accordance with the February 2014 speech therapy progress report, the March 2014 IEP indicated that the student presents with deficits in both receptive and expressive language areas, as well as in auditory processing (compare Dist. Ex. 2 at p. 2, with Dist. Ex. 8 at p. 1). Additionally, the March 2014 IEP reflected a March 2014 counseling progress report which indicated that the student benefited from a small structured classroom setting and individualized attention (compare Dist. Ex. 2 at p. 2, with Dist. Ex. 10 at p. 1). Moreover, the March 2014 IEP, consistent with the March 2014 counseling progress report, described the student as friendly and sociable, well-liked by her peers, articulate at expressing her concerns, and as "present[ing] older than she is" (id.). The March 2014 IEP also indicated, in accordance with the March 2014 counseling progress report, that the student needed to "gain a greater understanding of recognizing boundaries and limits and an understanding of what can be said to authority figures" (id.). The March 2014 IEP reported that the student needed a lot of prompting to use "emotional words"; was able to discuss inappropriate behavior, interact with peers, and use her words; received social skills training; and did not tantrum, have meltdowns, or cry (Dist. Ex. 2 at p. 2). However, the IEP also reported incidents of aggressive behavior, and that when upset, the student would often "sit down and sulk" (id.). The March 2014 IEP reported from the student's then-current teacher that the student was "eager to please teachers and enjoy[ed] learning new things" (Dist. Ex. 2 at p. 2; see Dist. 7 at p. 2). The March 2014 IEP also indicated that the parent and her advocate requested termination of a crisis management paraprofessional due to the student's progress (Dist. Ex. 2 at p. 2).

In accordance with a February 2014 OT progress report, the March 2014 IEP indicated that the student presented with significant delays in fine motor and manipulation skills, visual perceptual and visual motor skills, and sensory processing skills (compare Dist. Ex. 2 at p. 2, with Dist. Ex. 9 at p. 1). The March IEP, consistent with the February 2014 OT progress report, also indicated that the student demonstrated poor upper body strength and decreased bilateral coordination and integration (id.).

In order to address the student's needs as described above, the March 2014 IEP recommended a 12:1+1 special class with the related services of counseling once per week individually and once per week in a small group (3:1), OT twice per week individually, and speech language therapy twice per week individually and once per week in a small group (3:1) (Dist. Ex. 2 at pp. 7-8, 11). Furthermore, the March 2014 IEP included approximately 17 annual goals designed to address the student's skills in expressive and receptive language, auditory processing, fine motor and perceptual skills, social skills, self-regulation, and academics (id. at pp. 4-7). To further support the student's needs, the March 2014 IEP includes a variety of environmental and material resources needed to address the student's management needs including: repetition and paraphrasing information, instruction broken down into concrete units of learning, use of multisensory materials, praise and encouragement, graphic organizers, preferential seating, verbal cueing, small classroom environment, refocusing, motivation to keep on task, and review of previously taught material before introducing a new topic (id. at p. 3).

Pursuant to State regulation, 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]). Here, as documented above, the evidence in the hearing record reveals that the student's learning and management needs were

significant enough to interfere with the instructional process; therefore, in accordance with State regulation and in order to address the student's academic, language, and social/emotional delays, the March 2014 CSE appropriately recommended a 12:1+1 special class placement.

With regard to the September 2014 IEP, the hearing record indicates that the CSE reconvened in order to consider the privately obtained June 2014 neuropsychological evaluation (Tr. p. 50; Dist. Ex. 1; Parent Exs. E; G). According to the special education teacher and district representative who attended both the March 2014 and the September 2014 CSE meetings, the CSE reconvened to consider the information in the neuropsychological evaluation, and he testified that the CSE also had available to it the progress reports in academics, speech-language therapy, OT, and counseling considered during the March 2014 CSE meeting, as well as updated Gesher Yehuda progress reports from September 2014 (Tr. pp. 45-46; 49-50; Dist. Exs. 7; 8; 9; 10; Parent Ex. G). Comparison of the March 2014 IEP with the September 2014 IEP shows that the September 2014 CSE updated the student's present levels of performance to include information from the June 2014 neuropsychological evaluation report and information provided by the student's then-current teacher (compare Dist. Ex. 2 at pp. 1-3, with Dist. Ex. 1 at pp. 1-5; see Parent Ex. G). Moreover, the new information considered by the September 2014 CSE supported the recommendation for a 12:1+1 special class with related services of counseling, OT, and speech-language therapy, and the recommended supports to address the student's management needs.⁷

Specifically, in accordance with the June 2014 neuropsychological evaluation, the September 2014 IEP reported the scores from an administration of cognitive testing, which indicated that the student's full scale IQ was within the extremely low range, and other cognitive areas ranged from low average to extremely low (compare Parent Ex. G at pp. 4-7, 17, with Dist. Ex. 1 at p. 1). The September 2014 IEP also reported the student's academic achievement scores, which indicated that the student's listening comprehension skills fell within the preschool range; her decoding and comprehension scores fell between a kindergarten to first grade level; her math scores were at a kindergarten level; and in writing the student's scores were at a kindergarten level (compare Parent Ex. G at pp. 9-10, 19, with Dist. Ex. 1 at p. 2). Comparison of these scores with the information provided in the March 2014 IEP show similar levels of functioning in both the cognitive and academic domains (compare Dist. Ex. 2 at pp. 1-3 with Parent Ex. G at pp. 4-7, 9-10, 17, 19). Additionally, consistent with information provided by the August 2013 psychoeducational evaluation which was included in the March 2014 IEP, the June 2014 neuropsychological evaluation indicated that the student's profile revealed "variability among the indices that make up the [full-scale IQ], suggesting uneven functioning across domains" and that while her full-scale IQ fell within the extremely low range, there were discrepancies which indicated that the composite was "less indicative of her true potential" (Dist. Ex. 2 at p. 1; compare Dist. Ex. 5 at p. 2-4, with Parent Ex. G at p. 5). Furthermore, the June 2014 neuropsychological evaluation recommended a small, supportive, structured and multisensory self-contained classroom setting, speech-language therapy services, OT, and counseling; all of which were

⁷ To the extent that the parent argues on appeal that the district defended the September 2014 IEP instead of the March 2014 IEP, the September 2014 IEP superseded the March 2014 IEP, and embodied the final version of the program recommended for the student for the 2014-15 school year. Regardless, the hearing record indicates that with the exception of statements taken from the June 2014 IEE in the present levels of performance section and the addition of several resources to address the student's management needs and two annual goals, none of which are directly challenged on appeal, the two IEPs are substantially similar and contain the same recommended special education program and related services (compare Dist. Ex. 1, with Dist. Ex. 2).

included in the program and related services recommendations in both the March 2014 and the September 2014 IEPs (compare Parent Ex. G at p. 13, with Dist. Ex. 1 at pp. 9-10, and Dist. Ex. 2 at pp. 7-8). Moreover, the evaluator's recommendations to address the student's management needs are similar to those recommended in the September 2014 IEP, indicating that the September 2014 CSE properly considered the new evaluative information available to it (compare Parent Ex. G at pp. 13-16, with Dist. Ex. 1 at pp. 4-5). Furthermore, in addition to the inherent support provided in a 12:1+1 special class along with the recommended related services, the September 2014 CSE developed additional goals to further address the student's social/emotional and academic needs, and added additional strategies and accommodations to the recommendations to address the student's management needs (see Dist. Ex. 1 at pp. 5-9).

In view of the foregoing, I find that the information provided by the private June 2014 neuropsychological evaluation, which was appropriately considered by the September 2014 CSE, supports the appropriateness of the program developed by the CSE.

With regard to the parent's contention that the district failed to provide sufficient detail regarding the provision of multisensory instruction to the student, the evidence in the hearing record does not support the parent's contention that the March 2014 and September 2014 IEPs did not adequately address the student's need for multisensory instruction. On the contrary, both the March 2014 and the September 2014 IEPs reflected the student's need for multisensory instruction and recommended that the student use multisensory materials (Dist. Exs. 1 at pp. 2, 4; 2 at pp. 1, 3). Furthermore, the September 2014 IEP also recommended the use of manipulatives for math, opportunities for use of multisensory modalities and "real life" examples during lessons, and use of a multi-modal approach to reading (Dist. Ex. 1 at pp. 4-5).

Addressing the parent's contention that the March 2014 IEP did not provide a transition plan for the student to support her transition from private to public school, a review of the March 2014 IEP recommended that the student be provided with "transitional support into public school program should be provided at teacher's discretion" (Dist. Ex. 2 at p. 3). As noted by the district representative at the March 2014 and September 2014 CSE meetings, transitional supports are useful for any student going from a private school to public school setting because of the "normal adjustment period" involved in becoming "used to routines and procedures within the new school" (Tr. pp. 67-68). Furthermore, despite the district's acknowledgment of the utility of such services, the IDEA does not require that the CSE develop a plan to support a student's transition from one school to another (R.E., 694 F.3d at 195), State regulations reference transitional support services as being for the benefit of a student's teacher (8 NYCRR 200.1[ddd]), and the hearing record does not indicate that the failure to develop one would preclude the student from receiving educational benefits.

With respect to the district's cross-appeal, although I agree that it is possible to read the IHO's order as directing the district to consider certain services in perpetuity, a more reasonable interpretation would be that the IHO intended for the district to consider the provision of such services when next it reconvenes to develop a program for the student for the 2015-16 school year, as it would be inappropriate for the IHO to attempt to bind the CSE for an unlimited future period of time. To the extent the IHO intended this directive to be limited in scope, the hearing record does not indicate that ordering the district to consider whether the student would require the

services of a 1:1 paraprofessional for assistance with respect to refocusing and transitioning to a public school setting constituted an abuse of discretion under the circumstances of this case.⁸

B. Challenges to the Assigned Public School

On appeal, the parent asserts that the IHO incorrectly determined that her claims with respect to the assigned school were speculative. Specifically, the parent argues that the district failed to present any evidence regarding the credentials of staff or teaching methodologies utilized at the assigned school. Furthermore, the parent alleges that based on her visit to the assigned school, the student would not be appropriately functionally grouped and that both the school and class size would be too large for the student.

Generally, the sufficiency of the program offered by the district must be determined on the basis of the IEP itself (R.E., 694 F.3d at 186-88). The Second Circuit has explained that "[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 E.H. v. New York City Dep't of Educ., 2015 WL 2146092, at *3 [2d Cir. May 8, 2015]; R.B. v. New York City Dep't of Educ., 603 Fed. App'x 36, 40 [2d Cir. Mar. 19, 2015]; R.B. v. New York City Dep't of Educ., 589 Fed. App'x 572, 576 [2d Cir. Oct. 29, 2014]; T.Y. v. New York City Dep't of Educ., 584 F.3d 412, 419 [2d Cir. 2009]). Furthermore, when parents have rejected an offered program and unilaterally placed their child prior to implementation of the student's IEP, "[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 "[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. v. New York City Dep't of Educ., 530 Fed. App'x 81, 87 [2d Cir. July 24, 2013], quoting R.E., 694 F.3d at 187). Accordingly, when a parent brings a claim challenging the district's "choice of school, rather than the IEP itself . . . 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. v. New York City Dep't of Educ., 553 Fed. App'x 2, 9 [2d Cir. Jan. 8, 2014], quoting R.E., 694 F.3d at 187 n.3). Therefore, if the student never attends the public schools under the proposed IEP, there can be no denial of a FAPE due to the parent's suspicions that the district will be unable to implement the IEP (R.E., 694 F.3d at 195; see E.H., 2015 WL 2146092, at *3).

However, the Second Circuit has held that although a district's assignment of a student to a particular public school site is an administrative decision, it must be made in conformance with the CSE's educational placement recommendation, and the district is not permitted to assign the student to a school that cannot implement the IEP (M.O. v. New York City Dep't of Educ., 793 F.3d 236, 244-45 [2d Circuit 2015]; R.E., 694 F.3d at 191-92; T.Y. 584 F.3d at 419-20; see C.F. v. New York City Dep't of Educ., 746 F.3d 68, 79 [2d Cir. 2014]). In particular, the Second Circuit has stated that claims regarding an assigned school's ability to implement an IEP may not be speculative when they consist of "prospective challenges to [the assigned school's] capacity to provide the services mandated by the IEP" (M.O., 793 F.3d at 244; see Y.F. v. New York City Dep't of Educ., 2015 WL 4622500, at *6 [S.D.N.Y. July 31, 2015] [noting that the "the inability of the proposed school to provide a FAPE as defined by the IEP [must be] clear at the time the

⁸ As noted above, the hearing record indicates that the CSE removed a recommendation for a 1:1 paraprofessional at the parent's request because of the student's progress (Dist. Ex. 2 at p. 2).

parents rejected the placement"]; M.C. v. New York City Dep't of Educ., 2015 WL 4464102, at *6-*7 [S.D.N.Y. July 15, 2015] [noting that claims are speculative when parents challenge the willingness, rather than the ability, of an assigned school to implement an IEP]; S.E. v. New York City Dep't of Educ., 2015 WL 4092386, at *12-*13 [S.D.N.Y. July 6, 2015] [noting the preference of the courts for "'hard evidence' that demonstrates the assigned [public school] placement was 'factually incapable' of implementing the IEP"]; see also N.S. v. New York City Dep't of Educ., 2014 WL 2722967, at *12-*13 [S.D.N.Y. June 16, 2014]).

In light of the foregoing, the parent cannot prevail on her claim regarding the credentials of staff or the environment at the assigned public school site. It is undisputed that the parent rejected the district-recommended program and instead chose to enroll the student in a nonpublic school of her choosing (see Parent Ex. F at pp. 1-3). Furthermore, the hearing record is devoid of any evidence to indicate that the assigned school could not implement the IEP. While the parent asserts that she rejected the assigned school based, in part, upon observations and information provided by the school social worker during her visit to the assigned school, the hearing record contains no support for the proposition that the assigned school was incapable of implementing the student's IEP (*id.*) On the contrary, to the extent there is evidence in the hearing record regarding the ability of the school to implement the student's IEP, it supports the district's position that the assigned school could have implemented the September 2014 IEP (Tr. pp. 26-27). The parent's purported observations during her visit provide support only for what the parent believed might occur at the assigned school, rather than evidence that the assigned school was incapable of implementing the student's IEP. This is made clear by the language of the parent's letter to the CSE following her visit to the assigned school, expressing her opinions regarding the adequacy of the level of support in a 12:1+1 special class, allegations regarding the methods of instruction utilized at the school, and vague concerns regarding the parent's impressions of students in the class she observed (Parent Ex. F at pp. 1-2). Accordingly, the parent's claims based on her visit to the assigned school site and conversation with the district school social worker regarding the environment at the assigned public school site generally, rather than with respect to the implementation of the student's IEP, cannot provide a basis for a finding of a denial of a FAPE in this instance (see R.B., 589 Fed. App'x at 576 [holding that a parent's observations during a visit to an assigned school constituted speculative challenges that the school would not implement the student's IEP]).

With respect to the qualifications of staff at the assigned school, the parent does not assert that the district would not comply with State regulations regarding the qualifications of staff, which require that all services included in a student's IEP be provided by appropriately certified or licensed personnel (8 NYCRR 200.6[b]). Rather, the parent merely asserts that the district did not establish to her satisfaction that the staff working with her child would be adequately qualified. The parent requests information to which she is not entitled by State regulations, which do not require that parents be informed of the qualifications of their children's teachers or service providers. In any event, a teacher from the assigned school testified that all of the teachers and related service providers in the school were appropriately certified and licensed (Tr. pp. 19-20). As noted by several district courts, claims regarding qualifications of staff are inherently speculative when a student never attends the assigned public school, as there is no guarantee that a student will receive services from a specific teacher or provider (R.B. v. New York City Dep't of Educ., 15 F. Supp. 3d 421, 436 [S.D.N.Y. 2014], *aff'd*, 603 Fed. App'x 36; B.K. v. New York City Dep't of Educ., 12 F. Supp. 3d 343, 371-72 [E.D.N.Y. 2014]; M.S. v. New York City Dep't of Educ., 2 F. Supp. 3d 311, 331-32 [E.D.N.Y. 2013]).

Regarding the parents' claim that the district failed to present evidence regarding the manner in which the student would be provided with multisensory instruction at the assigned school, the parent's bare assertion in her September 2014 letter to the district that the assigned school did not use specific multisensory methodologies that had worked well with the student in the past or a "hands-on, multisensory approach" is insufficient to indicate that the assigned school was incapable of implementing the student's IEP. In particular, the parent provided no evidence indicating how she determined that the school could not provide multisensory instruction, and the testimony of the private psychologist who conducted the June 2014 IEE and accompanied the parent on her visit to the assigned school gives no indication that they were informed the school was incapable of providing multisensory instruction in accordance with the student's IEP (Tr. pp. 105-06). Accordingly, any conclusion that the assigned school was inappropriate on this basis would be speculative.

With regard to functional grouping, the parent argues that based on her observation of a 12:1+1 special class at the assigned school during her visit, she determined that the students in the classroom had a "wide range of classifications" and higher "levels of functioning" than the student (Parent Ex. F at p. 3). Nevertheless, the parent's alleged observation does not overcome the speculative nature of grouping claims when a student never attended the assigned public school site (M.C., 2015 WL 4464102, at *7; R.B., 15 F. Supp. 3d at 436; B.K., 12 F. Supp. 3d at 371; N.K. v. New York City Dep't of Educ., 961 F. Supp. 2d 577, 590 [S.D.N.Y. 2013]; see J.L. v. City Sch. Dist. of New York, 2013 WL 625064, at *11 [S.D.N.Y. Feb. 20, 2013] [noting that the "IDEA affords the parents no right to participate in the selection of . . . their child's classmates"]). Even assuming that the parent's observations were accurate, there is no basis in the hearing record to find that the range of skills among the students in the observed classroom violated State regulations, which require students to be grouped by similarity of needs, or that such a violation would impede the student's ability to receive a FAPE (8 NYCRR 200.6[a][3][h][2]). Furthermore, even if the students would not have been appropriately grouped in the specific 12:1+1 classroom at the time that the parent observed the class, no evidence was presented that this was the classroom in which the student would have been placed had she attended the assigned school and, in any event, any claim based on this observation would necessarily be speculative in that classroom groupings may change over time (see, e.g., M.S., 2 F. Supp. 3d at 332 n.10). Similarly, parental concerns regarding school or class size, when not contrary to a requirement in a student's IEP, have been deemed not to constitute permissible challenges to the ability of an assigned school to implement the student's IEP (M.O., 793 F.3d at 234; Y.F., 2015 WL 4622500, at *6).⁹

Accordingly, as the September 2014 IEP was appropriate to meet the student's needs for the reasons set forth above, any conclusion regarding the district's ability to implement the IEP at the assigned public school site, the functional grouping within the classroom, or the effect of the school or class size on the student's ability to learn would necessarily be based on impermissible

⁹ To the extent the parent asserts that the IEP should have specified a school size, while the private evaluator recommended a "small school environment," the evaluative information available to the CSE did not specify what size school would be appropriate and the hearing record presents no basis for concluding that the student would be unable to receive educational benefit if placed in a larger school. In particular, while the private evaluator testified that the student would be "overwhelmed" in the assigned school, she did not provide details of how this would manifest (Tr. pp. 102-03), and the student's special education classroom teacher at Gesher Yehuda indicated that when in a larger group of students, the student would "sit shyly on the side and just rather eat her snack than join the game" (Tr. pp. 219-20). Any conclusion about how the student would react to the size of the assigned school would thus be speculative.

speculation, and the district was not obligated to present retrospective evidence at the impartial hearing regarding the implementation of the student's program at the assigned public school site or to refute the parent's claims related thereto (M.O., 793 F.3d at 244-46; R.B., 589 Fed. App'x at 576; F.L., 553 Fed. App'x at 9; K.L., 530 Fed. App'x at 87; R.E., 694 F.3d at 187 & n.3).

C. Reimbursement for IEE

Lastly, the parent contends that the IHO erred in failing to direct the district to fund the cost of the privately-obtained IEE.¹⁰ Both the IDEA and State and federal regulations guarantee parents the right to obtain an IEE (see 20 U.S.C. § 1415[b][1]; 34 CFR 300.502; 8 NYCRR 200.5[g]), which is defined by State regulation as "an individual evaluation of a student with a disability or a student thought to have a disability, conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student" (8 NYCRR 200.1[z]; see 34 CFR 300.502[a][3][i]). Parents have the right to have an IEE conducted at public expense if the parent disagrees with an evaluation conducted by the district and requests that an IEE be conducted at public expense (34 CFR 300.502[b]; 8 NYCRR 200.5[g][1]; see K.B. v Pearl River Union Free Sch. Dist., 2012 WL 234392, at *5 [S.D.N.Y. Jan. 13, 2012] [noting that "a prerequisite for an IEE [at public expense] is a disagreement with a specific evaluation conducted by the district"]). If a parent requests an IEE at public expense, the district must, without unnecessary delay, either ensure that an IEE is provided at public expense or initiate an impartial hearing to establish that its evaluation is appropriate or that the evaluation obtained by the parent does not meet district criteria (34 CFR 300.502[b][2][i]-[ii]; 8 NYCRR 200.5[g][1][iv]). If a district's evaluation is determined to be appropriate by an IHO, the parent may still obtain an IEE, although not at public expense (34 CFR 300.502[b][3]; 8 NYCRR 200.5[g][1][v]). However, both federal and State regulations provide that "[a] parent is entitled to only one [IEE] at public expense each time the public agency conducts an evaluation with which the parent disagrees" (34 CFR 300.502[b][5]; 8 NYCRR 200.5[g][1]).

Here, the IHO denied the parent's claim for public funding of the IEE on the basis that no evidence was presented at the impartial hearing that the parent requested an IEE or that the parent disagreed with the district's assessment of the student (see IHO Decision at p. 52). However, upon review of the hearing record, I disagree. By letter dated March 17, 2014, the parent asserted that she expressed her disapproval with the district assessments during the March 2014 CSE meeting and was informed that the district "would not be able to complete another evaluation" (Parent Ex. C at p. 2). The parent notified the district that she was "not happy with the evaluations done by the [district]" as they "did not capture the full picture of [the student]" and that in accordance with the March 2014 CSE's recommendation, she would pursue a private evaluation and share the report with the district, after which she intended to seek reimbursement for its cost (id.). Thus, the hearing record supports the parent's contention that she expressed her disagreement with the district's evaluation of the student and requested an IEE. Accordingly, it was incumbent upon the district either to provide the student with an IEE at public expense or to initiate an impartial hearing to establish that its evaluation was appropriate or that the privately-obtained evaluation did not meet district criteria (34 CFR 300.502[b][2][i]-[ii]; 8 NYCRR 200.5[g][1][iv]). The hearing record indicates that the district did neither. In light of the foregoing, I find that the IHO erred in denying the parent's request for reimbursement for the IEE and I direct the district to reimburse the parent

¹⁰ The district asserts that it does not now challenge the parent's claim for reimbursement for the IEE.

for the costs of the privately obtained June 2014 neuropsychological evaluation upon submission of proof of payment.¹¹

VII. Conclusion

Having determined that the evidence in the hearing record supports the IHO's determination that the district offered the student a FAPE for the 2014-15 school year, the necessary inquiry is at an end. I have considered the parties' remaining contentions and find it unnecessary to address them in light of my determinations above.

THE APPEAL IS SUSTAINED IN PART

THE CROSS APPEAL IS DISMISSED

IT IS ORDERED that the IHO's decision, dated June 25, 2015, is modified by reversing that portion that denied the parent's request for reimbursement for the IEE.

Dated: **Albany, New York**
 October 2, 2015

CAROL H. HAUGE
STATE REVIEW OFFICER

¹¹ The independent evaluator testified that she "believe[d]" she charged \$4,000 for the evaluation, but no invoice or proof of payment appears in the hearing record (Tr. pp. 104-05).