



The University of the State of New York

The State Education Department

State Review Officer

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No. 20-159

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

Appearances:

Gina DeCrescenzo, P.C., attorneys for petitioners, by Gina DeCrescenzo, Esq.

Honeywell Law Firm, PLLC, attorneys for respondent, by Michael W. Gadomski, 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 those portions of the decision of an impartial hearing officer (IHO) which, among other things, denied their request to be reimbursed for their daughter's tuition costs at Blooming Grove Academy (Blooming Grove) for the 2019-20 school year.¹ The parents further appeal from the IHO's denial of their request for independent educational evaluations (IEEs) at district expense. The appeal must be sustained in part.

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

¹ This decision contains references to the both of the student's "parents" interchangeably in both the singular and the plural form. The student's father often acted on behalf of both parents, and there appear to be no significant inconsistencies in viewpoints of the student's mother and father. Accordingly, unless noted otherwise, the singular "parent" refers to the student's father but is attributable to the mother as well as they were jointly represented throughout this matter.

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 demonstrates global delays in speech-language development and academic skills and has generally made slow progress academically, with current functioning at the first and

second grade levels (Tr. pp. 81, 352-53; Dist. Exs. 7 at pp. 2-3; 13 at pp. 4, 5, 11, 20, 26). The student also exhibits social deficits, struggling to engage in conversation and keep pace with social exchanges and exhibits deficits in adaptive functioning that impact her ability to navigate her environment (Dist. Ex. 13 at pp. 4, 16, 17-18, 21, 28, 29). In addition, the student has received diagnoses of moderate intellectual developmental disorder, that likely stems from underlying medical/neurological issues (agenesis of the corpus callosum); a language disorder; an other specified attention deficit hyperactivity disorder; a global developmental delay (that impacts all areas of learning/academics); and a general anxiety disorder (Parent Ex. C; Dist. Ex. 13 at pp. 19, 21).

With respect to the student's educational history, as an infant, the student experienced developmental delays with regard to motor and language milestones (Dist. Ex. 13 at p. 3). She received services through the Committee on Preschool Special Education (CPSE) (*id.*). The student attended a 10:1+3 special class for preschool and received speech-language therapy, occupational therapy (OT), and group therapy services for social interaction from October 5, 2010 until summer 2012 (Dist. Exs. 10 at p. 2; 11 at p. 2; 13 at p. 3). Beginning in September 2012, the student attended kindergarten in a district 8:1+3 special class (Dist. Exs. 11 at p. 2; 13 at p. 3). The student's delays in speech and language, daily living skills and social interaction continued from kindergarten through second grade when a delay in reading skills emerged and continued during third grade (Dist. Ex. 10 at p. 2). For the student's fourth grade school year (2016-17) she attended a 15:1+1 special class, and received speech-language therapy, OT, and group therapy services for socialization, and worked with a reading specialist and a tutor outside of school (Parent Ex. B; Dist. Exs. 1 at p. 1; 10 at p. 2). At the age of nine, the student received a diagnosis of a seizure disorder, specifically, absence seizures characterized by eye rolling or blinking, as well as a diagnosis of an other specified attention deficit hyperactivity disorder (Parent Ex. A; Dist. Exs. 10 at pp. 1, 9; 11 at p. 2; 13 at p. 3-4).

On January 26, 2017, the parents obtained a private neuropsychological evaluation of the student (Dist. Ex. 10).² The resultant report noted that the student's full-scale IQ had dropped from 65 at the time of an October 2015 evaluation, to 54 at the time of the January 2017 evaluation, both in the extremely low range (*id.* at p. 5). In a letter to "staff," dated April 26, 2017, the neuropsychologist who conducted the student's January 2017 neuropsychological evaluation opined that the student would benefit more from a setting focused on developing basic skills (i.e. her then-current 15:1+1 special class in a non-integrated setting), and less from a setting focused on developing life skills (Parent Ex. B).

For the student's 2017-18 school year (fifth grade), the CSE convened on May 1, 2017, and determined that she was eligible for special education services as a student with multiple disabilities (Dist. Ex. 1 at p. 1).³ The parents requested that the student be placed in a 15:1 special class for the 2017-18 school year and shared the April 26, 2017 letter from the student's neuropsychologist with the CSE, supporting that placement (*id.*). The CSE discussed the student's

² According to the evaluation report, the evaluation took place on January 4, 2017 while the report was generated on January 26, 2017 (Dist. Ex. 10 at p 1).

³ The student's classification as a student with multiple disabilities was based on her intellectual disability and her seizure disorder (Tr. p. 100).

eligibility for New York State Alternate Assessment, but the student's father indicated that he did not want to consider alternate assessment at that time (*id.* at p. 2).⁴ The parents' advocate agreed and suggested that the student should continue in a program similar to the one she was in to see if she made additional academic progress (*id.*). Despite significant concerns expressed by school staff regarding the student's lack of progress in her then-current 15:1+1 special class, the CSE recommended the student for a 15:1 special class placement supported by a 1:1 teacher assistant, along with related services of two 30-minute sessions per week of group speech-language therapy and one 30-minute session per week of group counseling services (*id.* at pp. 1, 9).⁵ In addition, comments in the student's IEP indicated that the CSE would reconvene shortly after the first marking period to review her performance in the 15:1 special class (*id.* at p. 2).

In August 2017, the student began participating in a private social skills therapy group, one hour per week at the Help Center paid for by the parents (Parent Exs. C at p. 1; *see* D at p. 1).

On November 6, 2017, the CSE reconvened for a review requested by staff to discuss more supports for the student based on observations of significant academic difficulties (Dist. Ex. 2 at pp. 1-2). Based on input from both parents and staff, and a review of the student's progress, the CSE determined that the student required a more supportive placement (Dist. Exs. 2 at p. 2; *see* Dist. Ex. 31 at p. 1).⁶ An in-district 8:1+3 special class was considered; however, due to the population of the class at the time, it was determined to be inappropriate for the student (Dist. Ex. 2 at p. 2). Therefore, the CSE recommended a packet be sent to the local BOCES and the student remained in her 15:1 special class placement, with no program changes, while a program search was conducted (*id.*).

The CSE convened on April 5, 2018 to conduct an annual review and placement meeting (Dist. Ex. 3 at p. 2). The meeting information summary indicated that the student had been accepted into a BOCES program and that the CSE recommended her for an 8:1+1 special class placement there beginning in summer 2018, with one 30-minute session per week of group speech-language therapy and one 30-minute session per week of group counseling (*id.* at pp. 1, 2). The

⁴ The New York State Alternate Assessment is administered to students whom the CSE has designated as having severe cognitive disabilities as defined by the Office of Special Education (*see* "Eligibility Criteria for Participation in the New York Alternate Assessment Criteria – NYSAA," at p. 1, Office of Special Educ. [May 2019], available at <http://www.p12.nysed.gov/specialed/publications/documents/eligibility-criteria-for-participation-in-nysaa-advisory-and-attachments.pdf>; *see* 8 NYCRR 100.1[t][2][iv]). To be eligible for the New York State Alternate Assessment, a student must be found to have: "a severe cognitive disability and significant deficits in communication/language and significant deficits in adaptive behavior; and . . . require[] a highly specialized educational program that facilitates the acquisition, application, and transfer of skills across natural environments . . . ; and . . . require[] educational support systems, such as assistive technology, personal care services, health/medical services, or behavioral intervention." (*id.* at pp. 3-6).

⁵ The May 1, 2017 CSE also recommended the student for 12-month services for summer 2017 consisting of a 15:1+1 special class placement and related services of two 30-minute sessions per week of group speech-language therapy and one 30-minute session per week of group counseling (Dist. Ex. 1 at pp. 1, 10).

⁶ A November 10, 2017 report card reflected that the student received passing grades for all academic subjects however, the student's teacher indicated at the November 6, 2017 CSE meeting that the student's grades were not reflective of her independent performance due to the level of assistance the student required to complete assignments (Dist. Exs. 2 at pp. 1-2; 30 at p. 1).

CSE recommended that the student continue in the BOCES 8:1+1 special class placement for the rest of the 2018-19 school year and receive one 30-minute session per week of group counseling and increased her speech-language services to two 30-minute sessions per week in a small group (id.). The CSE also recommended that a program review be conducted eight weeks into the 2018-19 school year to assess the student's progress (id. at p. 2).

The CSE reconvened on June 5, 2018 at the request of the parents to address questions and make clarifications regarding the student's IEP (Dist. Ex. 3 at p. 1). According to the meeting information summary, the CSE reviewed suggested changes to the student's IEP and updated her annual goals based on its discussion (id.) Although the parents requested an increase in speech-language sessions from two to three per week, based on the student's progress and functioning the CSE continued its recommendation for two sessions per week for the 2018-19 school year (id.).

In October 2018, the district conducted a psychoeducational evaluation and speech-language evaluation, and completed a social history and a health report, as part of its triennial reevaluation of the student (Dist. Exs. 8; 9; 11; 12).

A CSE convened on December 14, 2018 to review the results of the district's reevaluations (Dist. Ex. 4 at p. 1). The meeting information summary reflected the parents' continued concern regarding the student's difficulty understanding presented materials and her then-current level of functioning (id. at pp. 1, 2). District staff reiterated that the student's significant cognitive, academic, adaptive and language delays impeded her ability to progress at a faster rate (id. at pp. 1, 2). The CSE discussed the student's classification and agreed that due to her significant cognitive delays and severely delayed adaptive skills the student's classification should be changed to intellectually disabled (id. at p. 2). The CSE also discussed the criteria for alternate assessment and although the staff believed that alternate assessment would be appropriate for the student, the student's father indicated he wanted to delay the decision at that time (id.). The CSE determined that the parents and their advocate would meet informally with the CSE chairperson so that she could further explain the criteria for alternate assessment and the profile of programs for students who were alternatively assessed (id.). The change in the student's eligibility for special education programs and services from a student with multiple disabilities to a student with an intellectual disability was the only change made to the student's IEP (id.).

In an email to the CSE chairperson dated March 25, 2019, the student's father indicated that he disagreed with the district's previous testing of the student and requested that independent neuropsychological and speech-language evaluations be conducted by providers chosen by the parents, at the district's expense (Dist. Ex. 33 at p. 3). He also requested the district's criteria for approving IEEs (id.).

In response later that same day, the director of pupil personnel services (the director) sent the student's father an IEE request response letter, the Board of Education IEE policy, and a list of independent evaluators approved by the district to conduct an IEE speech-language evaluation (Dist. Ex. 33 at p. 2; see Dist. Exs. 34; 35; 36). In the request response letter, the director informed the parent that in accordance with district policy the district would agree to pay for the speech-language IEE, however, the evaluator chosen by the parent exceeded both the maximum rate and geographic parameter delineated by board policy (Dist. Ex. 34). The director indicated that she had enclosed a list of board approved evaluators and informed the student's father that if he

believed there was any provision in the board policy that prevented him from obtaining an appropriate evaluation, the parent should provide additional information to request a waiver (id.). With respect to the parent's request for a neuropsychological IEE, the director indicated that the district could not authorize the evaluation at public expense and explained that in order to obtain an IEE at district expense, the district must have conducted an evaluation with which the parent disagreed, and the district had not conducted a neuropsychological evaluation (id.). The director further indicated that if the parent had a neuropsychological evaluation conducted at his own expense, the CSE would take that evaluation into consideration when reviewing the student's IEP (id.).

In an email dated March 26, 2019, the parent informed the director that the district's rate cap for the independent speech-language evaluation was "far below the prevailing rate in the community" and as such, her response was "tantamount to denying [his] request" as the rate cap would effectively prevent him from obtaining an independent evaluation (Dist. Ex. 33 at p. 2). The parent requested that the BOE update its criteria to reflect the prevailing rate for this type of evaluation to avoid a state complaint regarding the issue (id.). In addition, the parent indicated that if the district was formally denying his request for an independent neuropsychological evaluation, he would expect it to commence a due process action against him and to defend the district's psychoeducational evaluation (id.).

In an email to the parent dated March 27, 2019, the director explained that the district had made recent inquiries to providers in the area, including those on the list she had provided him, in order to determine an appropriate rate cap and that all of the providers indicated that \$500 was an acceptable fee for a speech-language evaluation (Dist. Ex. 33 at p. 1). The director further indicated that if the parent had any unique or extenuating circumstances that should be considered, the district could grant a waiver of the fee cap (id.). With regard to the parent's request for a neuropsychological evaluation, the director reiterated that the parents were entitled to an IEE at public expense only if they disagreed with an evaluation conducted by the district, however, the district had not completed a neuropsychological evaluation (id.). The director further indicated that as the district had completed a psychoeducational evaluation of the student, it could approve an independent psychoeducational evaluation at the district's expense of up to \$1,500 (id.).

In an email to the district transportation coordinator dated April 3, 2019, the parent attached a request for transportation to Blooming Grove for the 2019-20 school year (Dist. Exs. 37 at p. 2; Ex. 38). In an email to the parent dated April 4, 2019, the transportation coordinator indicated that she would be unable to update the student's busing until a request for records was received by Pupil Personnel Services (Dist. Ex. 37 at p. 2).⁷ The transportation director further explained in an email dated April 5, 2019 that because the student's CSE meeting to determine her 2019-20 school year placement had not yet taken place, her projected enrollment at BOCES continued for the 2019-20 school year (id. at p. 1). In response to the transportation coordinator, the parent sent an email of

⁷ The transportation coordinator explained that the district could not recommend placement at Blooming Grove because it was not a State approved program but that parents could choose to parentally place their child at Blooming Grove (Dist. Ex. 37 at pp. 1-2). She noted that once the student was accepted at the school, Blooming Grove would request the student's records which would inform the district that the student was officially enrolled in another school (id.) Once the district received this notification it could disenroll the student and arrange for transportation to the private school (id.).

same date indicating that he was not sure if the student would be attending Blooming Grove but that he had neuropsychological and speech-language testing set up for the next two weeks and that following these evaluations, they could determine where the student was "best suited" (id. at p. 1).⁸ He also noted that Blooming Grove was "state approved" (id. at p. 1).

Turning back to the parents' request for IEEs, in an email dated April 8, 2019, the director advised the parent that the speech-language IEE had been approved but that the district never arranged for a provider (Dist. Ex. 37 at p. 1). She indicated that she assumed the parent was pursuing the neuropsychological and speech-language evaluations on his own, however if the parent wanted the district to pay for the speech-language IEE, she would first need to enter into a contract with the evaluator before the evaluation could take place (Dist. Ex. 37 at p. 1). The director further indicated that while Blooming Grove may have been a State-approved private school, it was not a state-approved special education placement and therefore the district could not recommend Blooming Grove as a placement for the student (id.).

On April 9 and 10, 2019, the parents obtained a private neuropsychological evaluation to explore the student's strengths and areas in need of improvement (Dist. Ex. 13). On April 26, 2019, the parents obtained a private speech-language evaluation to gain a comprehensive view of the student's receptive, expressive and pragmatic language skills (Dist. Ex. 14 at p. 1).⁹

For the student's 2019-20 school year (seventh grade), the CSE convened on May 10, 2019 for the student's annual review (Dist. Ex. 5 at p. 1). The CSE reviewed the student's academic and social performance in her BOCES placement and discussed whether the student met the criteria for NYS Alternate Assessment (id. at p. 2). The parents indicated that the student had recently undergone a private neuropsychological evaluation and a private speech-language evaluation that might impact the CSE's decision to recommend alternate assessment for the student (id.) The CSE decided to table the student's annual review until the results of the private evaluations were available to the CSE (id.).¹⁰

On June 4, 2019, the CSE reconvened to discuss the student's private neuropsychological and speech-language evaluations (Dist. Ex. 6 at p. 1). During the CSE meeting, the private neuropsychologist reviewed her April 2019 neuropsychological evaluation including an overall summary of test results and her diagnostic findings (id.). Results of the private speech-language evaluation were also reviewed and the CSE discussed appropriate recommendations at length (id. at p. 2). The CSE concluded that based on information from the two evaluations, the student was "not able to be successful in a graded program, working on grade-level curriculum even with significant modifications" and "[t]herefore, NYS Alternative [sic] Assessment [was]

⁸ The Commissioner of Education has not approved Blooming Grove Academy as a school with which school districts may contract to instruct students with disabilities (8 NYCRR 200.1[d]; 200.7).

⁹ The resultant report for the April 2019 private speech-language evaluation was dated May 16, 2019 (Dist. Ex. 14 at p. 1).

¹⁰ The May 10, 2019 CSE determined that the student was eligible for special education services as a student with multiple disabilities, a change from her previous IEP's in which the CSE found the student eligible for services as a student with an intellectual disability (compare Dist. Exs .4 at p. 1, with 5 at p. 1).

recommended" (id.). The CSE recommended the student for an in-district 8:1+3 special class with speech-language therapy and counseling services for 2019-20 school year (id. at pp. 1, 2, 10). The CSE also recommended the student for 12-month services (id. at p. 11). The parents advised the CSE that they were not in agreement with its recommendation for alternate assessment or with its program recommendation (id.).

In an email dated June 10, 2019, the parents provided the district with 10-day notice that they were unilaterally placing the student at Blooming Grove and would be seeking tuition and transportation reimbursement because the district failed to offer the student a FAPE (Dist. Ex. 16 at p. 2). In response, the director requested that the parents elaborate on how they felt the student was being denied a FAPE (id.). In a follow-up email to the district dated June 11, 2019, the parents explained that they disagreed with the recommendations made at the June 2019 CSE meeting and that the program recommended for the student was not appropriate (id. at p. 1). The parents stated that the private neuropsychologist's recommendations were not considered; that the recommended classroom was chaotic, noisy, and restrictive and consisted of students who were all boys and who all had autism, noting that their daughter was able to be successful in a more diverse, less restrictive setting (id.). The parents indicated the private neuropsychologist was adamant that the student remain a student who took State-wide tests and that she should not be considered for alternate assessment as testing showed the student had "an aptitude of being able to complete work higher than her capabilities" (id.). The parents also asserted that the student's reading scores had regressed during the time she attended BOCES and that she required a daily 1:1 reading program "of Orton, Wilson or PAF" for 60-90 minutes per day (id.). In addition, the parents stated that the neuropsychologist recommended daily, intensive, speech-language therapy to address the student's globally weak language but the district program did not include the recommended frequency (id.).

In response, by email dated June 14, 2019, the director indicated that since the parents' disagreement with the CSE's recommendation was based upon their private neuropsychological evaluation, she was recommending an independent neuropsychological evaluation at district expense (Dist. Ex. 16 at p. 1). She explained that the purpose of the evaluation was to provide additional information to determine the student's educational needs and amend her IEP, as necessary (id.). The director's email indicated she was attaching a prior written notice to this effect as well as a consent form and a list of independent evaluators (Dist. Ex. 16 at p. 1; see Dist. Ex. 17 at pp. 1-4). The director requested that the parents sign and return the consent form and indicate which of the evaluators they would like to perform the evaluation (Dist. Ex. 16 at p. 1).

On June 28, 2019, the parent signed a tuition contract for the student's attendance at Blooming Grove for the 2019-20 school year (Parent Ex. G at p. 4).¹¹

On September 5, 2019, the CSE for the public school district within which Blooming Grove is located (district of location) convened for a requested review meeting to develop an individualized education service plan (IESP) for the student while she attended Blooming Grove

¹¹ Testimony by the director of Blooming Grove Academy indicated that she believed there was an error with regard to the date she signed the contract and that the date the student was accepted and the date she signed the contract should both have read June 30, 2019 (Tr. pp. 705-07).

(Parent Ex. L at p. 1).¹² The private evaluations obtained by the parents were reviewed and the director of Blooming Grove reported on the student's progress and transition to Blooming Grove (*id.*). The parents reported that a previous CSE (in the district of residence) had suggested the student be changed to alternate assessment and that the parents did not agree with this modification (*id.*). On the IESP, the CSE recommended the student receive 23 60-minute sessions per year of individual direct consultant teacher services, 46 30-minute sessions per year of group speech-language therapy, and 10 15-minute sessions per year of indirect counseling consultation (*id.*)

A. Due Process Complaint Notice

In a due process complaint notice dated November 5, 2019,¹³ the parents alleged that the district failed to offer the student a FAPE for the 2017-18, 2018-19 and 2019-20 school years (Dist. Ex. 20 at p. 9). The parents asserted that for all three school years, the CSE failed to appropriately evaluate the student in all areas of disability or properly consider the evaluative data before the CSE (*id.* at p. 8). According to the parents, the CSE failed to review and revise the student's IEPs in a timely manner (*id.*). Next, the parents argued that the district's IEP lacked methodologies and strategies based upon peer-reviewed research, social skills interventions, 12-month services, and individualized parent counseling and training to address the student's needs (*id.* at pp. 8-9). The parents contended that the district provided the student with inadequate special education, supports and services and failed to implement or "inconsistently implemented" program modifications and accommodations on the student's IEPs (*id.*). Lastly, the parents argued that to the extent their allegations were "procedural in nature" the violations impeded the student's right to a FAPE and significantly impeded their opportunity to participate in the decision-making process (*id.* at p. 9).

As relief, the parents requested, among other things, reimbursement for the student's tuition at Blooming Grove for the 2019-20 school year, including extended school year services (Dist. Ex. 20 at p. 9) (*id.*). In addition, the parents requested reimbursement for the student's private academic instruction and social skills group that had been paid by the parents beginning in 2017 as a supplement to the district's programming (*id.*). The parents also requested reimbursement for a privately obtained neuropsychological and speech-language evaluation paid at the parents' expense (*id.*). Lastly, the parents requested compensatory educational services for the student's deprivation of FAPE from the 2017-18 school year to June 2019 (*id.* at pp. 9-10).

B. Impartial Hearing Officer Decision

A prehearing telephone conference was held on January 14, 2020 (January 14, 2020 Pre-Hearing Conference Transcript at pp. 1-27). An impartial hearing convened on May 15, 2020 and concluded on June 17, 2020 after six days of proceedings (Tr. pp. 1-902).

¹²The IESP reflected that the student was eligible for special education services as a student with multiple disabilities and that the status of the student was "Classified PP NR Within District Dual Enrollment" (Parent Ex. L at p. 1).

¹³ The page headers after the first page appear to be misdated (Dist. Ex. 20 at pp. 2-10).

In a final decision dated August 31, 2020, the IHO found that the district failed to offer the student a FAPE for the 2017-18 and 2018-19 school years (IHO Decision at pp. 33-34). The IHO further found that the district offered the student a FAPE for the 2019-20 school year (id. at p. 34).

With respect to the 2017-18 school year, the IHO found that the parents had the opportunity to meaningfully participate during the CSE meeting and that there was nothing in the hearing record to support a finding that the parents were impeded in participating in the decision-making process regarding the provision of a FAPE to the student (IHO Decision at p. 36). The IHO noted that the student had made slow progress while attending a 15:1+1 special class during the 2016-17 school year, but did not achieve any of her goals (IHO Decision at p. 35).¹⁴ The IHO further found that the student was denied a FAPE for the 2017-18 school year because the CSE's program recommendation of a 15:1 "graded classroom" failed to provide the student with an appropriate education (id. at p. 33). The IHO also found that based on the testimony of the district's speech-language pathologist and student's special education teacher during the 2017-18 school year, along with the student's May and November 2017 IEPs, the student's program recommendation was not appropriate and not reasonably calculated to confer educational benefit upon the student (id. at p. 37). The IHO also noted that the student failed to make appropriate progress in light of the student's circumstances and that based on the hearing record, the student would have made appropriate progress, if the student was placed in an appropriate program (id. at p. 37).

Regarding the 2018-19 school year, the IHO found that the parents meaningfully participated during the CSE meeting and that the hearing record does not support a finding that the parents were impeded in participating in the decision-making process regarding the provision of a FAPE to the student (IHO Decision at p. 38). The IHO also found that the district failed to offer the student a FAPE for the 2018-19 school year because the CSE's program recommendation of a Board of Cooperative Educational Services (BOCES) 8:1+1 "graded classroom" failed to provide the student with an appropriate education (id. at pp. 33-34). The IHO noted evidence that the 8:1+1 special class was conducted at a sixth grade level, but that level was above what the student could grasp and that the student was functioning at a first or second grade level (IHO Decision at p. 37). The IHO determined that based on the testimony of the student's special education teachers for the 2017-18 and 2018-19 school years and the CSE chairperson, along with the student's June 2018 and December 2018 IEPs, the district's program recommendation was not appropriate and not reasonably calculated to confer educational benefit upon the student (id. at p. 39). Additionally, the IHO noted that the student did not make appropriate progress in light of her circumstances during the 2018-19 school year (id. at p. 39). at p. 39).

Turning to the 2019-20 school year, the IHO found that the district offered the student a FAPE and that the student's IEP and recommended program was reasonably calculated to confer educational benefit upon the student (IHO Decision at p. 34). The IHO ruled that the parents and their advocate had the opportunity to meaningfully participate during the CSE meeting and the fact that the parents disagreed with the CSE's program recommendation was not a violation of the IDEA (id. at p. 40). The IHO explained that the student scored low in her cognitive testing and

¹⁴ The IHO noted that the student's speech-language therapist found that she had to group the student with students from an 8:1+1 classroom during fourth grade because the student needed a slower pace, simpler activities and directions, and the gap between the student's skills and those of the other students in the 15:1+1 class was too wide (IHO decision at p. 35).

adaptive skills and noted that while the CSE did not dispute the validity of testing, the CSE was not required to adopt the programming recommendations of the parents' privately obtained experts with which it disagreed (IHO Decision at pp. 40-41). The IHO stated that "[t]here is no question that the [d]istrict has an obligation to consider the [p]arents programming requests but they are not obligated to do so if the programs and services available would not be adequate to provide FAPE" (IHO Decision at p. 41). The IHO noted the testimony of district witnesses who explained that the student could be "overwhelmed with too much information and must be worked with at a slower pace with small bits of information" (IHO Decision at p. 42). Furthermore, the IHO found that although the parents disagreed with the CSE's recommendation of an 8:1+3 special class and the indication of alternate assessment on the student's IEP, in part because it would not lead to the student obtaining a diploma,¹⁵ the evidence in the hearing record did not support a finding that the student was likely to obtain a Regents diploma (*id.* at pp. 42-43). With respect to the parents' argument that the district failed to consider the speech-language and neuropsychological IEEs, the IHO found that the district was not obligated to adopt the findings and recommendations of the IEEs, but rather consider them while crafting an IEP and recommending a program for the student (*id.* at p. 41).

With regard to the parents' request for reimbursement of the neuropsychological IEE in the amount of \$5,500, the IHO found that the parents were not entitled to reimbursement because the district had not previously performed a neuropsychological evaluation for the student and that a pre-requisite for a parent obtaining an IEE was the parents' disagreement with a specific evaluation conducted by the district (*id.* at p. 45). With respect to the parents' request for reimbursement of the speech-language IEE in the amount of \$1,500, the IHO found that the parents were not entitled to reimbursement because it was above the board-approved rate cap of \$500 and that there were no unique circumstances or additional issues to consider in justifying waiving the cap that were provided to the district (*id.*). With regard to the parents' request of \$375 for the appearance of the neuropsychologist who conducted the neuropsychological IEE at the student's CSE meeting, the IHO found that their request was denied because although the CSE invited the neuropsychologist to attend, the CSE was not required to pay any party to attend the meeting (*id.* at pp. 45-46).

Notwithstanding the IHO's ruling that the district offered the student a FAPE for the 2019-20 school year, the IHO made an alternative finding that Blooming Grove was an appropriate unilateral placement for the student because the program at Blooming Grove was individualized for the student and the student made progress while attending the school (IHO Decision at pp. 46-47). The IHO also determined that equitable considerations favored the district because although the parents and their advocate participated in the CSE meetings, the hearing record indicated that the parents had already made a determination to send the student to Blooming Grove as early as April 3, 2019, which was prior to the speech-language and neuropsychological IEEs being conducted (*id.* at pp. 47-48).

As relief for the denial of a FAPE for the 2017-18 and 2018-19 school years, the IHO deemed the parents' request for compensatory relief abandoned because the parents did not address it during the hearing (IHO Decision at p. 46). The IHO also denied the parents' request for tuition reimbursement at Blooming Grove for the 2019-20 school year (*id.* at p. 49). Lastly, the IHO

¹⁵ The IHO used the acronym "AA" when referencing alternate assessment (IHO Decision at p. 8).

denied the parents' request for reimbursement for the student's private academic instruction and social skills group because the IHO found that the parents failed to establish that any progress was attributable to the tutors or social skills providers or that they met the student's needs (*id.* at pp. 43-44).

IV. Appeal for State-Level Review

The parents appeal, asserting that the IHO erred in finding that the district offered the student a FAPE for the 2019-20 school year. Initially, the parents argue that the student's present levels of performance were "inaccurate" because the CSE did not rely upon evaluative data provided by the parents. The parents contend that the CSE ignored the recommendations in the speech-language and neuropsychological IEEs without providing a cogent explanation for their reasoning. Next, the parents allege that the district failed to consider a full continuum of placement options, instead placing the student in a classroom deemed inappropriate by the IHO. The parents also argue that the IEP did not include measurable annual goals and that all of the above resulted in an inappropriate program for the student. While the parents believe the IHO correctly determined that Blooming Grove was appropriate for the student, they assert that the IHO erred in finding that equitable considerations favored the district and instead should have found that they favored the parents because they did not contractually commit to Blooming Grove until after their 10-day notice and they did not interfere with the CSE's process. As relief, the parents seek tuition reimbursement for Blooming Grove for the 2019-20 school year.

The parents assert that the IHO erred in denying their request to be reimbursed for the speech-language and neuropsychological IEEs. With respect to the neuropsychological IEE, the parents argue that they should be reimbursed because the district unilaterally decided its psychoeducational evaluation was sufficient even though the district director of pupil personnel services conceded that a neuropsychological evaluation would provide more information. With respect to the speech-language IEE, the parents argue that they should be reimbursed because the district had no information regarding the rates providers would actually accept and the district's offer of reimbursement of \$500 was tantamount to denying the request, without filing a due process proceeding to defend the district's evaluation of the student.

In an answer, the district responds to the parents' allegations, and generally argues to uphold the IHO's determinations to deny tuition reimbursement because the district offered the student a FAPE for the 2019-20 school year and that the parents' request for compensatory educational services for the student's deprivation of FAPE for the 2017-18 and 2018-19 school years should be deemed abandoned.

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]). 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]).¹⁶

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. Preliminary Matters

1. Scope of Review

As an initial matter, it is necessary to identify which of the parties' arguments are properly before me on appeal. State regulations governing practice before the Office of State Review require that the parties set forth in their pleadings "a clear and concise statement of the issues presented for review and the grounds for reversal or modification to be advanced, with each issue numbered and set forth separately," and further specify that "any issue not identified in a party's request for review, answer, or answer with cross-appeal shall be deemed abandoned and will not

¹⁶ 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" (Andrew F., 137 S. Ct. at 1000).

be addressed by a State Review Officer" (8 NYCRR 279.8[c][2], [4]; see 8 NYCRR 279.4[a]). Further, an IHO's decision is final and binding upon the parties unless appealed to a State Review Officer (34 CFR 300.514[a]; 8 NYCRR200.5[j][5][v]).

First, I note that the district has not appealed the IHO's adverse determinations that it failed to offer the student a FAPE for the 2017-18 and 2018-19 school years (IHO Decision at pp. 33-34). Further, the parents have not appealed the IHO's adverse findings that they had the opportunity to meaningfully participate during the CSE meeting for the student's 2019-20 school year (id. at p. 40), they abandoned their request for compensatory relief (id. at p. 46), and they failed to prove that they were entitled to reimbursement for the student's private academic instruction and social skills group (id. at pp. 43-44). Therefore, the IHO's determinations on these issues have become final and binding on both parties and they will not be reviewed on appeal (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; see M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6-*7, *10 [S.D.N.Y. Mar. 21, 2013]).

Additionally, there are a number of issues that were previously identified in the parents' due process complaint notice that were not addressed by the IHO, but neither party advanced or addressed in this appeal. Specifically, the following claims related to the 2019-20 school year were not raised on appeal: (1) the CSE failed to review and revise the student's IEPs in a timely manner; (2) the district failed to recommend methodologies and strategies in the student's IEP that were based on peer-reviewed research; (3) the district failed to recommend social skills interventions; (4) the district failed to recommend 12-month services; (5) the district failed to implement or inconsistently implemented program modifications or accommodations; and (6) the district failed to recommend individualized parent counseling and training (compare Dist. Ex. 20, with Req. for Rev). To the extent the parents do not raise arguments on appeal regarding those claims which were alleged in the due process complaint notice and were not addressed by the IHO, those claims are deemed abandoned and will not be further addressed (8 NYCRR 279.8[c][2], [4]).

2. Scope of Impartial Hearing

In addition to the unappealed issues above, the parents also attempt to assert a new claim for the first time in this State-level review proceeding, namely that the student's IEP for the 2019-20 school year was inappropriate in part because it did not include measurable annual goals. However, the parents did not raise this issue in their due process complaint notice, and, therefore, it is improperly raised for the first time on appeal (see Dist. Ex. 20). The IDEA and its implementing regulations provide that a party requesting an impartial hearing may not raise issues at the impartial hearing that were not raised in its original due process complaint notice unless the other party agrees (20 U.S.C. § 1415[f][3][B]; 34 CFR 300.508[d][3][i], 300.511[d]; 8 NYCRR 200.5[i][7][i][a]; [j][1][ii]), or the original due process complaint is amended prior to the impartial hearing per permission given by the IHO at least five days prior to the impartial hearing (20 U.S.C. § 1415[c][2][E][i][II]; 34 CFR 300.507[d][3][ii]; 8 NYCRR 200.5[i][7][b]). Here, the parents did not seek the district's agreement to expand the scope of the impartial hearing to include this issue or file another amended due process complaint notice to add this claim. Nor can it be said that the district "opened the door" to this claim by raising evidence as a defense to a claim that was not

identified in the due process complaint notice (M.H., 685 F.3d at 250-51).¹⁷ Therefore, I will not review this issue raised for the first time on appeal.¹⁸

B. 2019-20 School Year

1. Consideration of Evaluative Information and Present Levels of Performance

The parents assert that the June 2019 CSE failed to adequately consider the April 2019 private neuropsychological evaluation and May 2019 private speech-language evaluation and, further, that the June 2019 IEP did not accurately reflect the student's present levels of performance. Contrary to the parents' assertions, a review of the hearing record supports the IHO's finding that the CSE considered the April 2019 private neuropsychological evaluation and May 2019 private speech-language evaluation and that the student's needs were adequately addressed in the IEP.

Among the other elements of an IEP is a statement of a student's academic achievement and functional performance and how the student's disability affects his or her progress in relation to the general education curriculum (20 U.S.C. § 1414[d][1][A][i][I]; 34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]; see 8 NYCRR 200.1[ww][3][i]). In developing the recommendations for a student's IEP, the CSE must consider the results of the initial or most recent evaluation; the student's strengths; the concerns of the parents for enhancing the education of their child; the academic, developmental and functional needs of the student, including, as appropriate, the student's performance on any general State or district-wide assessments as well as any special factors as set forth in federal and State regulations (34 CFR 300.324[a]; 8 NYCRR 200.4[d][2]). It is well settled that a CSE must consider privately-obtained evaluations, provided that such evaluations meet the district's criteria, in any decision made with respect to the provision of a FAPE to a student (34 CFR 300.502[c]; 8 NYCRR 200.5[g][1][vi]). However, "consideration" does not require substantive discussion, that every member of the CSE read the document, or that the CSE accord the private evaluation any particular weight (T.S. v. Bd. of Educ. of the Town of Ridgefield, 10 F.3d 87, 89-90 [2d Cir. 1993]; G.D. v. Westmoreland Sch. Dist., 930 F.2d 942, 947 [1st Cir. 1991]; but see A.M. v. New York City Dep't of Educ., 845 F.3d 523, 544-45 [2d Cir. 2017] [finding that recommendations included in private evaluation created a consensus as to what the student required where the district did not conduct any evaluations of its own to call into question the opinions and recommendations contained in the private evaluations]).

¹⁷ The hearing record indicates that the district solicited testimony regarding the annual goals in the student's June 2019 IEP as part of general background information and routine questioning (see. Tr. p. 364) and did not serve to "open the door" to this issue under the holding of M.H. (see A.M., 964 F. Supp. 2d at 282-84; J.C.S., 2013 WL 3975942, at *9). Even assuming that the district did "open the door" to the issue of annual goals, the June 2019 IEP included annual goals with short-term objectives addressing the student's needs related to study skills, reading, writing, mathematics, speech-language development, and social/emotional/behavioral skills (Dist. Ex. 6 at pp. 7-9).

¹⁸ The IHO stated that during the impartial hearing "[t]he Parent asserted that the goals and the SL therapy were insufficient. I do not credit the assertion. The goals were crafted and presented at the CSE meeting" (IHO Decision at p. 37); however, this is not sufficient to bring the matter into the scope of the impartial hearing.

According to the June 2019 IEP, the CSE relied on the following evaluations and reports when developing the student's IEP for the 2019-20 school year: a January 2017 neuropsychological evaluation; a health report, social history update, psychoeducational reevaluation and speech-language reevaluation all dated October 2018; the April 2019 private neuropsychological evaluation; and the May 2019 private speech-language evaluation (Dist. Ex. 6 at pp. 3-4).

The present levels of performance in the June 2019 IEP indicated that the student was functioning at the mid-first grade (1.4) level in reading and that she struggled with reading comprehension, vocabulary acquisition, and phonics skills (Dist. Ex. 6 at pp. 4, 5). Consistent with this, test results from the private neuropsychological evaluation reflected that the administration of the Kaufman Test of Educational Achievement, Third Edition (KTEA-3) revealed grade equivalents in reading of 1.7 in letter word recognition and 1.8 in reading comprehension, both at the first percentile (compare Dist. Ex. 6 at pp. 4-5 with Dist. Ex. 13 at p. 26). The private evaluation indicated that the student's performance on the Gray Oral Reading Tests-Fifth Edition (GORT-5), which measured the student's reading rate, decoding accuracy, fluency and comprehension yielded results similar to those reported on the IEP and showed that the student's overall oral reading quotient was at the first percentile with grade equivalents of 2.0 in fluency, decoding accuracy, and rate (pace) and 1.4 in comprehension when asked to answer open ended questions based on passages presented (compare Dist. Ex. 6 at p. 4 with Dist. Ex. 13 at pp. 11, 26). Consistent with the June 2019 IEP, the private evaluation noted the student's deficits in reading comprehension and decoding, and the parent's private speech-language evaluation noted the student's difficulty with receptive vocabulary (Dist. Exs. 13 at pp. 5, 10; 14 at p. 9).

In terms of writing skills, although the present levels of performance did not reflect a specific grade equivalent they indicated that the student required adult assistance with daily journal activities, had difficulty with spelling, punctuation, capitalization and in writing grammatically correct sentences, as well as with staying on the provided topic (Dist. Ex. 6 at p. 4). The May 10, 2019 meeting information summary indicated that the student was just starting to write full sentences (id. at p. 2). The private neuropsychological evaluation report explained that the skills assessed in the written expression subtest of the KTEA-3 included use of complete sentences, subject-verb agreement, correct verb tense, meaningful content, punctuation, capitalization, complex sentences and smooth transitions, as well as planning and organizing ideas (Dist. Ex. 13 at p. 12). Consistent with the limited abilities described in the IEP's present levels of performance, the student attained grade equivalent scores on the KTEA-3 of 1.3 in written expression and 1.1 in spelling, both at the first percentile (compare Dist. Ex. 6 at pp. 4, 5 with Dist. Ex. 13 at p. 26). The private neuropsychological evaluation noted the student's difficulty with spelling, recognizing punctuation errors, and drafting coherent sentences in response to a specific task (Dist. Ex. 13 at p. 12).

With regard to mathematics, the present levels of performance of the June 2019 IEP indicated that the student was functioning on a 1.8 grade level in math and that she was able to independently work on double-digit addition and subtraction problems without regrouping and single-digit multiplication problems up to the seven and eight times tables (Dist. Ex. 6 at p. 4). The IEP further indicated that the student displayed confusion with single digit division and required adult assistance to decipher and complete word problems (id.). Similarly, the neuropsychological evaluation report reflected that the student's performance on the math portion of the KTEA-3 yielded a grade equivalent score of 1.6 and fell at the first percentile on the concepts

and applications subtest (compare Dist. Ex. 6 at p. 4 with Dist. Ex. 13 at p. 26). According to the evaluation report, the student was able to correctly identify triple digit numbers, complete addition and subtraction problems when pictures were provided, and understand a number line but struggled with money and time skills and multiplication and division questions (id. at p. 11). The neuropsychological evaluation report reflected that the student performed somewhat better in math computation, and that when given a structured worksheet format she was able to correctly answer multiple digit addition, subtraction and multiplication problems but struggled with division and fractions which yielded a grade equivalent score of 3.0, at the fourth percentile (compare Dist. Ex. 6 at p. 4 with Dist. Ex. 13 at pp. 11, 26).

The present levels of performance in the June 4, 2019 IEP also reflected the student's functioning with regard to her speech and language development indicating as described below, deficits in pragmatic, expressive, and receptive language (language comprehension) (see Dist. Ex. 6 at pp. 4-5).

With regard to pragmatics, the IEP indicated that the student's participation in speech-language therapy sessions was inconsistent, often mood dependent, and that she preferred to speak directly with the therapist rather than the peers in her small group sessions (Dist. Ex. 6 at p. 4). The student was described as benefitting from visual and verbal reminders to include others in the conversation through questioning and commenting for a 2-3 turn conversation (id. at p. 5).

With regard to expressive language and language comprehension, the IEP present levels of performance indicated that the student continued to demonstrate gradual progress in writing sentences to express her opinions and benefitted from visual and verbal supports for sentence structure and content of the sentence so that it reflected the appropriate response to the question asked (Dist. Ex. 6 at p. 5). (Dist. Ex. 6 at p. 5). The IEP described the student as benefitting from visual sentence starters to help guide her in accurately answering the question asked and to give details and reasons for her responses (id.). The present level of performance indicated that the student had been exposed to vocabulary at the third grade level through structured stories and articles read aloud during sessions and demonstrated difficulty defining the vocabulary with sufficient detail and retaining the definitions of the words learned but benefitted from visual and verbal supports to increase her success with these skills (id.).

Similar to the information presented in the student's June 2019 IEP, the May 16, 2019 private speech-language evaluation also indicated that the student presented with deficits across language comprehension, language processing and pragmatic language areas that manifested in a variety of comprehension and expressive language needs (Dist. Ex. 14 at pp. 8-9). For example, while the present level of performance reflected the student's difficulty in accurately answering the question asked, the private speech evaluator similarly noted that the student needed to learn that basic question forms such as "who" refers to a person or character and that "where" refers to a place (compare Dist. Ex. 6 at p. 5 with Dist. Ex. 14 at p. 8). While the IEP noted the student's need for visual and verbal supports related to sentence structure, the private evaluator similarly listed among the student's comprehension needs, improving her understanding of complex sentence structures (compare Dist. Ex. 6 at p. 5 with Dist. Ex. 14 at pp. 8-9). With regard to vocabulary, the IEP reflected the student's difficulty defining words with sufficient detail while the private evaluator noted in her list of expressive language needs, that similarly, the student needed to develop sequenced language to describe a photo, video, or activity (compare Dist. Ex. 6

at p. 5 with Dist. Ex. 14 at p. 9). The private evaluator also noted the student's incorrect use of vocabulary and need to further develop her functional vocabulary (Dist. Ex. 14 at pp. 6, 9). The present levels of performance in the IEP also reflected the student's deficits with regard to providing details and reasons for her responses when answering questions in writing while the private evaluator similarly indicated that the student needed to learn to include supporting details and a conclusion in her narrative writing structure (id.).

In addition, the district speech pathologist who supervised the completion of the October 2018 speech-language evaluation testified that it was reviewed at the December 14, 2018 CSE meeting (Tr. pp. 185, 189, 190) and that the that the May 2019 private speech-language evaluation was reviewed at the June 2019 CSE meeting (Tr. pp. 194-95, 208).¹⁹ Furthermore, the June 2019 IEP included both of these evaluations in the list of evaluations/reports that were in front of the CSE at that meeting (Dist. Ex. 6 at p. 3). A comparison of these evaluations shows that both evaluations identified the area of receptive language or comprehension as the primary area of deficit for the student (Dist. Exs. 9 at p. 3; 14 at p. 8). The district evaluator indicated this was based on the student's difficulty understanding directions during the evaluation and the private evaluator also noted the student's lack of understanding of the directions given to her in the personal interview section of her evaluation, where the student initially simply responded "I don't know" when asked to tell about herself and her interests but readily joined in, adding information once the evaluator told her a bit about herself (Dist. Exs. 9 at p. 3; 14 at p. 6). During the private evaluation, the student also demonstrated difficulty understanding the directions when asked to write a story about a picture she was shown and to start when she was ready (Dist. Ex. 14 at p. 4). The student indicated she was ready but when the examiner did not respond, the student asked "what?" and then responded the same way when the directions were read again (id.). The evaluator noted that after she simplified the directions, the student loosely described the picture presented but did not appear to understand the task of generating a basic story arc (id.).

With regard to pragmatic language, although the private evaluator indicated that the student presented with pragmatic language deficits, she did not describe them in her report in any detail (Dist. Ex. 14 at p. 8). She indicated, however, that during her evaluation, the student was unable to interpret the social interactions depicted in videos showing humorous social scenarios (id. at p. 7). However, in addition to the pragmatic needs reflected in the student's present level of performance, the district's October 2018 speech-language evaluation indicated that the student was unable to maintain rules of typical conversation including waiting for the speaker to respond and pausing between thoughts, did not make eye contact with the clinician, and did not engage unless prompted to do so (Dist. Ex. 9 at p. 2).

Moreover, the district psychologist who completed a psychoeducational evaluation of the student in October 2018, and who also attended the June 2019 CSE meeting, testified that the April 2019 private neuropsychological evaluation was reviewed at the CSE meeting, that she did not disagree with the testing or findings in the private neuropsychological evaluation, and that there was no reason to believe the findings were inaccurate or unreliable (Tr. pp. 303, 306-07; Dist. Ex. 8). However, the district psychologist further testified that she disagreed with the

¹⁹ The district speech-language pathologist testified that she had a student intern that she supervised in completing the October 2018 evaluation and that she was with the intern for the entire evaluation (Tr. p. 208). She further testified that she herself, chose the specific tests that were administered to the student by the intern (id.).

recommendations in the private neuropsychological evaluation (Tr. pp. 302-03). Similarly, the district speech-language pathologist who supervised the student's October 2018 speech-language evaluation, and who also attended the June 2019 CSE meeting, testified that the May 2019 private speech-language evaluation was reviewed at the meeting and that she agreed with the findings in the private speech-language evaluation but did not agree with the evaluator's recommendations (Tr. pp. 185, 194-98, 225-26). The manner in which the CSE addressed the recommendations for the student's special education services in the student's IEP is further addressed below.

Based on the above, the evidence in the hearing record shows that the June 2019 CSE had sufficient information about the student's skills and needs, and that the resulting IEP contained information that was generally consistent with the information contained in the both the April 2019 private neuropsychological evaluation and the May 2019 private speech-language evaluation. Consequently, even if the parents might have preferred that the present levels of performance in the June 2019 IEP more heavily reflect the findings of the private evaluators over that of the district's evaluations,²⁰ there is no reason to disturb the IHO's conclusion that the district offered the student a FAPE for the 2019-20 school year on the basis that that CSE failed to appropriately evaluate the student in all areas of disability or consider the evaluative data that was before the CSE.

2. Appropriateness of 8:1+3 Special Class Placement

On appeal, the parents argue that the IHO erred in finding that the June 2019 CSE's recommendation of an 8:1+3 special class was an appropriate program for the student, in light of the IHO's determination that the student's program recommendation for the 2018-19 school year denied the student a FAPE. The parents also argue that the district failed to consider a full continuum of placement options for the student, and improperly ignored the recommendations of the parents' private experts.

As mentioned above, for the 2018-19 school year, the April 2018 CSE recommended a 12-month 8:1+1 BOCES special class with related services of two 30-minute sessions per week of group speech-language therapy and one 30-minute session per week of group counseling during the school year (Dist. Ex. 3 at p. 2). For summer 2018, the CSE recommended related services of one 30-minute session per week of group speech-language therapy and one 30-minute session per week of group counseling (*id.*). The IEP also indicated that the student would participate in the same State and district-wide assessments of student achievement that are administered to general education students (*id.* at p. 10). The student's teacher in the 8:1+1 BOCES special class testified that the student's program was "basically an academic program where [staff] would try to follow the New York State curriculum that was adapted for the students" (Tr. p. 337).

For the 2019-20 school year, the June 2019 CSE recommended the student for a 12-month 8:1+3 special class placement in the district (Dist. Ex. 6 at pp. 2; 10).²¹ The CSE meeting

²⁰ For example, the present levels of performance could have included some of the narrative from the reports of the independent evaluators, but it that does not amount to a denial of a FAPE in this instance.

²¹ The hearing record included an additional IEP dated August 28, 2019, however, this was a requested review where the CSE met only to review an OT evaluation (Dist. Ex. 7 at p. 1).

information summary indicated that, based on the evaluative information before the CSE, the student was "not able to be successful in a graded program, working on grade-level curriculum even with significant modifications" and was therefore recommended for NYS Alternate Assessment for students with severe disabilities (id. at pp. 2, 12).²² For summer 2019, the CSE recommended related services of two 30-minute sessions per week of group speech-language therapy and one 30-minute session per week of group counseling (id. at pp. 1, 11). For the 2019-20 school year, beginning in September, the CSE recommended the student's group speech-language and counseling services continue and added one 30-minute individual session per week of each service (id. at pp. 1, 10).

With regard to the IHO's determination that the student was denied a FAPE in the prior school year, it is clear that the IHO did not believe it was appropriate to have the student working on the curriculum at a sixth grade level because it was above her instructional level, too stressful and was impeding her growth (IHO Decision at pp. 37-38). I don't disagree with the IHO's observations that the district was pressing the student very hard to meet the parents' expectations at the time so that the student's would in theory stay on track for a Regents diploma in subsequent school years, to the point of appeasing them. But as further described below, the district changed approaches in the following school year and moved the student into an alternate assessment approach to the curriculum (Dist. Ex. 6 at p. 10), and with the pressure of trying to satisfy all grade-level standards removed (along with changes in the level of staffing support), it resulted in different findings for the following school year. In comparing the program recommendations for the two school years, the student-to-teacher ratio in the recommended placement for the 2019-20 school year had changed from 8:1+1 to 8:1+3, providing the support of two additional adults in the student's classroom as compared to the previous school year (compare Dist. Ex. 3 at pp. 1, 2 with Dist. Ex. 6 at pp. 1, 2) In addition, the June 2019 CSE added both individual speech-language therapy and individual counseling services to the student's related services recommendation (compare Dist. Ex. 3 at pp. 1, 9-10 with Dist. Ex. 6 at pp. 1, 10-11). Testimony by the district speech-language pathologist indicated that she believed the addition of one individual session of speech-language therapy represented a compromise with the private speech-language therapist's recommendation for daily speech-language services (Tr. pp. 199-201). Thus, the most notable difference between the recommended programs for the two school years was the change from the student's participation in State and district-wide assessments for the 2018-19 school year to the student's participation in New York State Alternate Assessment for students with severe disabilities for the 2019-20 school year (compare Dist. Ex. 3 at p. 10 with Dist. Ex. 6 at p. 12).

According to district staff among the reasons that the parents disagreed with the June 2019 CSEs recommendation was that the parent wanted the student to remain in a class where she would participate in State and district-wide assessments in accordance with his expectation that the student would ultimately graduate from high school with a Regents or other high school diploma, despite her moderate intellectual disability, absence seizure disorder, language disorder, and global developmental delay, all of which impacted the student's learning and academics (Tr. pp. 124-25, 490; Dist. Ex. 13 at pp. 19, 21). In their memorandum of law the parents continue their argument

²² The comments further indicated that the private neuropsychologist reported that the student needed instruction in functional academics, learning real-life skills and required teaching at her foundational level, and remediation to address these deficits (Dist. Ex. 6 at p. 2).

on this tack, asserting that during standardized testing the student struggled to process information on normed assessments, she could nevertheless access grade level curriculum through modification or differentiation. In contrast, the district wanted the student to be placed in a class where she would participate in alternate assessment and receive instruction at her functional level (Tr. pp. 489-90; Dist. Exs. 1 at p. 2; 2 at p. 2; 4 at p. 2; 5 at pp. 1-2; 6 at p. 2).

During the impartial hearing, district CSE participants testified regarding the reasoning behind the committee's recommendation. In particular, the district psychologist testified that she completely disagreed with the private evaluator's recommendation that the student receive ABA because as far as she was aware the student was not identified as autistic and she did not present as needing "any level of . . . behavioral reinforcement" (Tr. p. 279). She noted that the student was "quite cooperative" and willing to try her best at all times (Tr. p. 279). The school psychologist stated that she did not see any need for providing constant reinforcement in order to get the student to try her best and opined that it would be extremely restrictive to provide the student with ABA if she did not need it (Tr. p. 279). With respect to the private neuropsychologist's recommendation that the student required daily reading instruction by an educator certified in evidence-based, multisensory, Orton-Gillingham based instruction, the district psychologist reported that she consulted with certified Wilson instructors who advised her that Wilson was typically recommended for students who had an IQ of 80 or above (Tr. p. 279). She noted that Wilson focused primarily on decoding and the student's primary deficit was in reading comprehension (Tr. p. 280). The district psychologist explained that she felt it was much more appropriate for the student to have a program that was more comprehension based (Tr. p. 280). She opined that a program that addressed the student's deficits in reading comprehension would have to be "a very vocabulary language enriched program" (Tr. p. 281). She reported that when she assessed the student, she was able to read words at a second-grade level but she was only able to comprehend at a beginning first-grade level (Tr. p. 281). She testified that the student needed to be taught strategies for understanding what words meant, such as using picture cues and other strategies (Tr. p. 281). The district psychologist also disagreed with the private neuropsychologist's assertion that alternate assessment was not an appropriate accommodation for the student (Tr. pp. 281-82). She stated that the student had access to testing accommodations for many years and they were not addressing her need to have instruction taught at her level of functioning (Tr. p. 282). The district's psychologist opined that alternate instruction would be in the student's best interest because she was struggling in a classroom where some of the instruction was at grade level as she was unable to comprehend it (Tr. p. 282). She further opined that continuing the student in the type of program where instruction was many years above her level of functioning would frustrate the student and not support her academic progress (Tr. p. 282).²³

The district psychologist also convincingly testified that the student's slow progress in academics was directly related to her low cognitive abilities and her limited receptive and

²³ Although the private neuropsychologist stated in her evaluation that alternate assessment was not an appropriate accommodation for the student she did not provide a reasonable explanation for that opinion (see Dist. Ex. 13 at p. 22). However, she testified that she did not think alternate assessment was appropriate because it was not "evidenced-based" (Tr. pp. 809, 833, 835). She opined that it was ubiquitous and not "an operationalized term" and that she provided her own recommendations in terms of what she thought was appropriate for the student in terms of assessment (Tr. p. 809). As further described below, I did not find her statements convincing as the curriculum had to be modified significantly to provide instruction to the student in a reasonable way.

expressive language functioning (Tr. pp. 269, 327-28). She explained that applied academic areas, such as reading comprehension and math word problems, required a certain level of vocabulary and cognitive verbal reasoning ability that the student lacked (Tr. p. 328). The district psychologist further testified that the student's low intellectual abilities indicated that she would learn at an extremely slow pace and would require a concrete level of instruction and "things" broken down, and repeated, as well as presented in a different manner (Tr. p. 265). The school psychologist testified that given the student was in the sixth grade and her academic skills were at a first or second grade level her rate of progress was going to be very slow (Tr. p. 269). She indicated that it was her experience that students with IQ scores similar to the student's typically had considerable difficulty achieving beyond the second grade academically for a variety of reasons (*id.*). Among these were the language involved—she noted that by the time students were in second or third grade they were expected to think inferentially, something that was difficult for a person at the student's IQ level to do (Tr. pp. 269-70). She opined that if there was something very concrete and relatable it would be more meaningful and easier for the student to learn (Tr. p. 270). However, the school psychologist opined that once students got past the second or third-grade level, instruction became more abstract and involved multi-step instructions, which could be challenging (Tr. p. 270). She continued to explain that by second or third grade teachers expected students to make inferences based on information provided, generalize some of the skills they had learned, apply what they had learned, and find evidence in a text to support their answers (Tr. p. 271). Turning to the student's adaptive skills, the school psychologist testified that they were used to determine her developmental needs in that they would sometimes indicate the need for "an alternative assessment" where staff would work on skills that were required for the student to interact with others (Tr. p. 272). She noted that daily living skills were a personal strength for the student but that her delayed communication and social skills were preventing her from achieving her goals academically and from making friends with her peers (Tr. pp. 272-73). Additionally, the district psychologist testified that she believed the student was being held back because the material she was presented with in her sixth grade class was at such a high level and because many elements of her day were really beyond the level that the student was able to comprehend in order to make academic progress (Tr. pp. 273-74). In contrast to the recommendations by the parents' private psychologist, the district psychologist opined that the student might benefit more from an alternatively assessed program where the instruction was geared toward the student's independent instructional levels throughout the day and from shifting her goals more toward the adaptive skills that she was lacking (Tr. p. 273).

The student's special education teacher who participated in the CSE meeting also recalled the private neuropsychologist discussing her April 2019 evaluation at the meeting (Tr. pp. 364, 376-77). She testified that she agreed with the district's recommendation to designate the student as alternate assessment because the curriculum would be on a level that the student would be able to grasp and there would be more adults to help the student in the 8:1+3 special class setting (Tr. pp. 369-70). The teacher testified that grade level curriculum for algebra would be too abstract for the student, but that algebraic or geometric concepts could be addressed in a more basic level (*id.*).²⁴ She added that she did not see the student doing well on regular State testing and that she

²⁴ The neuropsychologist testified that "[o]n grade level curriculum, in my understanding, is a set of information, a set of facts and goals that a student at a certain grade level is to master and learn and grade level curriculum in my understanding can be modified, can be differentiated, is the research based term that's used in order to meet

thought alternate assessment would be less stressful and provide more of a sense of accomplishment for the student, and therefore would be a good idea for the student (Tr. p. 370).

Similarly, the district speech-language pathologist testified that the student's low scores on the October 2018 speech-language evaluation "coincided" with her low IQ and that the student's IQ of 56 limited her cognitive abilities, which in turn limited her language skills (Tr. p. 187). The speech-language pathologist testified that the student's severe receptive vocabulary delay indicated that she would have difficulty understanding academics at her chronological age level (Tr. pp. 186-87). Specifically, district speech-language pathologist disagreed with the private therapist's recommendation for individual speech-language therapy five times per week for 60-minute sessions because: the student would miss too much time in the classroom (Tr. p. 197). The district speech-language pathologist opined that a better use for that time might be for the therapist to go to the student's classroom and help her carry-over and reinforce skills that she was learning in therapy, or to provide the teacher and teacher assistant with strategies to use when the speech therapist was not present, which would avoid the student from being continually pulled out of her classroom (Tr. p. 197). The district speech-language pathologist further opined that providing the student with individual speech-language therapy five times per week for 60 minutes was not going to "remedy where [the student] function[ed]" and although staff wanted to maximize the student's potential they could not cure her disability (Tr. p. 198). She expressed concern that the level of recommended therapy would result in the speech-language pathologist serving as a tutor who worked more on academics than addressing just speech and language (*id.*). In addition, the district speech-language pathologist opined that individual speech-language services were inappropriate for a student who had deficits in pragmatics (Tr. pp. 196, 198-99). She suggested, however, that one individual session of speech-language therapy per week was added to the student's IEP as a compromise (Tr. pp. 199-200).

Additionally, the district CSE chairperson testified that with regard to test scores from September 2018, she believed that the student's low cognitive abilities were going to make it difficult for her to acquire skills on grade level in academic areas and her language scores

the needs of the individual learner" (Tr. pp. 820-21). I have no reason to doubt the neuropsychologist's skill in conducting assessments and evaluations, but her understanding of curriculum, State learning standards, and alternate assessment was flawed. While I agree that specially designed instruction under the IDEA envisions the modification of the content, methodology, and delivery of instruction, that does not mean State learning standards can be simply rewritten by a CSE or teacher for every disabled student no matter how severe a student's disabilities are. It would be manifestly unfair to all students, disabled or not, because every CSE would be responsible to reengineer State's learning standards and diploma requirements every year—but only for severely disabled students. In this case modifying the curriculum itself—that is the content of the student's instruction—so that it was at the student's instructional level numerous years below that of her same-aged peers and at a pace that she could reasonably absorb new information and grow tends to support district's decision that the student should be alternately assessed. The district's evidence included a copy of its curriculum map and an alternate assessment curriculum map that described precursor skills that a student would need before moving on to higher level skills (Dist. Exs. 25; 26; *see* Tr. pp. 427-432). Should there be any question, I note that the IHO properly overruled the parents' objection to the curriculum map because the parents were merely employing an impermissibly rigid four corners rule (*see R.E.*, 694 F.3d 167, 185 [noting that it is permissible to "explain or justify what is listed in the written IEP" to the extent it does not "support a modification that is materially different from the IEP" because the Second Circuit rejected a ridged "four corners" rule limited solely to the IEP document itself]). It would be ridiculous to put an entire curriculum in an IEP as the parents suggested the district should have during the repeated objection.

suggested she would have difficulty in the classroom with any language-based task and that this would also impact her social skills (Tr. pp. 485-86; see Dist. Ex. 4 at pp. 3-4; and see Dist. Ex. 6 at pp. 3-4). The CSE chairperson recalled having a lengthy discussion with the private neuropsychologist at the June 2019 CSE meeting with regard to the student's need for specialized support and goals and objectives geared towards her level, and that based on the student's profile, she was a student who would have significant difficulty accessing grade-level material (Tr. p. 493). The CSE chairperson also remembered discussing that ultimately she was describing a student who required an alternative curriculum and alternative assessment and noted that the private neuropsychologist agreed to all of her points but disagreed with the recommendation for alternate assessment (Tr. pp. 493-94).

With respect to the continuum of special education services, the parents do not argue that the district has violated federal and State regulations by failing to have placements available along the five continuum options described in the IDEA, but instead argue in their memorandum of law that the programming offered by the district is overly restrictive, citing regulations that have to do with the IDEA's LRE requirement that address a student's access to nondisabled peers (Parent Mem. Of Law at pp. 16-17; see Req. for Rev. ¶ I). A lack of access to the nondisabled peers was not among the issues raised in the parent's due process complaint notice (see Dist. Ex. 20), but the district nevertheless opened the door by asking questions on the matter after the parent addressed the matter first during cross examination (Tr. pp. 279, 496-97). During the impartial hearing, both parties at various points improperly conflated the notion of access to nondisabled peers with student-to-staff ratio (Tr. p. 170; 499-500; 515-16; 559-60), but the parent made it unequivocally clear in her post hearing brief to the IHO that her argument against the district's programming was that the district should have provided a different disabled student-to staff special class ratio (IHO Ex. III at p. 23). Thus on appeal, the parents' argument that the district's 8:1+3 special class was improper because "districts should move students to a more restrictive setting 'only when the nature or severity of the disability is such that even with the use of supplementary aids and services, education cannot be satisfactorily achieved'" is taken out of context because neither the district nor the parent believed that the student should be placed in general education in a regular education classroom with nondisabled peers (see Parent Mem. Of Law; Req. for Rev.)²⁵ Thus, this aspect of the parent's argument, namely that the 8+1+3 special class setting was overly restrictive and violated the district's obligation to have options along the continuum of services is without merit.

Based on the above, the evidence shows that the June 2019 CSE's recommendation of an 8:1+3 special class with the student's participation in alternate assessment was significantly different from the April 2018 CSE's recommendation of an 8:1+1 BOCES special class with the student's regular participation in State and district-wide assessments, and the parents' argument

²⁵ To bolster the continuum argument the parent cites to Part 200 of State regulations, but conveniently cuts out the preceding clause, which when read in full, states "placement of students with disabilities in special classes, separate schools or other removal from the regular educational environment occurs only when the nature or severity of the disability is such that even with the use of supplementary aids and services, education cannot be satisfactorily achieved) 8 NYCRR 200.5[cc] [emphasis added]). The remainder of the LRE standard discusses the placement of students with nondisabled peers to the maximum extent appropriate, a point that drops out of the parent's arguments as she continues her argument in favor of adding additional special education supports that the student required while at the same time pressing for a different ratio of students to special education teacher in a special class setting.

that the IHO's decision was erroneous because the district simply offered the same programming without change is lacking in merit. With respect to the parents' assertion that the June 2019 CSE ignored the recommendations of the April 2019 private neuropsychological evaluation and the May 2019 private speech-language evaluation, the CSE was not required to adopt the recommendations of the neuropsychologist and private speech language pathologist in this case (J.C.S., 2013 WL 3975942, at *11 [holding that "the law does not require an IEP to adopt the particular recommendation of an expert; it only requires that that recommendation be considered in developing the IEP"]; Watson v. Kingston City Sch. Dist., 325 F. Supp. 2d 141, 145 [N.D.N.Y. 2004] [holding that a CSE's recommendation is not necessarily rendered inappropriate by "[t]he mere fact that a separately hired expert has recommended different programming"], aff'd, 142 Fed. App'x 9 [2d Cir. July 25, 2005]). Therefore, under the circumstances, there is no reason to overturn the IHO's finding that the district offered the student a FAPE for the 2019-20 school year and that the June 2019 IEP and recommended program was reasonably calculated to enable the student to receive educational benefits in light of her circumstances.

While can I sympathize with the parents' desire that their daughter continue to be provided the curriculum in the same way as her peers, perhaps with further modification in the mode or delivery of instruction, and in the parents' view thereby perhaps preserve the hope of receiving a Regents or other high school diploma, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP," and the district is not required to guarantee this particular outcome (Walczak, 142 F.3d at 130; see Rowley, 458 U.S. at 189).²⁶ It may be of little solace to the parents, but I note that the IDEA's requirement is that "the door of public education must be opened for a disabled child in a meaningful way. This is not done if an IEP affords the opportunity for only trivial advancement (Walczak, 142 F.3d at 130). But I cannot conclude, and the evidence does not show, that that district the failed to open the door for this student in a meaningful way in light of her circumstances.

3. Independent Educational Evaluations

On appeal, the parents argue that the IHO erred in denying their request for reimbursement of the April 2019 private neuropsychological and May 2019 private speech language evaluations.

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 expresses disagreement 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 Riv. Union Free Sch. Dist., 2012 WL 234392, at *5 [S.D.N.Y. Jan. 13, 2012] [noting that "a prerequisite for an IEE is a disagreement with a specific evaluation conducted by the district"]; R.L. v Plainville Bd. of Educ., 363 F. Supp. 2d. 222, 234-35 [D. Conn. 2005] [finding parental failure to disagree with an

²⁶ That possibility could remain, but the parents are astute in realizing that transitioning to alternate assessment in middle school may signal a decrease in the likelihood that a student will ultimately achieve a regular diploma. However, it should in no way signal an end to learning or meaningful growth toward independent living.

evaluation obtained by a public agency defeated a parent's claim for an IEE at public expense)). Guidance from the United States Department of Education's Office of Special Education Programs (OSEP) indicates that if a parent disagrees with an evaluation because a child was not assessed in a particular area, "the parent has the right to request an IEE to assess the child in that area to determine whether the child has a disability and the nature and extent of the special education and related services that child needs" (Letter to Baus, 65 IDELR 81 [OSEP 2015]; see Letter to Carroll, 68 IDELR 279 [OSEP 2016]). If a parent requests an IEE at public expense, the school district must, without unnecessary delay, either (1) ensure that an IEE is provided at public expense; or (2) initiate an impartial hearing to establish that its evaluation is appropriate or that the evaluation obtained by the parent does not meet the school district criteria (34 CFR 300.502[b][2][i]-[ii]; 8 NYCRR 200.5[g][1][iv]). If a school 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]). Additionally, 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]).

a. Neuropsychological IEE

Turning first to parents' request for public funding of their neuropsychological evaluation as an IEE, the evidence shows that as part of the student's triennial reevaluation process, the district conducted a psychoeducational evaluation and a speech-language evaluation and completed a social history and a health report in October 2018 (Dist. Exs. 8; 9; 11; 12). As noted above, in an email dated March 25, 2019 to the CSE chairperson, the student's father informed the district that he disagreed with its previous testing of the student and requested an independent neuropsychological evaluation at the district's expense (Dist. Ex. 33 at p. 3). In a response, also dated March 25, 2019, the director indicated that the district could not authorize the neuropsychological evaluation at public expense and explained that in order to obtain an IEE at district expense, the district must have conducted an evaluation with which the parent disagreed, and the district had not conducted a neuropsychological evaluation (*id.*). The director further indicated that if the parent had a neuropsychological evaluation conducted at his own expense, the CSE would take that evaluation into consideration when reviewing the student's IEP (*id.*). In an email dated March 26, 2019, the parent responded to the director indicating that if the district was "formally denying" his request for a neuropsychological IEE, then he expected it to commence a due process action defending its psychoeducational evaluation (*id.* at p. 2).

In a response dated March 27, 2019, the director reiterated her explanation that the parent was entitled to an IEE only if there was an evaluation conducted by the district with which the parent disagreed (Dist. Ex. 33 at p. 1). By way of example, the director explained that if the parent disagreed with a district conducted speech-language evaluation, then the parents could obtain an independent speech-language evaluation (*id.*). The director further explained that since the district conducted a psychoeducational evaluation and not a neuropsychological evaluation, it would approve an independent psychoeducational evaluation at public expense (*id.*). However, the director noted that the parent failed to "specify what in [the district's] psycho-educational evaluation [that the parent] disagreed with and why it led [the parent] to request a neuropsychological evaluation" (*id.*). The director further noted that if the parent would like to specify "the reason" he was seeking a different evaluation, the district might be able to look at conducting some additional subtests or seek other ways to answer the parent's question (*id.*).

Here, the parents sought the April 2019 private neuropsychological IEE because of their disagreement with the district's psychoeducational evaluation. In his email of March 25, 2019, the parent expressed clear disagreement with the district's psychoeducational evaluation, stating, that he disagreed with "previous testing" and his email of March 26, 2019, in which he expected the district to defend its psychoeducational evaluation (Dist. Exs. 33 at pp. 2, 3). Although the district requested that the parent specify what led to the parent's disagreement with the district's psychoeducational evaluation, State and federal regulations only require that "the parent disagrees with an evaluation obtained by the public agency"; the regulations do not speak to how a parent must manifest this disagreement to the district (34 CFR 300.502[b][1]; 8 NYCRR 200.5[g]; see Genn v. New Haven Bd. of Educ., 219 F. Supp. 3d 296, 317 [D. Conn. 2016] [a parent does not have to express disagreement "in a formalistic manner . . . to be found to have disagreed in substance with [an] assessment"]). Thus, the district was permitted to ask why the parent disagreed with the district's psychoeducational evaluation, but the district could not require the parents to explain the basis for the disagreement and could not unreasonably delay in either providing the IEE at public expense or filing for a due process hearing to defend the appropriateness of its own evaluation (34 CFR 300.502[b][4]).

As applied in this case, the parent obtained a private neuropsychological evaluation in April 2019 (Dist. Ex. 13). Thereafter on June 4, 2019, the CSE reconvened to discuss the student's private April 2019 neuropsychological evaluation and went forward with revising the student's IEP, but did not proceed with one of the two available options with respect to the parent's request for an IEE (see Dist. Ex. 6 at p. 1). As mentioned above, the private neuropsychologist attended the CSE and reviewed her April 2019 neuropsychological evaluation including an overall summary of test results and her diagnostic findings during the meeting (id.). The CSE then recommended an in-district 8:1+3 special class placement with 12-month services for the student's 2019-20 school year (id. at pp. 1-2, 10-11). The CSE also recommended that the student participate in the New York State Alternate Assessment for students with severe disabilities" (id. at p. 12). However, the parents voiced their opinion that they were not in agreement with the CSE's recommendation for alternate assessment or with the program recommended by the CSE (id. at p. 2).

After the CSE meeting had concluded and the decisions had been made, in an email to the student's father dated, June 14, 2019, the director indicated that since the parents' disagreement with the CSE's recommended credential track and placement was based upon their private April 2019 neuropsychological evaluation, she recommended that a different independent neuropsychological evaluation be conducted, this time at district expense (see Dist. Ex. 16 at p. 1). According to the director, the purpose of the IEE was to provide additional information to determine the student's educational needs and amend her IEP as necessary (id.). The director's email indicated that she was attaching a prior written notice to this effect as well as a consent form and a list of independent evaluators, which she would also mail to the student's father (Dist. Ex. 16 at p. 1; see Dist. Ex. 17 at pp. 1-4). The prior written notice noted that the parents had submitted their 10-day notice on June 10, 2019, and in subsequent correspondence articulated that their rationale for placing the student at Blooming Grove was because the district was not fully implementing the recommendations from the April 2019 neuropsychological evaluation (Dist. Ex. 17 at p. 1). The prior written notice went on to explain that the CSE was proposing an independent neuropsychological evaluation to assist it in determining the contents of the student's IEP (id.).

As stated above, once the parents disagreed with the district's evaluation, and made the request for an independent neuropsychological evaluation at public expense, barring a withdrawal of the request or the parents' consent to delay the matter, the district had two options: (1) either agree to the parents' request for a neuropsychological IEE or; (2) initiate a due process hearing before a hearing officer in order to prove that its evaluation with which the parent disagrees was appropriate (34 CFR 300.502[b][2][i]-[ii]; 8 NYCRR 200.5[g][1][iv]). If the district prevailed at a due process hearing, the CSE would still have to consider the parents' privately obtained neuropsychological IEE, but would not have to provide payment for it at public expense. In this case, the district did neither. Instead, as discussed above, the district considered the content of the April 2019 private neuropsychological evaluation, which suggests that the IEE did not fail to meet district criteria, and the CSE merely chose not to adopt some of the recommendations made by the evaluator. The district also incorporated some information consistent with the April 2019 private neuropsychological evaluation into the student's June 2019 IEP (Dist. Ex. 6). Additionally, after the district utilized the April 2019 private neuropsychological evaluation and the parents disagreed with the June 2019 CSE's recommendation, the district then acquiesced and agreed that an independent neuropsychological evaluation at district expense was appropriate (Dist. Ex. 16 at p. 1). It bears repeating that OSEP has indicated that if a parent disagrees with an evaluation because a child was not assessed in a particular area, "the parent has the right to request an IEE to assess the child in that area to determine whether the child has a disability and the nature and extent of the special education and related services that child needs" (Letter to Baus, 65 IDELR 81 [OSEP 2015]; see Letter to Carroll, 68 IDELR 279 [OSEP 2016]). Thus, the fact that the district did not complete its own neuropsychological evaluation first was not a valid reason to deny the parent's request for an IEE (see Dist. Ex. 44). After considering the parents' IEE at the CSE meeting, the district remained free to resolve the parents' request for public funding by either agreeing to provide public funding or commencing a due process proceeding to defend its own evaluation.²⁷ I find it was not an appropriate response to the parents' request for an independent neuropsychological evaluation by a provider of their choice to propose yet another IEE by a different evaluator.²⁸ In short, the district attempted to evade the parent's request for public funding by a provider they chose by ignoring it and then offering to pay for an independent evaluation by someone else. That response only leaves the undersigned to wonder if the district personnel simply did not want to pay for an evaluation by an outsider unless the independent view—both in terms of assessments and recommendations—also upheld with their own viewpoints.²⁹ Under these circumstances the district agreed to an independent neuropsychological

²⁷ OSEP has indicated that "it would be inconsistent with the provisions of 34 CFR § 300.502 to allow the public agency to conduct an assessment in an area that was not part of the initial evaluation or reevaluation before either granting the parents' request for an IEE at public expense or filing a due process complaint to show that its evaluation was appropriate" (Letter to Carroll, 68 IDELR 279 [OSEP 2016]).

²⁸ If the district wished to conduct further reevaluation of the student, it remained free to try to obtain its own evaluation with the parent's consent. However, there are limits insofar as a district's reevaluation of a student may occur not more than once a year, unless the parent and the district agree otherwise (34 CFR 300.303[b]).

²⁹ I also find that the district personnel genuinely wanted to help the parents get the best picture of the student they could, such as by offering to complete additional testing (see, Dist. 33 at p. 1), but in so doing they appeared to lose sight of sufficiently safeguarding the parent's right to an IEE under the IDEA procedures. The parents had the right to try to convince the CSE regarding alternate assessment with the support of a non-employee expert of their choosing (see Tr. p. 879), even if the CSE ultimately was not required to adopt that viewpoint. That is just

evaluation at public expense, and the district must pay for the IEE that the parents obtained, especially where there is no argument that that evaluation failed to meet district criteria, albeit even if the district did not agree on costs.

As a final point, the amount of public funding available for the IEE must be addressed, and the events in this case took place while the district was in the process of revising its rates for IEEs. When a parent requests an IEE, the district must provide the parent with a list of independent evaluators from whom the parent can obtain an IEE, as well as the district's criteria applicable to IEEs should the parents wish to obtain evaluations from individuals who are not on the list (Educ. Law § 4402[3]; 34 CFR 300.502[a][2]; [e]; 8 NYCRR 200.5[g][1][i], [ii]; see Letter to Parker, 41 IDELR 155 [OSEP 2004]). Upon request, the district is required to provide the parents with information regarding where IEEs may be obtained, as well as the district's criteria applicable to IEEs should the parents wish to obtain evaluations from individuals who are not on the district's list of independent evaluators (34 CFR 300.502[a][2]; [e]; 8 NYCRR 200.5[g][1][i], [ii], [vi]; see Letter to Parker, 41 IDELR 155 [OSEP 2004]). The criteria under which the publicly-funded IEE is obtained, including the location of the evaluation and the qualifications of the independent evaluator, must be the same as the criteria that the public agency uses when it initiates an evaluation (34 CFR 300.502[e][1]; 8 NYCRR 200.5[g][1][ii]; see Letter to Anonymous, 103 LRP 22731 [OSEP 2002]). If the district has a policy regarding reimbursement rates for IEEs, it may apply such policy to the amounts it reimburses the parent for the private evaluations (34 CFR 300.502[e][1]; see Individual Educational Evaluation, 71 Fed. Reg. 46689-90 [Aug. 14, 2006]). The district may also establish maximum allowable charges for specific tests to avoid unreasonable charges for IEEs (see Letter to Anonymous, 103 LRP 22731 [OSEP 2002]). When enforcing reasonable cost containment criteria, the district must allow parents the opportunity to demonstrate that "unique circumstances" justify an IEE that does not fall within the district's cost criteria (id.; Individual Educational Evaluation, 71 Fed. Reg. 46689-90 [Aug. 14, 2006]).

First, as noted above, the district mentioned the concept of a \$1,500 rate cap to the parent and sent the parent the board policies on IEE's from December 2009 then in effect (Dist. Exs. 33, 34, 39). The \$1,500 rate cap described by the district personnel addressed the case of an independent psychoeducational evaluation (not a neuropsychological evaluation), but that amount was in excess of the district's 2009 policy for either a neuropsychological or psychoeducational evaluation (District Ex. 35). Thus, the 2009 policy is not convincing in terms of actual reasonable costs, especially when the district's witness conceded that some rates were below market value, but the policy approach to rates was provided to the parents and it clearly explained that the district had cost containment measures in place and that parents needed to request a waiver and may need to assume any balance above the district's rate cap (Dist. Ex. 39; see Tr. pp. 875-76).

Thus I believe the parents might have easily explained that the rate cap of \$1,200 that was provided to them in the board policy in effect at the time was significantly under current market rates and the district probably would have agreed in the spring of 2019 given its then-ongoing work of proposing new rate caps to its board since 2017 (see, e.g., Dist Ex. 39, Tr. pp. 880). During the course of this proceeding the board in fact adopted an increased rate cap of \$3,000 for an independent neuropsychological evaluation (Dist. Ex. 40). But the parents did not make any

part of the collaborative process envisioned by the IDEA.

specific attempt to explain to the district why a waiver was necessary for an independent neuropsychological evaluation either to the original rate cap information that they received or to any other rate information that may have been presented during the impartial hearing. Because district personnel were clearly aware that the district's December 2009 cap of \$1,200 for a neuropsychological evaluation was out of step with market rates—being even lower than the \$1,500 rate for a psychoeducational IEE—its proposed rate of \$3,000 is the best alternative choice given the fact that the parent made no attempt to justify the \$5,500 cost of their preferred provider to the district. The fact that the Board did not formally adopt the revised rate until December 2019 is of little moment in light of the particular and specific evidence proffered about the modifications of the district's rate caps and their reasonableness at the time of the parent's request in March 2019.

Based on the foregoing, there is sufficient basis in the hearing record to reverse that portion of the IHO's decision denying the parents' request for reimbursement of the April 2019 private neuropsychological evaluation and the district is directed to fund the cost of the April 2019 private neuropsychological evaluation in part, as set forth below.

b. Speech-Language IEE

The parents also argue that the IHO erred in denying their request for reimbursement of the May 2019 private speech-language evaluation as an IEE at public expense, and while the same criteria and rules apply to the speech-language IEE request, the evidence presents a clearer picture because the district's rate caps did not change over time (Dist. Exs. 35; 40).

As mentioned above, in October 2018, the district conducted the student's triennial reevaluation which included a speech-language evaluation (Dist. Ex. 9). In an email to the CSE chairperson dated March 25, 2019, the student's father indicated that he disagreed with testing previously conducted by the district and requested an independent speech-language evaluation at the district's expense (Dist. Ex. 33 at p. 3). The student's father identified the agency he intended to have perform the IEE, along with the agency's address and the rate it charged for a speech-language evaluation (*id.*). The CSE chairperson responded to the parent via email that same day and attached an IEE Request Response letter, the Board of Education IEE policy, and a list of independent evaluators approved by the district to conduct an IEE for speech and language (Dist. Ex. 33 at p. 2; *see* Dist. Exs. 35; 36; 40). In the response letter, the director informed the parent that the district would agree to the speech-language IEE, however, she indicated that the evaluator chosen by the student's father exceeded both the maximum rate and geographic parameter delineated by board policy (Dist. Ex. 34).³⁰ The director advised the student's father that if there was any provision in the board policy that prevented him from obtaining an appropriate evaluation, the parent should provide additional information to request a waiver (*id.*). In response, the parent emailed the director on March 26, 2019 informing her that the district's rate cap for the independent speech-language evaluation was "far below the prevailing rate in the community" and as such, her response was "tantamount to denying [his] request" (Dist. Ex. 33 at p. 2). Moreover, he asserted

³⁰ The district did not address the point about geographic distance further, including in this appeal. The parent's selected evaluator was in Mount Kisco, New York, which does not appear to be unreasonably distant from the district (Dist. Ex. 14 at p. 1). It's not clear that all of the independent speech-language evaluators on the district's list are within its 25-mile geographical parameter and even if they were, I am not convinced that alone is a valid reason to deny a parent an IEE (Dist. Exs. 35; 36).

that the rate cap would effectively prevent him from obtaining an independent evaluation (*id.*). The parent requested that the BOE update its criteria to reflect the prevailing rate for this type of evaluation to avoid a state complaint regarding the issue (*id.*).

The director, focusing solely on the IEE rate cap, responded to the student's father by email dated March 27, 2019, and explained that recent inquiries to providers in the area, including those on the list she had provided him, were made in order to determine an appropriate rate cap and that all of the providers indicated that \$500 was an acceptable fee for a speech-language evaluation (Dist. Ex. 33 at p. 1). The director informed the parent that the district could grant a waiver of the fee cap if there were extenuating circumstances that required it and inquired of the parents whether there were additional issues or circumstances that they would like the district to consider (*id.*). She requested that the parents advise the district whether they were selecting a new speech-language evaluator for their IEE or if they were seeking to have the excess fees charged by their chosen evaluator paid for by themselves or their insurance (*id.*). The director further reiterated, "[w]e are happy to work with you, however, absent some extenuating circumstances the rate cap remains [at] \$500" (*id.*).

There is no dispute amongst the parties that the district agreed to fund \$500 of the cost of the parents' May 2019 private speech-language evaluation. Moreover, as noted above, the district did not commence due process to defend its own evaluations. Instead, the crux of the parties' dispute with respect to this matter is how much reimbursement of the cost of the May 2019 private speech-language evaluation are the parents entitled to. In the instant case, the district provided the parent with a list of independent evaluators from whom the parent could obtain a speech-language IEE, as well as the district's criteria applicable to a speech-language IEE, should the parents wish to obtain evaluations from individuals who were not on the list (Dist. Exs. 33 at p. 2; 34). With respect to cost parameters, the director informed the parents that she surveyed the providers in the area to determine an appropriate rate cap and that all of the providers indicated that \$500 was an acceptable fee for a speech-language evaluation (Dist. Ex. 33 at p. 1). Furthermore, the director also testified that the district had determined the \$500 rate cap based on a survey of evaluators in the area and determined that the price was aligned with market value (Tr. p. 868). The director testified that she provided the parent with an opportunity to give her additional information to determine if there was justification to waive the rate cap; however, he did not (Tr. p. 870; *see* Dist. Exs. 33 at p.1; 34). Furthermore, the hearing record is devoid of any evidence regarding the parent providing the district with any unique or extenuating circumstances that would function as a valid reason to waive the district's fee cap of \$500, other than the assertion of the student's father that he would be denied an independent evaluation if the rate of his preferred provider was not honored. I am unconvinced by the parents' reasoning that \$500 was an unreasonable cost containment policy by the district, which had stronger evidence to support that the rate was justified. Accordingly, I find that the IHO should have granted the parents' request for reimbursement of the speech-language IEE, but in the amount of \$500 in accordance with the evidence supporting that rate cap.

VII. Conclusion

In summary, the evidence in the hearing record supports the IHO's determination that the district offered the student a FAPE for the student's 2019-20 school year. As for the parent's requests for public funding for IEEs, the IHO's orders are modified as the evidence in the hearing

record does not support outright denial in the parents' requests for reimbursement for the independent April 2019 neuropsychological and May 2019 speech-language evaluations obtained by the parents.

I have considered the parties' remaining contentions and find that I need not address them in light of my determinations herein.

THE APPEAL IS SUSTAINED IN PART.

IT IS ORDERED that the IHO decision dated August 31, 2020 is modified by reversing that portion which denied reimbursement for a neuropsychological IEE, and the district shall reimburse the parents for the independent April 2019 neuropsychological evaluation in the amount of \$3,000.00, and

IT IS FURTHER ORDERED that the IHO decision dated August 31, 2020 is modified by reversing that portion which denied reimbursement for a speech-language IEE, and the district shall reimburse the parents for the independent May 2019 speech-language evaluation in the amount of \$500.00.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

Dated: Albany, New York
November 27, 2020

JUSTYN P. BATES
STATE REVIEW OFFICER