



# The University of the State of New York

## The State Education Department

State Review Officer

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No. 15-118

**Application of the BOARD OF EDUCATION OF THE  
BALLSTON SPA CENTRAL SCHOOL DISTRICT for review  
of a determination of a hearing officer relating to the provision  
of educational services to a student with a disability**

**Appearances:**

Girvin & Ferlazzo, PC, attorneys for petitioner, Tara L. Moffett, Esq., of counsel

### DECISION

#### I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the district) appeals from the decision of an impartial hearing officer (IHO) that found that it failed to provide the student with appropriate declassification support services, and directed it to provide the student with 20 hours of tutoring on an individual basis as compensatory services. The appeal must be sustained.

#### II. Overview—Administrative Procedures

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

New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding "any matter relating to the

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

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

### **III. Facts and Procedural History**

The student, enrolled in another school district at the time of the impartial hearing, was parentally placed at a nonpublic school located within the geographic boundaries of the district during the time period at issue in this case (Tr. p. 245; Joint Ex. A, Attachment A at p. 2).<sup>1</sup> The student was a resident in the district until sometime during the 2012-13 school year (Joint Ex. R at p. 1).

During the 2011-12 school year (kindergarten), the student attended the nonpublic school, was identified by a CSE as a student with a speech or language impairment, and received two 30-minute sessions per week of speech-language therapy in a small group (Tr. pp. 213-14; Joint Ex.

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<sup>1</sup> While all the joint exhibits are cumulatively numbered in sequential order (see Joint Exs. A-Z), the citations in this decision conform to the total number of pages in each separate exhibit.

A, Attachment A at p. 2). A subcommittee of the CSE convened on January 26, 2012 to discuss updated speech-language testing results (Joint Ex. X at p. 1). The January 2012 CSE subcommittee recommended updated academic testing of the student (id. at p. 2).

On March 23, 2012, the CSE subcommittee convened for an annual review of the student's program and to develop her individualized education services program (IESP) for the 2012-13 school year (Joint Ex. X at pp. 1-3). The March 2012 CSE subcommittee recommended that the student receive five 40-minute sessions per week of resource room services and two 30-minute sessions per week of speech-language therapy in a group (id. at p. 11). Additionally, the March 2012 CSE subcommittee recommended that the student receive extended time to complete assignments and special seating arrangements (id.).

During the 2012-13 school year (first grade), the student attended the nonpublic school and received services pursuant to the March 2012 IESP (Tr. pp. 16, 20-21; Joint Exs. Q; W at p. 1; X at p. 11). On June 5, 2013, a CSE convened for an annual review of the student's program (Joint Ex. S at p. 1). In a prior written notice dated June 19, 2013, the district informed the parent that the June 2013 CSE determined, after "consideration and review of all evaluative materials and school reports," that the student no longer met the criteria to be classified as a student with a disability and did not require special education services (Joint Ex. R at p. 1).

During the 2013-14 school year (second grade), the student continued to attend the nonpublic school, where she received academic intervention services (AIS) in English language arts (ELA) (Joint Ex. A, Attachment A at p. 3).<sup>2</sup> The hearing record shows that with this general education support, the student's quarterly averages for the school year were above 90 percent, as was her final overall grade for the school year (Joint Ex. A, Attachment D at p. 2).

The student continued to attend the nonpublic school for third grade during the 2014-15 school year, where she received testing accommodations (i.e., tests read to the student, separate location) and twice weekly sessions with the nonpublic school principal that provided preteaching and reteaching of material (Tr. pp. 222-23, 229-30). In a letter dated October 3, 2014, the parents notified the CSE of their disagreement with the district's evaluation "which resulted in declassification," and requested both an independent educational evaluation (IEE) with a specified evaluator as well as a CSE meeting to review the results and "make a plan to address" the student's needs (Joint Ex. A, Attachment E). The district's director of special education approved the parent's request for an IEE via letter dated October 22, 2014, subject to a determination that the chosen evaluator met the district's criteria or a request by the parent for a waiver of district policy (Joint Ex. P). The parent responded via a November 5, 2014 letter, indicating that they had obtained an IEE from the desired evaluator, requesting reimbursement for the IEE and a CSE meeting, and indicating that the student had received a diagnosis of dyslexia (Joint Ex. O). The district responded to the parent's letter on November 24, 2014, informing the parent that, without any data or final report from the parent's private evaluator, there was nothing for the CSE to review, requesting that any relevant information be forwarded to the district when available, and indicating

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<sup>2</sup> State regulations define AIS as "additional instruction which supplements the instruction provided in the general curriculum and assists students in meeting the State learning standards . . . and/or student support services which may include guidance, counseling, attendance, and study skills which are needed to support improved academic performance" but does not include special education services and programs (8 NYCRR 100.1[g]).

that a CSE meeting would be scheduled upon receipt of the IEE report (Joint Ex. N). The parent wrote to the district on December 1, 2014 that he would share the IEE report with the district once he had "received an assurance" that he would be reimbursed for the cost and that he was concerned that the student was in "real danger of failing" third grade (Joint Ex. M). The district responded to the parent on December 15, 2014 that it would consider reimbursement after "having the opportunity to discuss and review the report" (Joint Ex. L).

The district completed an occupational therapy (OT) evaluation on January 8, 2015 (Joint Ex. D). On January 16, 2015 the district completed a speech-language evaluation of the student (Joint Ex. E). On February 6, 2015, a CSE convened to develop an IESP for the student for the remainder of the 2014-15 school year (Joint Ex. C). Finding the student eligible for special education and related services as a student with a learning disability, the February 2015 CSE recommended that the student receive five 40-minute sessions per week of resource room services, as well as program modifications and testing modifications (id. at pp. 1, 8-10). The February 2015 CSE deferred a recommendation regarding the student's eligibility for 12-month services pending review (id. at p. 9).

### **A. Due Process Complaint Notice**

By due process complaint notice dated June 5, 2015, the parents alleged, as relevant to this appeal, that by improperly declassifying the student, the district denied the student a free appropriate public education (FAPE) for the period of September 2013 through February 2015 (see Joint Ex. A at pp. 3-4).<sup>3</sup> As a remedy, the parents requested independent evaluations, in addition to "aggressive reading remediation" and "remediation through the summer months" (id. at p. 6). The parents also requested that the district assess the student's progress every three months (id.). Finally, the parent requested reimbursement for the costs of the IEE and a privately obtained reading program, and an award of compensatory educational services for the period during which the student was improperly determined to be ineligible for special education services (id.).

### **B. Impartial Hearing Officer Decision**

On September 22, 2015, an impartial hearing convened and concluded on September 24, 2015, after two days of proceedings (Tr. pp. 1-267).<sup>4</sup> By decision dated November 13, 2015, the IHO concluded that the hearing record supported the June 2013 CSE's decision to declassify the student; however, he also determined that the district failed to offer the student a FAPE because it did not "address the issue of declassification support services when declassifying the student" (IHO Decision at pp. 11-13, 16, 20). In particular, the IHO held that State law required the CSE to consider whether the student required declassification support services when it determined that the student was no longer eligible for special education (id. at pp. 15-16, 20). Accordingly, as relief, he directed the district to provide the student with 20 hours of individualized tutoring provided by a special education teacher (id. at pp. 20-21). However, the IHO rejected the parent's assertion

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<sup>3</sup> The parents also contended that the district improperly failed to recommend services for the student for summer 2015 (Joint Ex. A at pp. 4-5).

<sup>4</sup> The district moved to dismiss certain of the parents' claims by letter motion dated July 15, 2015 (IHO Ex. 1). By interim decision dated September 8, 2015, the IHO denied the district's motion (IHO Ex. 3).

that the student was entitled to 12-month services (*id.* at pp. 16-17). With respect to the parent's request for full reimbursement of the cost of the IEE, the IHO denied the parent's claim because the parent did not comply with the district's policy to request a waiver on the district's limit on the cost of the evaluation (*id.* at pp. 18-19). Lastly, the IHO rejected the parents' other requests for relief, including reimbursement for a specific software program and additional evaluations, due to "the utter lack of support for such relief in the record" (IHO Decision at p. 20).

#### **IV. Appeal for State-Level Review**

The district appeals, and argues that the IHO erred in finding that it failed to offer the student a FAPE by not offering the student declassification support services. The district further alleges that the IHO erred in awarding 20 hours of individual tutoring as compensatory declassification support services for the student. The district also argues that the hearing record did not show that the student required declassification services, and that there was no connection between the student's declassification and the compensatory education award.

In an answer, the parent generally admits or denies the district's allegations and requests that the IHO decision be upheld in its entirety.<sup>5</sup>

#### **V. Applicable Standards**

A board of education must offer a FAPE to each student with a disability residing in the school district who requires special education services or programs (20 U.S.C. § 1412[a][1][A]; Educ. Law § 4402[2][a], [b][2]). However, the IDEA confers no individual entitlement to special education or related services upon students who are enrolled by their parents in nonpublic schools (*see* 34 CFR 300.137[a]). Although districts are required by the IDEA to participate in a consultation process for making special education services available to students who are enrolled privately by their parents in nonpublic schools, no such students are individually entitled under the IDEA to receive some or all of the special education and related services they would receive if enrolled in a public school (*see* 34 CFR 300.134; 300.137[a], [c]; 300.138[b]).

For a parentally placed student in a nonpublic school, Education Law § 3602-c—commonly referred to as the dual-enrollment statute—sets forth IDEA compliance requirements for both districts and parents (Educ. Law § 3602-c[2]). "Boards of education of all school districts of the state shall furnish services to students who are residents of this state and who attend nonpublic schools located in such school districts, upon the written request of the parent" (Educ. Law § 3602-c[2][a]). In such circumstances, the district of location's CSE must review the request for services and "develop an [IESP] for the student based on the student's individual needs in the same manner and with the same contents as an [IEP]" (Educ. Law § 3602-c[2][b][1]). The CSE must "assure that special education programs and services are made available to students with disabilities attending nonpublic schools located within the school district on an equitable basis, as compared to special education programs and services provided to other students with disabilities attending public or nonpublic schools located within the school district" (*id.*). Additionally, unlike

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<sup>5</sup> Because the parents did not cross-appeal from the IHO's determinations which were adverse to them, they have become final and binding on the parties and will not be reviewed on appeal (8 NYCRR 200.5[j][5][v]; *M.S. v. New York City Dep't of Educ.*, 2 F. Supp. 3d 311, 325 [S.D.N.Y. 2013]).

the provisions of the IDEA, section 3602-c provides that a parent may seek review of the recommendation of the CSE pursuant to the impartial hearing and State-level review procedures set forth in Education Law § 4404 (id.).

Except for in circumstances not applicable here, the school district bears the burden of proof during an impartial hearing (Educ. Law § 4404[1][c]; see R.E. v. New York City Dep't of Educ., 694 F.3d 167, 184-85 [2d Cir. 2012]; M.P.G. v. New York City Dep't of Educ., 2010 WL 3398256, at \*7 [S.D.N.Y. Aug. 27, 2010]).

## **VI. Discussion**

Initially, the district alleges that the IHO erred in concluding that the district denied the student a FAPE for the 2013-14 school year by not considering declassification support services. More specifically, the district alleges that the IHO failed to defer to State Education Department guidance regarding the implementation of declassification support services for students with disabilities enrolled by their parents in nonpublic schools.

State law provides that once a CSE determines that a student no longer requires special education services, the CSE is required to "identify and recommend the appropriate declassification support services" for the student (Educ. Law § 3602[1][i][2]; [5-a][d][1]; 8 NYCRR 200.4[d][1][iii][a]). Declassification support services are defined as "services for teachers and pupils in the first year that a pupil moves from a special education program to a full-time regular education program"; services for students "shall be provided on a regular basis and may include, but not be limited to psychological, social work, speech and language services and noncareer counseling services"; and services for teachers "may include the assistance of teacher aides or consultation with appropriate personnel" (Educ. Law § 3602[5-a][d][1]; see Educ. Law § 3602[1][i][2]; 8 NYCRR 200.1[ooo]). The purpose of declassification support services is "to aid in [the] student's transition from special education to full-time regular education" (8 NYCRR 200.1[ooo]). State Regulations provide that a recommendation for declassification support services must "indicate the projected date of initiation of such services, the frequency of provision of such services, and the duration of such services, provided that such services shall not continue for more than one year after the student enters the full-time regular education program" (8 NYCRR 200.4[d][1][iii][b]).

Education Law § 3602-c provides nonpublic school students with disabilities with an entitlement to receive special education services and programs, and counseling, psychological, and social work services related to such instruction (Educ. Law § 3602-c[1][a], [d]; [2][a]; see Educ. Law § 4401[1], [2]). The statute does not directly reference declassification support services, and it is not clear whether a nonpublic school student who has been declassified is entitled to receive declassification support services pursuant to Education Law § 3602-c (see Educ. Law § 3602[1][i][2]; [5-a][d][1]).<sup>6</sup> However, the New York State Education Department published a guidance document delineating the responsibilities of a school district with respect to students with

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<sup>6</sup> While declassification support services are not clearly included within the definition of special services and programs, declassification support services are defined to include psychological, social work, speech-language, and counseling services, and consultant teacher services, all of which are included in the definition of special services or programs (Educ. Law §§ 3602[1][i][2]; [5-a][d][1]; 4401[2][a], [k]).

disabilities attending nonpublic schools in the district ("Chapter 378 of the Laws of 2007 – Guidance on Parentally Placed Nonpublic Elementary and Secondary School Students with Disabilities Pursuant to the Individuals with Disabilities Education Act (IDEA) 2004 and New York State (NYS) Education Law Section 3602-c," VESID Mem. [Sept. 2007], available at <http://www.p12.nysed.gov/specialed/publications/policy/nonpublic907.pdf>). The guidance document addresses the issue of declassification support services directly and succinctly, stating that "[o]nly students who are enrolled in public schools are entitled to declassification support services" (id. at Attachment 1, Question 21).

The IHO declined to follow the guidance document, finding that it was contrary to the plain language of Education Law § 3602-c (IHO Decision at pp. 15-16). In particular, the IHO determined that he could not "reconcile the language of the statute requiring 'equitable' services with the memorandum" (id.). I disagree and consider the guidance document a permissible interpretation of Education Law §3602-c. In any event, in addition to not being entitled to declassification support services as a student attending a nonpublic school, the hearing record reveals that the student did not suffer any harm as a result of not receiving declassification support services. As discussed below, at the time she was declassified, measures of the student's academic, speech-language, and cognitive skills indicated functioning within the average range for a student her age, and she spent the majority of the school day in a general education setting, such that the student did not require declassification support services.

While completing first grade at the nonpublic school during the 2012-13 school year, the student participated in individualized evaluations as part of a mandatory three-year review, including a December 2012 psychological evaluation and an April 2013 special education program report that incorporated academic achievement testing results (Joint Exs. U at p. 3; W at p. 1).<sup>7</sup>

According to the January 2013 psychological evaluation report, the evaluator administered one task from each of several areas of the Woodcock-Johnson III Normative Update Tests of Cognitive Abilities to screen the student's "general cognitive ability" (Joint Ex. W at pp. 1, 3). On a task targeting short-term memory, the student performed within the low average-to-average range (id. at p. 4). Overall, according to the psychological evaluation, "no areas of concern regarding [the student's] cognitive skill development" were identified at the time of the evaluation (id.).

Academic achievement testing was also completed as part of the three-year review; the Wechsler Individualized Achievement Test – Third Edition (WIAT-III) was administered by the student's special education resource room teacher (Joint Ex. U at pp. 1, 3-10). According to the student's performance on the WIAT-III, the student's reading, writing, and math skills fell within the average range when compared with same-age peers (id. at pp. 4-5). More specifically, the student earned a composite standard scores of 103 (58th percentile) in total reading, 97 (42nd percentile) in basic reading, 101 (53rd percentile) in mathematics, and 111 (77th percentile) in math fluency (id. at p. 8). Individual subtest standard scores ranged from 113 (81st percentile) to 91 (27th percentile) and all were within the average range when compared with same-age peers (id. at pp. 4-6). In addition to the WIAT-III, the special education teacher explained the student's

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<sup>7</sup> The report from the psychological evaluation conducted in December 2012 is dated January 2013 (Joint Ex. W at p. 1).

progress was assessed through multiple means, including a remedial reading program's unit assessments, observations he and the student's classroom teacher made, report cards, and the Qualitative Reading Inventory (Tr. pp. 18-19; Joint Ex. U at p. 1).

As noted in the psychological evaluation report, the student's first grade teacher found the student to be a hard worker, who exhibited a "desire to improve" (Joint Ex. W at p. 2). The student's teacher also described the student as friendly and social, and eager to participate in group activities, even when she might be unable to "provide the correct answer" (*id.*). Additionally, the student's resource room special education teacher reported that, while at the beginning of the 2012-13 school year the student struggled to acquire the "developmental skills for reading . . . it was affecting her motivation, [and] it was frustrating her," by the end of the year she had increased her abilities into the average range and "was on her way" (Tr. pp. 21-22). The special education teacher further testified that the student was "an incredibly hard worker . . . she met with very consistent positive growth" (Tr. p. 17). As the year progressed, the teacher reported that the student was able to meet her reading goals, and in at least one case, "far exceed" the expectations of a goal (Tr. pp. 17-18, 21; *see* Joint Ex. Q at p. 2). As reported by the student's special education teacher, the student had achieved an overall reading level commensurate with her then-current grade placement (Tr. pp. 38-39). Furthermore, by the end of the school year, the special education teacher testified the student was more positive and "enjoyed reading in front of the class" (Tr. pp. 21-22).

The June 2013 CSE convened to conduct an annual review of the student's program (Joint Ex. S). In addition to the psychological and academic achievement evaluation results, the committee considered a special education progress report and the findings of an April 2013 speech-language assessment (Tr. pp. 37-39; Joint Exs. R at p. 1; S at p. 3). According to the hearing record, on a March 2013 administration of the Clinical Evaluation of Language Fundamentals - Fourth Edition, the student attained standard scores for each of the following indices: 97 in core language; 96 in expressive language; 108 in language content; 101 in language structure; and 113 in receptive language (Joint Ex. S at p. 3). On the Goldman Fristoe Test of Articulation - Second Edition, the student achieved a standard score of 104 on the sounds in words index, and on the Peabody Picture Vocabulary Test - Fourth Edition, the student attained a standard score of 113 (*id.*).

Following a review of the student's progress during the 2012-13 school year, including consideration of "all evaluative materials and school reports," the June 2013 CSE found the student no longer met the criteria to be classified as a student with a disability and no longer required special education services (Joint Ex. R at p. 1). Furthermore, the June 2013 declassification statement indicated the student's special education services would be discontinued as of June 21, 2013 (Joint Ex. S at p. 1).

As noted above, the purpose of declassification support services is "to aid in [a] student's transition from special education to full-time regular education." (8 NYCRR 200.1[ooo]). However, the hearing record reflects that a full-time regular education program is similar to the program that the student was already receiving, in that she attended a general education classroom for the majority of the school day, except while she received speech-language therapy and attended her resource room program (*see* Joint Ex. X at pp. 11, 13). Though there is no evidence in the hearing record that any declassification support services were considered by the June 2013 CSE,



as discussed above, the evaluative information available to the June 2013 CSE did not indicate the student had any needs for which these support services were required. The reports considered by the June 2013 CSE indicated that on measures of academic, speech-language, and cognitive functioning, the student's performance was solidly within the average range when compared with same-age peers (Joint Exs. S at p. 3; U at p. 5; W at pp. 3-4).

Additionally, during the 2013-14 school year, the nonpublic school provided the student with twice weekly sessions of AIS, a general education support program (Joint Ex. A, Attachment A at p. 3). A review of the student's second grade report card shows that despite the absence of special education services, the student's quarterly averages across the 2013-14 school year, as well as her final overall average, were above 90 percent (Joint Ex. A, Attachment D at p. 2). The student's second grade report card portrayed the student as a focused, diligent student, who "strives to be successful" (*id.*). The report card also indicated the student continued to "need to work on writing skills" and "work on organization a little" (*id.*). Teacher comments across the school year indicate the student exhibited consistent effort despite challenges, and that she met with success during each marking period (*id.*). Finally, there is no evidence in the hearing record to indicate that the nonpublic school referred the student to the CSE at any point during the 2013-14 school year.

The IHO, noting that the parents did not request a specific award of compensatory education, "fashioned a reasonable award" of "20 hours of individualized tutoring by a special education teacher" (IHO Decision pp. 20-21). As discussed above, the purpose of declassification support services is to support a student or the student's teacher in the student's first year enrolled in a full-time regular education program after having been enrolled in a special education program the prior year (Educ. Law § 3602[1][i][2]; [5-a][d][1]; 8 NYCRR 200.1[ooo]). The award of direct special education instruction does not fulfill these objectives and, furthermore, the hearing record does not support an award of compensatory education in any event. A compensatory award should attempt to place a student in the position he or she would have occupied if not for the violation of the IDEA (*P. v. Newington Bd. of Educ.*, 546 F.3d 111, 123 [2d Cir. 2008]; *Bd. of Educ. v. L.M.*, 478 F.3d 307, 316 [6th Cir. 2007]; *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 [D.C. Cir. 2005]; *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 [9th Cir. 1994]). As the only violation of the IDEA at issue is the district's failure to consider declassification support services, and the student made progress during the school year after her declassification, there is no basis appearing in the hearing record on which to premise an award of compensatory services.

## **VII. Conclusion**

In summary, a review of the hearing record supports a finding that the district was not obligated to provide the student with declassification support services following the student's June 2013 declassification, and the IHO erred in finding that the district denied the student a FAPE on that basis and awarding compensatory education services.

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

**THE APPEAL IS SUSTAINED.**

**IT IS ORDERED** that the impartial hearing officer's decision dated November 13, 2015 is modified, by reversing the portions thereof which determined that the district failed to offer the student a FAPE and awarded compensatory tutoring services.

**Dated:**           **Albany, New York**  
                          **February 26, 2016**

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**CAROL H. HAUGE**  
**STATE REVIEW OFFICER**