The University of the State of New York

The State Education Department
State Review Officer
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No. 19-031

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

Appearances:
Howard Friedman, Special Assistant Corporation Counsel, attorneys for respondent, by Brian Davenport, Esq.

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioners (the parents) appeal from a decision of an impartial hearing officer (IHO) which granted their request to be reimbursed by respondent (the district) for their son's tuition costs at the Rivendell School (Rivendell) for the 2018-19 school year and did not address their request for reimbursement for related 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

Due to the disposition of this appeal, a full recitation of the student's educational history is unnecessary. Briefly, based upon the information in the hearing record, the student received early intervention services and he was later accepted as a preschool student at the Brooklyn Preschool of Science during the 2016-17 school year and at Rivendell during the 2017-18 school year and the student received services at both schools pursuant to IEPs from the district's Committee on Preschool Special Education (Tr. pp 341-43; District Ex. 15 at pp. 3, 6; Parent Ex. B at pp. 3-5). For the 2018-19 school year (kindergarten) the CSE found the student eligible for special education and related services as a student with autism (see Tr. p. 70; Parent Ex. F at p. 1). On May 9, 2018 the CSE convened and there was discussion during the during the meeting and agreement that the student's related services should continue (Tr. pp. 157, 348). The parent also indicated that there was a discussion of options on the continuum of educational placements, including an ICT setting, a special class setting, and a specialized school setting (Tr. p. 347). However, the parents were

dissatisfied during the meeting because there was no recommendation to continue SEIT services or provide or another form of 1:1 instruction by a special education teacher or 1:1 support from a paraprofessional in the student's IEP, without which the parents believed the student's programming would be insufficiently supportive (Tr. pp. 352-53).[1]

The CSE developed an IEP for the 2018-19 school year which recommended placement in an integrated co-teaching (ICT) class with the following related services: individual occupational therapy (OT) two times per week for 30-minute sessions in a separate room, OT one time per week for a 30-minute session in a special education classroom, individual physical therapy (PT) two times per week for 30-minute sessions in a separate room, individual speech-language therapy two times per week for 30-minute sessions in a separate room, speech-language therapy one time per week for a 30-minute session in group in a separate room, speech-language therapy one time per week for a 30-minute session in group in a general education classroom, and parent counseling and training four times per year for 60-minute sessions (Parent Ex. F at pp. 8-9, 13). The CSE also recommended the student receive 12-month services and special transportation (id. at pp. 10, 12). The IEP was scheduled to be put into effect in the beginning of September 2018. The parents, through an attorney, notified the district in August 2018 that they "intend[ed] to seek funding for this placement from the [d]istrict if it does not cure the procedural and substantive errors in the [IEP] and offer [the student] an appropriate program and placement" (Parent Ex. D at p. 1) to During the 2018-19 school year the student continued to attend Rivendell in its preschool program at a contracted cost of 29, 255 (Tr. pp. 70, 338; Parent Exs. D, CC, DD).

A. Due Process Complaint Notice

The parents, through their attorney, initiated the instant administrative due process proceeding by filing a due process complaint notice dated August 31, 2018 (Parent Ex. A at p. 1). The parents subsequently filed an amended due process complaint notice dated November 5, 2018 (Parent Ex. C at p. 1). The parents raised concerns about the adequacy of the CSE process and the student's 2018-19 school year and asserted that the district failed to provide the student with a free

[1] It may be helpful to the parents going forward if interested in continuing 1:1 instruction by a teacher or 1:1 support by a paraprofessional if they speak to district staff in those terms rather than relying on the term "SEIT." It is not inaccurate for district staff to indicate to the parents that a school-age student is not eligible for "SEIT" services, which are defined by State law as services available only to preschool students with disabilities (Educ. Law § 4410[1][k]). State law defines SEIT services (the specific service requested by the parent) as "an approved program provided by a certified special education teacher . . . , at a site . . . , including but not limited to an approved or licensed prekindergarten or head start program; the child's home; . . . or a child care location" (Educ. Law § 4410[1][k]; 8 NYCRR 200.16[i][3][ii]; see "Special Education Itinerant Services for Preschool Children with Disabilities," Office of Special Educ. Field Advisory [Oct. 2015], available at http://www.p12.nysed.gov/specialed/publications/2015-memos/documents/SpecialEducationItinerantServicesforPreschoolChildrenwithDisabilities.pdf; "Approved Preschool Special Education Programs Providing Special Education Itinerant Teacher Services," Office of Special Educ. [June 2011], available at http://www.p12.nysed.gov/specialed/publications/SEITjointmemo.pdf). In addition, SEIT services are "for the purpose of providing specialized individual or group instruction and/or indirect services to preschool students with disabilities" (8 NYCRR 200.16[i][3][ii] [emphasis added]). Thus, to the extent that the parent believes the student should continue to receive SEIT services in the 2018-19 school year, it is inconsistent with State regulation and policy for a school district to deliver a service designed exclusively for pre-school students to a school-aged student.

appropriate public education (FAPE) for the 2018-19 school year (id. at pp. 5-13). As relevant to this appeal, the parents requested relief in the form of tuition reimbursement at Rivendell and funding for the following services for the 2018-19 school year: direct special education itinerant teacher (SEIT) instruction four times per week for 30-minute sessions, indirect SEIT instruction two times per week for 30-minute sessions, three 45-minute sessions per week of individual speech-language therapy, one 45-minute session per week of speech-language therapy in a group of two, three 45-minute sessions per week of individual OT, two 45-minute sessions per week of individual PT, one 60-minute session per month of individualized parent counseling and training, and transportation to and from Rivendell "not to exceed 20 minutes and with a chair lift" (see id. at p. 14).

B. Impartial Hearing Officer Decision

The impartial hearing convened on September 26, 2018 and concluded on February 28, 2019, after five days of proceedings (see Tr. pp. 1-375). By interim decision dated September 26, 2018 on the issue of the student's stay-put placement, the IHO issued a decision finding that the last agreed upon IEP, the student's June 5, 2018 CPSE IEP, did not include funding tuition for the student's placement at Rivendell (IHO Interim Decision at p. 3). However, the IHO also ordered that the district continue to provide as a pendency placement for the student for the duration of the administrative proceedings the following related services: three 45-minute sessions per week of individual speech-language therapy, one 45-minute session per week of speech-language therapy in a group of two, three 45-minute sessions per week of individual OT, two 45-minute sessions per week of individual PT, one 60-minute session per month of parent counseling and training (see id.).

In a final decision dated April 18, 2019, the IHO found that the district failed to offer the student a FAPE for the 2018-19 school year because the IEP and the CSE's recommendations therein were based upon "preset district offerings" available in the district rather than upon the student's individual needs (IHO Decision at pp. 6-7). Notably, the IHO found that while district staff noted that the student required 1:1 SEIT services, the district did not provide such services because the student was entering kindergarten, and the district "does not allow an IEP team to recommend an ICT placement that includes the services of SEIT" and the district does not "offer SEIT or SETSS at the kindergarten level" (id. at pp. 5-6).[2] The IHO also found that the parents

[2] The IHO appeared to base the conclusion that the student required SEIT services on testimony from a district witness who prepared the student's IEPs for his preschool setting during the 2017-18 school year and summer 2018 (Tr. pp. 99-101), and the IHO found a "quandary" with regard to why 1:1 SEIT services would be offered in a preschool setting, but then only months later 1:1 SEIT services would not be continued on a school age IEP (IHO Decision at pp. 5-6). The district witness testified that that ICT services and a SEIT cannot be placed on a student's ICT, but that he did not know whether it was a policy (Tr. 106-107). The policy that SEIT services are not available to school-aged children is described above and is set forth in state law; however, that policy does not preclude a CSE from providing 1:1 instruction disability in a school-age program if required to offer a student a FAPE, similar to the manner in which a SEIT can provide instruction to a preschool student with a disability. Furthermore, State regulation provides explicit guidance for providing 1:1 aides that is applicable to school-age programming (8 NYCRR 200.4[d][3][vii]). The school psychologist who testified that accurately that SEIT services could not be provided with respect student's school age programming but did not fully respond to questions regarding the provision of 1:1 services in circumstances when the student is also recommended for ICT services (see, e.g., Tr. p. 160). The school psychologist indicated that SETSS could not be provided to a student

had met their burden of showing that Rivendell was an appropriate unilateral placement as it was "reasonably calculated to meet [the student's] needs and produce educational benefit" (id. at p. 8). The IHO ordered the district to reimburse the parents for the student's attendance at Rivendell in the 2018-19 school year and to reimburse the parents for SEIT services provided to the student in the 2018-19 school year (id.).

IV. Appeal for State-Level Review

On appeal, the parents proceed pro se and claim that the IHO incorrectly omitted a specific order to fund three 45-minute sessions per week of individual OT, two 45-minute sessions per week of individual PT, three 45-minute sessions per week of individual speech-language therapy, and one 45-minute session per week of speech-language therapy in a group of two for the 2018-19 school year. The parents maintain that these services were being provided to the student by "contract agencies working at Rivendell." The parents request that the district be ordered to pay for related services for the duration of the 2018-19 school year.

In an answer, the district responds to the parents' claims with denials and argues that the parents' request for relief should be dismissed and the matter remanded to the IHO for further proceedings in order to clarify whether the IHO relied on "testimony or other evidence to deny the related services," and to determine if it was the IHO's "intent . . . to deny this relief or it was an oversight (Answer at p. 4)."

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. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206-07 [1982]).

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; T.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 151, 160 [2d Cir. 2014]; 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. Fla. 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]).

in an ICT services setting, did not directly answer questions regarding why the student did not require full-time 1:1 support, indicating in response that there were two teachers in an ICT setting (see, e.g., Tr. pp. 164, 171-72, 175-76).

The Supreme Court has indicated that "[t]he IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement" (Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 580 U.S. __, 137 S. Ct. 988, 999 [2017]). 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. of the Chappaqua Cent. Sch. Dist., 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).

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 adequacy of a given IEP turns on the unique circumstances of the child for whom it was created" (Endrew F., 137 S. Ct. at 1001). 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 Endrew F., 137 S. Ct. at 1001 [holding that the IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances"]; 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]), 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]).[3]

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

There can be no dispute that the parents sought payment for the related services as one aspect of the relief sought in their due process complaint notice (Parent Ex. C at p. 14; see also Parent Ex. A at p. 7). Consequently, the IHO should have addressed the related services in the ordering clauses of the final decision in April 2019. On appeal the district concedes in the answer that "there was no substantive dispute in the record as to whether the Student required occupational therapy, physical therapy, and speech/language therapy," (Answer at p. 4) but nonetheless argues that because the SEIT provider at Rivendell testified that the student only required SEIT services it is "unclear whether [the IHO] relied on this testimony or other evidence to deny the related services" (id.) Further, the district claims that "[b]ecause the IHO ultimately found that the [district] deprived the Student of a FAPE, and the [district] had recommended the Student for these services but they were not included in the IHO's award, the SRO should remand the matter to the IHO for a clarification…whether her intent was to deny this relief or it was an oversight" (id.) Initially, I note that the district's characterization of the SEIT provider's testimony that SEIT services was "all that [the student] needed" (Answer at p. 4) is somewhat disingenuous; the testimony in the hearing record reflects that when she was asked whether the program at Rivendell and 25 hours of 1:1 SEIT services was appropriate to meet the student's needs she responded "[y]eah . . . I think it has been a really good program for him" (Tr. p. 295). The SEIT provider

[3] The Supreme Court has stated that even if it is unreasonable to expect a student to attend a regular education setting and achieve on grade level, the educational program set forth in the student's IEP "must be appropriately ambitious in light of his [or her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives" (Endrew F., 137 S. Ct. at 1000).

does not identify SEIT services as the only services the student requires or that the related services requested by the parent would be unnecessary or inappropriate.[4]

The district does not otherwise challenge the IHO's finding that the student was denied a FAPE for the 2018-19 school year, and the district does not take the position that the duration or frequency of services requested by the parents is inappropriate to address the student's needs. As a result, it is unclear why the parties could not resolve this matter without resorting to a formal appeal.[5] Further, the precise type of services being requested on appeal by the parents — OT, PT and speech-language therapy, together with annual goals related thereto— were included as part of the district's proposed May 2018 IEP for the 2018-19 school year (Parent Ex. F at pp. 5-8, 9). In addition, the student's IEPs for the 2017-18 school year indicate that the CSE recommended the same type and duration of services which the parents now request for the 2018-19 school year (Parent Ex. B at p. 19; Dist. Ex 15 at p. 21).[6] The school psychologist also testified that the duration of OT, PT and speech-language services was only reduced from 45-minute sessions in the 2017-18 school year to 30-minute sessions in the 2018-19 school year because the district does not otherwise recommend 45-minute sessions to its students (see Tr. pp. 136-40, 142-44). There is no basis for the district's contention on appeal that the matter should be remanded as the record is well developed on this issue. I find that the lack of related services in the IHO's final decision was an oversight on the part of the IHO at most, likely due to the fact that the quantity of OT, PT and speech-language therapy needed by the student were undisputed issues in this proceeding (see Tr. pp. 157, 348).

As a final point, even if the district could somehow prevail with respect to the parents' related services claim on the merits, the district's attempt to avoid funding them at this point would nevertheless fail as the district has the obligation to pay for them anyway as the student's pendency placement, which now covers the entirety of the 2018-19 school year, and even extends past it. I will direct the district to reimburse the parents for the related services identified by the parents for the 2018-19 school year, to the extent that such services have not already been provided through pendency.

VII. Conclusion

As the district has provided no sound justification to remand this case to the IHO for further proceedings nor has the district provided any argument to suggest that reimbursement for related services provided to the student at Rivendell is inappropriate, the parents are correct in their contention that the IHO's decision omitted whether tuition reimbursement included reimbursement for related services provided, and I will rectify that omission.

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[4] The test for the parents' private placement is whether it is appropriate, not whether it is perfect or "most appropriate" (C.L. v. Scarsdale Union Free Sch. Dist., 744 F.3d 826, 837 [2d Cir. 2014]).

[5] The district sought three extensions of the timelines for purposes of negotiating a settlement, to which the parent consented.

[6] Progress reports from the student's related service providers from the 2018-19 school year were included in the hearing record (see Parent Exs. NN-PP).

THE APPEAL IS SUSTAINED.

IT IS ORDERED THAT the decision of the IHO dated April 18, 2019 is modified to require that the district shall reimburse the parents for OT, PT and speech-language therapy provided to the student at Rivendell during the 2018-19 school year to the extent that the district has not already paid for these related services pursuant to pendency.

Dated: **Albany, New York**
July 5, 2019

JUSTYN P. BATES
STATE REVIEW OFFICER