



The University of the State of New York

The State Education Department

State Review Officer

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No. 20-172

Application of a 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 Rye City School District

Appearances:

Gina DeCrescenzo, PC, attorneys for petitioners, by Gina DeCrescenzo, Esq.

Ingerman Smith, LLP, attorneys for respondent, by Thomas Scapoli, 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 the decision of an impartial hearing officer (IHO) which denied their request to be reimbursed for private evaluations and services provided at parental expense during the 2016-17, 2017-18, 2018-19, and 2019-20 school years and for compensatory services. Respondent (the district) cross-appeals from the IHO's determination that it failed to conduct transition and vocational assessments. The appeal must be sustained in part. The cross-appeal must be dismissed.

II. Overview—Administrative Procedures

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

§§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[l]).

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

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

III. Facts and Procedural History

The student has received diagnoses including a specific metabolic disorder, an attention deficit hyperactivity disorder (ADHD), and a learning disorder with impairment in mathematics (see Parent Exs. O; R; Dist. Exs. 3 at p. 9; 5 at p. 3; 6 at p. 7). She also has a history of higher-level language, pragmatic language and social skill difficulties, symptoms of anxiety, and memory and executive functioning difficulties in the classroom (see Dist. Exs. 4 at p. 6; 6 at p. 7; 18 at p. 2). At six years of age a CSE determined that the student was eligible for special education as a student with an other health impairment and reportedly she received services such as speech-

language therapy, resource room services, and consultant teacher services while attending a parentally-selected nonpublic school (NPS) (Dist. Exs. 7 at pp. 1, 8; 18 at p. 2).¹

For the 2015-16 school year (seventh grade) the student attended the NPS and she received two 90-minute sessions per week of resource room services and two 30-minute sessions per week of speech-language therapy in a group pursuant to a district individualized education services program (IESP) (Dist. Ex. 7 at pp. 1-2). In January 2016, the CSE reconvened to modify the student's IESP to reflect the speech-language therapy services as one 30-minute session per week of language therapy in a group, and one 60-minute session per week of social skills group instruction to be provided at Dramatic Pragmatics (*id.* at pp. 1, 8). In March 2016, the speech-language pathologist who provided the student's language therapy at the NPS prepared an annual review report that described the student's progress (Dist. Ex. 8).

The student began attending the district's middle school for the 2016-17 school year (eighth grade) in September 2016 (*see* Parent Ex. D at p. 1). In October 2016 the CSE convened for a program review to "discuss if any changes should be made to [the student's] plan to support her transition to [the district's middle school]" (*id.*). According to the meeting information, the CSE discussed the speech-language services the student received at Dramatic Pragmatics and the parents' request that the student continue to receive social skills group instruction from that agency (*id.* at p. 2). The CSE recommended that the student receive a program consisting of daily, 40-minute sessions of resource room services in a group of up to five students; daily, 40-minute sessions of integrated co-teaching (ICT) services in language arts; and one 40-minute session per week each of speech-language therapy in a group, and social skills group instruction to be provided at school (*id.* at pp. 2, 9-10). After the CSE meeting, the parent and the director of pupil personnel services and special education (director) corresponded about the parent's request that the student continue to receive social skills instruction at Dramatic Pragmatics (Parent Ex. E). The director responded that the middle school would provide the student's social skills group instruction services during the school day, which would help the student transition to the "new school" (*id.* at p. 1). Subsequent to the CSE meeting, the parents privately continued the student's social skills instruction at Dramatic Pragmatics throughout the 2016-17 school year (Tr. pp. 1438-39; Dist. Ex. 23 at p. 1).

In November and December 2016, the district conducted a reevaluation of the student which included a classroom observation, an educational evaluation, a social history, a speech-language evaluation, and a psychological evaluation (Dist. Exs. 9-14). Also, in November and December 2016, the parent, speech-language pathologist, and director corresponded about the parent's concern that the grouping of students in the student's social skills group was not appropriate (*see* Parent Exs. F; G). On November 28, 2016, the parent informed the director that until "an alternative plan" was made for the student, she was "not going to attend the current social skills group at the school" (Parent Ex. G at p. 2).

On February 6, 2017, the CSE convened to review the fall 2016 evaluation results, conduct the student's annual review, and develop an IEP for the student for the 2017-18 school year (Dist.

¹ The student's eligibility for special education as a student with an other health impairment is not in dispute in this proceeding (34 CFR 300.8[c][9]; 8 NYCRR 200.1[zz][10]).

Ex. 15 at pp. 1-2). According to the meeting information, the CSE discussed results of the psychological, educational, and speech-language evaluations, as well as observations about the student's performance provided by the regular education teacher and guidance counselor (*id.*). The parent indicated that the student did not want to be "pulled out from classes" for related services and had been "refusing to attend speech" at school, but had made "tremendous progress" at Dramatic Pragmatics (*id.* at p. 2). Additionally, the parent reported that the student was spending an excessive amount of time on homework, required parent assistance to organize her materials, and had difficulty initiating tasks (*id.*). The speech-language pathologist reported that the student had "displayed significant improvement" from her performance on formal language testing three years ago, such that test results on areas currently measured were in the average to above average range (*id.*). For the 10-month school year beginning in September 2017 the CSE recommended that the student receive daily, 40-minute sessions of resource room services, one 40-minute session per day of ICT services for language arts, and two 40-minute sessions per month of individual counseling (*id.* at p. 9). The February 2017 IEP also provided for numerous supplemental aids and program modifications including wait time for oral and written responses, refocusing and redirection, preferential seating, long term assignments broken down, check for understanding, directions repeated and rephrased, additional set of books, visual prompts, graphic organizer, copy of class notes, and accommodations for medical needs (*id.* at pp. 9-10). Based on the speech-language evaluation results, the CSE recommended to discontinue speech-language therapy services for the 2017-18 school year (*id.* at pp. 1-2, 9).

In spring 2017 the student participated in the New York State examination in English language arts (ELA) and her performance was "well below proficient in standards" for eighth grade (Parent Ex. I). The student's 2016-17 report card reflected final averages of 72 (social studies), 86 (algebra), 70 (physical science), and 76 (English) (Dist. Ex. 16). According to the June 2017 IEP annual goals progress report, the student did not achieve her two study skill goals, but did achieve her reading goal, one of two writing goals, and both mathematics goals (Dist. Ex. 17 at pp. 1-3). The student was progressing gradually towards the second writing goal and was able to achieve the goal with teacher support (*id.* at p. 2). Regarding the student's four social/emotional annual goals, which included pragmatic language skills, the progress report indicated that, as of November 2016, the student had not "attended the social language group for a long enough time to gauge her progress in these areas" and subsequent marking periods did not reflect further comment (*id.* at pp. 3-4).

The student began ninth grade at the district's high school at the start of the 2017-18 school year (*see* Parent Ex. L). On September 6, 2017 the parent emailed the director and informed her that the student "was off to a rough start of high school this week," that she was having "a lot of social skills difficulty," and that the parent had already spoken to the student's counselor (*id.*). The parent further advised the director that the student had privately continued to receive instruction at Dramatic Pragmatics and although she had "made a lot of good progress" it was recommended she continue to receive services "at least through the first semester," which the parent asked whether the district could fund, as there was "no formal group in high school" (Parent Ex. L; *see* Parent K).

On March 16, 2018 the CSE convened for the student's annual review and to develop the IEP for the 2018-19 school year (Dist. Ex. 19). The meeting information reflected that the CSE discussed the results of a private November 2017 neuropsychological assessment, which indicated that the student's reading skills were "well-developed," but that she exhibited attention and

memory difficulties (Dist. Ex. 19 at p. 1; see generally Dist. Ex. 18). During the meeting, the CSE discussed services to address the student's memory and pragmatic language skill deficits (Dist. Ex. 19 at pp. 1-2). For the 2018-19 school year, the CSE recommended that the student receive ICT services in language arts and math for 40 minutes per day, one 40-minute session per week of counseling in a small group, and one 40-minute session per week of small group instruction in the "Learning Center," together with numerous supplemental aids and program modifications (id. at pp. 9-10).² In April 2018 the student began receiving one 45-minute session per week of private language therapy at Dramatic Pragmatics (Dist. Ex. 23 at p. 1).

In spring 2018, the parents obtained letters from the student's private physicians and providers in support of the student receiving services to address her speech-language and memory needs (see Parent Exs. O; Q; S).³ On May 22, 2018, the CSE reconvened for a program review (Dist. Ex. 20). The CSE discussed that the student was not experiencing seizure activity but rather had received an ADHD diagnosis, and the private neurologist's recommendations that the student receive services to meet her attention, metacognition, and executive functioning skill needs (Parent Ex. R at p. 1; Dist. Ex. 20 at p. 1; see Parent Ex. T). For the 2018-19 school year, the CSE recommended that the student receive ICT services for 40 minutes per day in both language arts and math, one 40-minute session per day of small group instruction in the learning center, one 40-minute session per week of counseling in a small group, two 15-minute sessions per month of individual counseling, and numerous supplemental aids and program modifications (Dist. Ex. 20 at pp. 9-11). According to the meeting information, the CSE discussed the parent's belief that the student required services to address her "possible language difficulties," but that the CSE determined the student had met her speech-language goals and therefore services were not required (id. at p. 2). The parent disagreed and "requested an independent evaluation to gather more information" (id.).

In email correspondence from May 30, 2018 to June 29, 2018, the parent and the director discussed the parent's request for a speech-language evaluation, a psychoeducational evaluation, and a neuropsychological IEE (see Parent Exs. T; NN; OO).⁴ The director informed the parent that with regard to the neuropsychological evaluation what she was asking for did "not qualify as an IEE" and provided her with the IEE policy (Parent Ex. T). The director further stated that the parent was requesting an IEE because the CSE "did not recommend everything that the private evaluator recommended" which was not the reason to request an IEE; and further, that if the parent disagreed with the CSE's recommendations, she had procedural safeguards (id.).

At the end of the 2017-18 school year the student had achieved final grades of 74 (living environment), 87 (fundamentals of math), 86 (English), and 85 (global history), with an overall

² According to the district school psychologist, the learning center was "similar to a resource room" in that it was a place for a small group of students to interact with and receive individualized attention from a special education teacher and to work on their goals—including study skill goals—executive functioning skills, organization, and prioritizing work (Tr. pp. 68, 131, 182, 281-82, 286-87).

³ During this time the student experienced episodes in which she "space[d] out" and was evaluated for seizure activity, which was ruled out (see Parent Exs. P; R).

⁴ Portions of parent exhibits NN and OO are difficult to read (see Parent Exs. NN; OO).

fourth quarter average of 88.18 and she achieved a 78 on the living environment Regents examination (Dist. Ex. 21). The June 2018 IEP annual goals progress report reflected that the student was progressing satisfactorily toward all of her study skills, reading, writing, and math annual goals, and had achieved one social/emotional goal and was progressing gradually towards the other (Dist. Ex. 22).

In July 2018, a speech-language pathologist from Dramatic Pragmatics conducted an independent language evaluation of the student and determined that she met the criteria for a diagnosis of a mixed expressive-receptive language disorder (Dist. Ex. 23; see Dist. Ex. 24 at p. 1). Recommendations from the evaluation included continuation of individual language therapy, participation in a social skills group, and various classroom accommodations including models for task expectations, graphic organizers, parsing of large assignments into smaller parts, links and relationships between old and new information, and access to class notes (Dist. Ex. 23 at pp. 10-11).

The student began tenth grade at the district's high school in fall 2018 (see Dist. Ex. 24 at p. 1). On October 15, 2018, the CSE convened for a requested review of the student's independent language evaluation (id.). Meeting information indicates that the CSE reviewed the results of the language evaluation with the evaluator and discussed the student's classroom performance with some of her teachers as well as her participation in counseling sessions (id. at pp. 1-2). Additionally, the CSE discussed the parents' view that the student required individual speech-language therapy from a provider trained in "metacognition" and their request that the district fund two to three sessions per week of speech-language therapy at Dramatic Pragmatics (id. at p. 2). District staff responded that the student's needs could be addressed within the context of the current curriculum during the school day and with services such as those provided in the learning center, therefore, speech-language therapy was not recommended (id. at pp. 2, 13). No changes were made to the student's ICT, counseling, or learning center services from the May 2018 IEP (compare Dist. Ex. 20 at p. 9, with Dist. Ex. 24 at p. 13).⁵

In a letter dated June 6, 2019, a private psychotherapist reported that she had been working with the student since October 2015, but since that time had "seen limited social and emotional development which ha[d] impacted [the student's] overall mental health quite profoundly" due to her "poorly developed language skills" (Parent Ex. W). The psychotherapist indicated that the student required "extensive speech and language intervention" and that until her educational needs were addressed, "her self-esteem [would] continue to suffer and her depression, social isolation and anxiety [would] persist" (id.).

On June 10, 2019, the CSE convened for the student's annual review and to develop an IEP for the 2019-20 school year (Dist. Ex. 29). The CSE, which included the parents' private consultant and the private speech-language pathologist, discussed the student's performance at school, the amount of support the student required to complete academic work, the results of the independent speech-language evaluation, and the work the student had been doing with the private speech-

⁵ Amendments to the student's 2018-19 IEP were made in November 2018 to add access to a computer, and in April 2019 to add 1:1 aide services for school sanctioned after-school activities to monitor the student for dehydration (Dist. Exs. 24 at p. 2; 25 at p. 1).

language pathologist over the past year (*id.* at pp. 1-2). The parent shared the letter from the psychotherapist and opined that the student struggled socially at school (*id.* at pp. 2-3). Although the school psychologist reported that the student had not attended individual counseling sessions but chose to work with teachers, she also reported that the student was "positive in group counseling sessions," and that growth was observed (*id.*). According to the meeting information, the CSE reviewed the student's medical information, management needs, annual goals, transition plan, program modifications, test accommodations, and eligibility for 12-month services (*id.* at p. 3). For the 2019-20 10-month school year, the CSE recommended that the student receive 40-minute daily ICT services in language arts and math, one 40-minute session per day of resource room services in a group of up to eight students, and one 40-minute session per week of counseling in a small group, together with numerous supplemental aids and program modifications (*id.* at pp. 14-16).⁶ The CSE also agreed to conduct a speech-language evaluation of the student and explained that if the parents disagreed with the results, they could request an IEE (*id.* at p. 3).

The student's 2018-19 report card reflected final grades of 92 (chemistry), 86 (global history), 93 (algebra), and 91 (English), with an overall fourth quarter average of 95.69 (Dist. Ex. 26). The student achieved a 75 on the global history and a 79 on the algebra Regents examinations (*id.*). The June 2019 IEP annual goals progress report reflected that the student had achieved both of her study skills goals, two out of five of her reading goals, one of her writing goals and all of her social/emotional and transition goals and she was progressing satisfactorily towards the remaining three reading goals, her additional writing goal, and both of her math goals (Dist. Ex. 27).

A. Due Process Complaint Notice

In an amended due process complaint notice dated August 15, 2019, the parents asserted that the district denied the student a free appropriate public education (FAPE) "from October 5, 2016 through the date that [the district] proposes an appropriate IEP" (Dist. Ex. 1 at p. 2). After reviewing the student's educational history, emphasizing the parents' communication with the district regarding the student's needs in the areas of pragmatic language and social/emotional skills, the parents presented a number of alleged deprivations only matching some of them to a specific time period or IEP (*id.* at pp. 2-13).

Initially, the parents alleged that the district failed to evaluate the student in all areas of her suspected disability and did not identify all of the student's needs (Dist. Ex. 1 at p. 12). The parents claimed that the district did not provide the student with a program tailored to her unique needs (*id.* at p. 13). Generally, the parents alleged that the district IEPs did not include measurable annual goals to meet the student's needs (*id.*). More specifically, the parents asserted that the district refused to recognize and address the student's needs in the areas of language and social pragmatics, did not sufficiently address the student's mental health needs, and failed to adequately address the student's social isolation, emotional distress, and depression (*id.*). The parents further

⁶ The June 2019 IEP also referred to the recommended resource room services as "Special Class Educational Support Class" (Dist. Ex. 29 at p. 14).

alleged that the district "did not conduct appropriate transition assessments, nor did it provide appropriate and measurable post-secondary goals" (id.).

The parents also asserted that in response to the parents' May 2018 request for a neuropsychological IEE, the district did not allow the IEE or file a due process complaint notice to show that its evaluation was appropriate (Dist. Ex. 1 at pp. 8, 12).

With respect to the March 2018 IEP and the October 2018 IEP, the parents asserted that the district did not implement the recommended ICT services in English language arts (ELA) (Dist. Ex. 1 at p. 12). With respect to the June 2019 CSE meeting, the parents alleged that the district did not address the parents' concern that the student was not on track to transition into college or other post-secondary environment (id.).

As relief, the parents proposed resolution requested a finding that the student was denied a free appropriate public education from October 5, 2016 until an appropriate program is recommended (Dist. Ex. 1 at p. 14). The parents asserted that an appropriate program for the 2019-20 school year included the recommendations from the private evaluation reports obtained by the parents (id.). The parents also requested an appropriate transition assessment with implementation of appropriate transition services and that the district fund a neuropsychological IEE by a provider chosen by the parents. In addition, the parents requested reimbursement for evaluations obtained by the parents, as well as speech-language therapy, social skills training, and counseling services obtained by the parents (id.). Finally, the parents requested unspecified compensatory services for the alleged denial of FAPE from October 5, 2016 (id.).

On September 27, 2019, the district submitted a response to the parents' amended due process complain notice (Dist. Ex. 2).

B. Impartial Hearing Officer Decision

The parties proceeded to an impartial hearing on February 7, 2020, which concluded on July 20, 2020 after nine days of hearings (Tr. pp. 1-1803).

In a final decision dated September 29, 2020, the IHO found that the parents' claims related to the 2016-17 school year were barred by the statute of limitations and the district offered the student a FAPE for the 2017-18, 2018-19, and 2019-20 school years (IHO Decision at pp. 22-44). With respect to the 2016-17 school year, the IHO found that the parents' claims related to the October 2016 IEP (id. at p. 24). The IHO determined that the student's mother attended the CSE meeting and understood the recommendations made by the CSE at that time, and accordingly, the parents knew or should have known about their concerns related to the October 2016 IEP at the time of the October 2016 CSE meeting (id.). Therefore the IHO found that the due process complaint notice filed in January 2019 was outside of the statute of limitations for that school year (id.).

The IHO then addressed the parents' claims related to sufficiency of evaluations, annual goals and progress reporting, and substantive concerns regarding special education programming and related services to address the student's social/pragmatic language needs or mental health needs (IHO Decision at pp. 25-32, 35-44). The IHO also found that the parents were not entitled

to the requested neuropsychological IEE because the parents never expressed disagreement with a district evaluation (id. at pp. 32-35).

Related to the sufficiency of evaluations, the IHO found that the district had sufficient evaluative information for all three school years at issue, and that the district's evaluations "were sufficiently comprehensive, using a variety of assessment tools and technically sound instruments" (IHO Decision at pp. 27-32). The IHO reviewed the evaluative information available at each of the CSE meetings held for the 2017-18, 2018-19, and 2019-20 school years and addressed the parents' claims that they were insufficient (id.). For example, for the 2017-18 school year, the IHO considered the parents' witnesses critiques of the district's 2016 speech-language evaluation but did not find the privately obtained August 2019 social thinking assessment as a valid alternative (id. at p. 28). For the 2018-19 school year, the IHO noted that the March 2018 CSE considered the results of a privately obtained November 2017 neuropsychological evaluation report and the October 2018 CSE considered the results of an independent language evaluation report (id. at pp. 29-30). The IHO noted the recommendation included in the independent language evaluation report that the student receive speech-language therapy, and, particularly regarding the October 2018 CSE, found that although the CSE did not adopt the recommendation for speech-language therapy, the CSE considered the evaluation report (id. at pp. 30-31). With respect to the 2019-20 school year, the IHO found that the June 2019 CSE reviewed the student's transition plan; however, the district offered no evidence of any transition or vocational assessments of the student (id. at pp. 31-32). Accordingly, the IHO found that he could not "evaluate the sufficiency of those assessments or the adequacy of recommended transition services" (id. at p. 32). The IHO found this to be a procedural violation, but also determined that the lack of transition and vocational assessments did not impede the student's right to a FAPE or cause a deprivation of educational benefits (id.).

Regarding the appropriateness of the annual goals and progress reporting, the IHO found that "the CSE developed and modified the student's annual goals consistent with her progress towards achieving those goals and according to discussions held during the meetings" (IHO Decision at pp. 35-40). With respect to the 2017-18 school year, the IHO found that the February 2017 CSE developed annual goals in the areas of reading, writing, math, study skills and social/emotional/behavioral functioning, which addressed the student's identified needs (id. at pp. 36-37). In addition, the IHO found that when the CSE reconvened in March 2018, the student's progress report indicated that she was progressing satisfactorily on most of her IEP goals (id. at p. 37). With respect to the 2018-19 school year, the IHO determined that the March 2018 CSE developed annual goals in the areas of reading, writing, math, and social/emotional/behavioral functioning, which addressed the student's needs (id. at p. 38). The IHO further found that the October 2018 CSE added annual goals to the student's IEP regarding question analysis, annotating text, and previewing vocabulary in response to the independent language evaluation results (id.). Regarding the student's progress, the IHO pointed to the student's progress report, which indicated she achieved two study skills goals, two out of five reading goals, one out of two writing goals, three social/emotional/behavioral goals and her career/vocational/transition goal, and that she was progressing satisfactorily on her remaining annual goals (id. at pp. 38-39). Turning to the 2019-20 school year, the IHO found that the June 2019 IEP included annual goals in the areas of study skills, reading, writing, math, and social/emotional/behavioral functioning, which addressed her needs (id. at p. 40). The IHO further

noted the parents' witnesses' critiques of the annual goals, in that a goal was not included for social pragmatics; however, the IHO determined that the IEP did not need to identify annual goals for every one of the student's deficits in order to offer a FAPE (id. at pp. 40-41).

Related to the parents' substantive challenges to the district's offered programs, the IHO noted the student's progress during the school years at issue, and determined that recommendations for ICT services, resource room, and counseling were reasonably calculated to enable the student to receive educational benefits (IHO Decision at pp. 41-44). Regarding the 2017-18 school year, the IHO found that ICT services and resource room provided the student with an opportunity to work on her attentional and organizational skills and helped in decreasing her anxiety (id. at p. 41). The IHO also determined that the student made progress in her counseling sessions and the student did not need speech-language therapy, accepting the district speech-language therapist's testimony that the student did not have language deficits that impacted her performance in the classroom (id. at pp. 41-42). With respect to the 2018-19 school year, the IHO found that the district recommended ICT services and "learning center services" directed at working on academic and organizational skills, that the recommended counseling supported the student's social skills and helped to reduce anxiety, and that program modifications addressed the student's difficulty with attention and executive functioning (id. at p. 43). The IHO noted the district school psychologist's testimony that for the 2018-19 school year, "the student displayed a more positive affect at school" (id.). Additionally, regarding the 2019-20 school year, the IHO noted that the district recommended ICT services "as well as support in an educational support class," along with continuing group counseling, and a program modification to assist in addressing the student's executive functioning needs (id. at p. 43). As a final matter, the IHO found that the district speech-language therapist's testimony was more credible than the parents' witness and determined that the student's language functioning during the school years at issue did not demonstrate an educational need for such a service (id. at p. 44). Similarly, the IHO found the district school psychologist's testimony credible, in determining that the evidence in the hearing record "d[id] not portray a student experiencing clinically significant levels of social isolation, emotional distress or depression in school" (id.).

IV. Appeal for State-Level Review

The parents appeal from the IHO's determinations that the district did not deny the student a FAPE for the 2017-18, 2018-19, and 2019-20 school years. As an initial matter, the parents allege that the IHO failed to disclose a conflict of interest affecting his impartiality. The parents assert that at one point, the IHO was a partner in a law firm with the attorney for the school district. Turning to the IHO's findings, the parents allege that the IHO erred in finding that the statute of limitations barred the parents' claims related to the 2016-17 school year. More specifically, the parents present claims, that they contend, accrued from January 24, 2017 through the end of the school year. For example, the parents assert that the district did not implement the October 2016 IEP, in that it did not provide an appropriate social skills group or a language group and did not provide parental consults with the speech-language pathologist. The parents also assert that the district failed to provide progress reporting on some of the student's annual goals.

The parents contend that the IHO erred in finding that the district's 2016 evaluations were appropriate. In particular, the parents assert that the privately obtained 2014 and 2017 neuropsychological evaluations indicated the student had significant deficits in executive

functioning; however, the 2016 psychoeducational evaluation did not assess the student's executive functioning "in any meaningful way." The parents also contend that the 2016 speech-language evaluation "missed a critical diagnosis" in that it did not document that the student met the criteria for a "Mixed Expressive/Receptive Language Disorder." The parents further contend that the IHO erred in not relying on the parents' witness' testimony that the district's 2016 speech-language evaluation was "not a reliable measure of pragmatic language" and should not have been relied on in discontinuing speech-language services.

The parents further assert that the student's annual goals for the 2017-18, 2018-19, and 2019-20 school years were inappropriate because they were based on evaluations that did not assess the student in all areas of need. The parents contend that the district needed to develop annual goals to address the needs identified in the July 2018 independent language evaluation, specifically identify vocabulary and lexical development, syntactic development, formulation strategies to aid with verbal organization, thinking skills for language comprehension and reasoning, strategies for active listening comprehension, and written language development as areas for which the student should have had annual goals.

According to the parents, the IHO overlooked defects in the district's programming for the student. The parents allege that the district failed to address the student's executive functioning deficits and anxiety, which were areas of need known to be related to her medical condition. Additionally, the parents allege that none of the student's IEPs addressed the student's social communication and language deficits, which the parents' witness testified had academic implications for the student in areas such as creative writing, reading comprehension, math, problem solving, and critical thinking. The parents further contend that they presented the testimony of a social worker who worked with the student and testified that although the student "may appear happy at school, she is actually suffering from extreme isolation, anxiety, and depression, lacking the language skills necessary to make and maintain friendships."

The parents further allege that the district did not implement the student's IEPs, identifying specific challenges for each of the school years at issue. For the 2016-17 school year, the parents contend that the district did not implement a monthly parental speech-language consult or social skills and language groups. The parents also allege that the student's speech-language goals were no longer worked on after the February 2017 CSE terminated speech-language services. For the 2017-18 school year, the parents allege that the student's resource room was provided in an 8:1 student-to-teacher ratio, instead of the recommended 5:1 student-to-teacher ratio. For the 2018-19 school year, the parents assert that the district did not provide ICT services for ELA. For the 2019-20 school year, the parents assert that the district did not implement recommended ICT services in either ELA or math.

Finally, the parents allege that the IHO erred in finding that the district did not have to fund a neuropsychological IEE. According to the parents, at the May 2018 CSE meeting, the parents expressed their disagreement with the district's fall 2016 "comprehensive reevaluation" and sought a speech-language and neuropsychological or psychoeducational IEE. The parents contend that the district failed to initiate a due process proceeding after the parent expressed disagreement with the district evaluation.

As relief, the parents request that the IHO's findings regarding the neuropsychological IEE and the provision of FAPE for the three school years at issue be reversed and that the parents be reimbursed "for all expenses incurred in connection with private evaluations and services provided at parental expense" as well as an award of compensatory services consisting of "3.5 years of weekly Social Thinking therapy at prevailing rates and . . . three years of language therapy at Dramatic Pragmatics twice per week."

In an answer with cross-appeal, the district responds to the parents' claims with admissions and denials. Generally, the district argues that the IHO decision finding that the district offered the student a FAPE for the school years at issue should be upheld. In addition, the district objects to the parents raising issues that were not identified in the amended due process complaint notice and contends that those issues are outside the scope of this proceeding. More specifically, the district identifies allegations raised for the first time on appeal as those related to implementation of speech-language consults, speech-language goals, the ratio of resource room, and ICT services for math. Further, the district contends that equitable considerations do not support the parents' request for relief, as the parents "repeatedly asked the District to deliver services using their preferred private providers, declined special education services from the District, and refused to provide the District with consent to conduct a speech evaluation." In addition, the district cross-appeals from the IHO's determination that the district did not conduct transition and vocational assessments. The district also cross-appeals from the IHO's decision to exclude a video of the June 2020 CSE meeting from the hearing record.⁷

In an answer to the district's cross-appeal, the parents assert that the district's answer and cross-appeal do not comply with 8 NYCRR 279.8(c)(3) because both documents lack citation to the record in support of the arguments therein, and the SRO, therefore, has the discretion to dismiss the answer and cross-appeal. With respect to the substance of the district's cross-appeal, the parents argue that the IHO correctly determined that the district did not provide the student with appropriate transition planning because the district failed to conduct any transition or vocational assessments of the student. The parents also argue that the IHO acted within his discretion to exclude the admission into evidence of a videotape documenting the student's functioning at the June 22, 2020 IEP meeting because the video did not shed light on the appropriateness of the educational programming at issue.

Finally, in a reply to the district's answer the parents assert that their counsel was not aware at the time of the impartial hearing of the previous professional relationship between the IHO and the district's attorney, that the district failed to present any evidence to defend against the parents' claims that it failed to implement the student's IEPs during the 2016-17, 2017-18, 2018-19, and 2019-20 school years, that the parents were entitled to an independent neuropsychological evaluation because they disagreed with the district's triennial evaluation of the student, that the

⁷ Although the district argues that the excluded video was relevant to the proceeding in that it displays the student's communication skills, the district has not submitted the excluded video exhibit as additional evidence on appeal or requested that I consider it in my review of the IHO's decision. Accordingly, even if the IHO's decision was in error, there exists no basis in the hearing record or in the district's submissions to find that this error was other than harmless and it will not be discussed further.

services provided by Dramatic Pragmatics were appropriate for the student and that equitable considerations did not bar reimbursement to the parents for the cost of Dramatic Pragmatics.

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]).⁸

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).

⁸ The Supreme Court has stated that even if it is unreasonable to expect a student to attend a regular education setting and achieve on grade level, the educational program set forth in the student's IEP "must be appropriately ambitious in light of his [or her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives" (Endrew F., 137 S. Ct. at 1000).

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. IHO Bias

The parents argue that the IHO erred by failing to disclose a conflict of interest affecting his impartiality. Specifically, the parents allege that they have learned that the IHO was, for a period of approximately ten years, the law partner of the attorney who represented the district at the hearing. The district contends that the parents have not presented any authority that a law partnership between the IHO and the district's attorney, which it alleges ended over 13 years ago and only lasted for three years, would support a finding of IHO bias.

It is well settled that an IHO must be fair and impartial and must avoid even the appearance of impropriety or prejudice (see, e.g., Application of a Student with a Disability, Appeal No. 12-066). Moreover, an IHO, like a judge, must be patient, dignified, and courteous in dealings with litigants and others with whom the IHO interacts in an official capacity and must perform all duties without bias or prejudice against or in favor of any person, according each party the right to be heard, and shall not, by words or conduct, manifest bias or prejudice (e.g., Application of a Student with a Disability, Appeal No. 12-064). An IHO may not be an employee of the district that is involved in the education or care of the child, may not have any personal or professional interest that conflicts with the IHO's objectivity, must be knowledgeable of the provisions of the IDEA and State and federal regulations and the legal interpretations of the IDEA and its implementing regulations, and must possess the knowledge and ability to conduct hearings and render and write decisions in accordance with appropriate, standard legal practice (20 U.S.C. § 1415[f][3][A]; 34 CFR 300.511[c][1]; 8 NYCRR 200.1[x]).

Here, there is no allegation that the IHO was a current employee of the district or had any personal or professional interest that would have conflicted with his objectivity and appropriate conduct of the impartial hearing. Although the parents claim that the IHO and the attorney for the district were law partners for 14 years, the district asserts that the IHO and the attorney for the district were first associates and then partners at the same law firms for a period of time that ended approximately 13 years ago. There is no indication from either party that the IHO and the district's attorney have had any mutual professional interest during the intervening 13 years since they were partners at the same firm. While it may have been optimal in terms of transparency for the IHO to have disclosed he and the district's attorney had previously been partners at the same law firm, a relationship that ended approximately 13 years prior to the hearing, this does not constitute a conflict of interest or present an interest that would impede the IHO's objectivity or ability to conduct an impartial hearing in accordance with the requisite regulations. Moreover, upon my independent review of the hearing record, there is no indication that the IHO demonstrated any bias in his words or conduct during the proceedings. As a result, there is not a sufficient basis to find any bias on the part of the IHO in this matter.

2. Statute of Limitations 2016-17 School Year

The parents contend that the IHO erred in holding that the statute of limitations barred claims related to the 2016-17 school year and that the district denied the student a FAPE during this time. Specifically, the parents argue that because they filed their due process complaint notice on January 14, 2019, any claims that accrued within two years of that date are timely which would include any claims related to the 2016-17 school year that accrued on or after January 14, 2017.⁹

The IDEA provides that a claim accrues on the date that a party knew or should have known of the alleged action that forms the basis of the complaint and requires that, unless a state establishes a different limitations period, the party must request a due process hearing within two years of that date (20 U.S.C. § 1415[f][3][C]; see also 20 U.S.C. § 1415[b][6][B]; Educ. Law § 4404[1][a]; 34 CFR 300.507[a][2], 300.511[e]; 8 NYCRR 200.5[j][1][i]; Somoza v. New York City Dep't of Educ., 538 F.3d 106, 114-15 & n.8 [2d Cir. 2008]; M.D. v. Southington Bd. of Educ., 334 F.3d 217, 221-22 [2d Cir. 2003]). Because an IDEA claim accrues when the parent knew or should have known about the claim, "determining whether a particular claim is time-barred is necessarily a fact-specific inquiry" (K.H. v. New York City Dep't of Educ., 2014 WL 3866430, at *16 [E.D.N.Y. Aug. 6, 2014]; see K.C. v. Chappaqua Cent. Sch. Dist., 2018 WL 4757965, at *14 [S.D.N.Y. Sept. 30, 2018] [collecting cases representing different factual scenarios for when a parent may be found to have known or have had reason to know a student was denied a FAPE]). Further, two exceptions to the statute of limitations may apply to the timelines for requesting impartial hearings. The first exception applies if a parent was prevented from filing a due process complaint notice due to the district withholding information from the parent that the district was required to provide under the IDEA (20 U.S.C. § 1415[f][3][D][ii]; 34 CFR 300.511[f][2]; 8 NYCRR 200.5[j][1][i]). A second exception may apply if a parent was prevented from filing a due process complaint notice due to a "specific misrepresentation" by the district that it had resolved the issues forming the basis for the due process complaint notice (20 U.S.C. § 1415[f][3][D]; 34 CFR 300.511[f]; 8 NYCRR 200.5[j][1][i]).

Here, the parents are correct that any claims that accrued on or after January 14, 2017, two years from the filing of the due process complaint notice, are within the two year statute of limitations. The district contends that the parents' claims accrued as of the time of the October 2016 CSE meeting. While the district is correct that any of the parents claims pertaining to the October 2016 CSE meeting or the resultant IEP fall outside of the actionable timeframe, the date of the CSE meeting is not determinative for statute of limitations purposes where the parent challenged the implementation of the IEP (K.P. v. Juzwic, 891 F. Supp. 703, 716-17 [D. Conn. 1995]; accord G.R. v. Dallas Sch. Dist. No. 2, 823 F. Supp. 2d 1120, 1130-35 [Or. 2011]). Accordingly, the parent's claims for the 2016-17 school year concerning the implementation of the

⁹ Although the parents refer to both January 14, 2019 and January 24, 2019 as the date of the due process complaint notice, the due process complaint notice admitted at the impartial hearing is dated January 14, 2019 and, accordingly, that date shall be used to compute the statute of limitations.

October 2016 IEP from January 14, 2017 to the end of the 2016-17 school year are not time-barred.¹⁰

B. FAPE

1. Sufficiency of Evaluative Information

The parents argue that the IHO erred in holding that the district's 2016 evaluations of the student were appropriate and that the district evaluated the student thoroughly in all areas of suspected disability and identified all her needs. Specifically, the parents contend that while the privately obtained 2014 and 2017 neuropsychological evaluation results indicated the student had significant deficits in executive functioning, the district's 2016 psychological evaluation did not assess the student's executive functioning "in any meaningful way" and that the district's 2016 speech-language evaluation missed a "critical diagnosis" of a mixed expressive/receptive language disorder subsequently identified by the independent speech-language pathologist. The parents further argue that the IHO erred in not relying on the parents' witness' testimony that the district's 2016 speech-language evaluation was "not a reliable measure of pragmatic language" and should not have been relied on in discontinuing speech-language services.

Regulations require that a district must conduct an evaluation of a student where the educational or related services needs of a student warrant a reevaluation or if the student's parent or teacher requests a reevaluation (34 CFR 300.303[a][2]; 8 NYCRR 200.4[b][4]); however, a district need not conduct a reevaluation more frequently than once per year unless the parent and the district otherwise agree and at least once every three years unless the district and the parent agree in writing that such a reevaluation is unnecessary (8 NYCRR 200.4[b][4]; see 34 CFR 300.303[b][1]-[2]). A CSE may direct that additional evaluations or assessments be conducted in order to appropriately assess the student in all areas related to the suspected disabilities (8 NYCRR 200.4[b][3]). Any evaluation of a student with a disability must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining, among other things, the content of the student's IEP (20 U.S.C. § 1414[b][2][A]; 34 CFR 300.304[b][1][ii]; see S.F., 2011 WL 5419847 at *12 [S.D.N.Y. Nov. 9, 2011]; see Letter to Clarke, 48 IDELR 77 [OSEP 2007]). In particular, a district must rely on technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors (20 U.S.C. § 1414[b][2][C]; 34 CFR 300.304[b][3]; 8 NYCRR 200.4[b][6][x]). A district must ensure that a student is appropriately assessed in all areas related to the suspected disability, including, where appropriate, social and emotional status (20 U.S.C. § 1414[b][3][B]; 34 CFR 300.304[c][4]; 8 NYCRR 200.4[b][6][vii]). An evaluation of a student must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified (34 CFR 300.304[c][6]; 8 NYCRR 200.4[b][6][ix]; see Application of the Dep't of Educ., Appeal No. 07-018).

¹⁰ On appeal, the parents assert that any claims for the 2016-17 school year which accrued on or after January 14, 2017 are not time-barred and do not specifically argue that any claims that accrued prior to this date are timely.

Based on the evidence in the hearing record, and detailed below, the CSE had sufficient evaluative information to develop the student's IEPs for the 2017-18, 2018-19, and 2019-20 school years and those evaluations were sufficiently comprehensive, using a variety of assessment tools and technically sound instruments.

a. 2017-18

In developing the student's 2017-18 IEP, the February 2017 CSE used the following evaluative information: February 2017 teacher progress summaries, a November 2016 psychological evaluation, a November 2016 social history, a November 2016 speech-language evaluation, a November 2016 classroom observation, a November 2016 educational evaluation, and an August 2016 physical examination (Dist. Ex. 15 at pp. 1-4; see Dist. Exs. 9 at pp. 1-2; 10 at pp. 1-4; 11; 12 at pp. 1-7; 13 at pp. 1-4; 14 at pp. 1-9).^{11, 12}

The November 2016 psychological evaluation report stated that the student's full scale IQ (105) was within the average range, indicating that her cognitive abilities were well developed and that she performed typical to that of her same age peers (Dist. Ex. 14 at pp. 3-5). The student's verbal comprehension (language-based reasoning abilities), visual spatial, fluid reasoning, and processing speed abilities were all within the average range (id. at pp. 5-6). Her working memory domain score (117) was in the high average range and the examiner stated that this was an overall strength within the student's cognitive profile and that it would "serve her well academically, as she possesse[d] a strong foundation for study skills and repetition which she may apply when acquiring new and previously learned material" (id. at pp. 4-6). The examiner noted that the student was observed to employ clever strategies to assist her in replicating pictured designs, displayed enthusiasm toward testing, and continued to strategize ways to perform successfully on each task (id. at p. 2). Self and parent reported rating scales indicated that the student's level of depression, withdrawal, attention problems, leadership, functional communication, locus of control, and interpersonal relationships were within the at-risk classification range and somatization and self-esteem were in the clinically significant range (id. at p. 6).

Within the November 2016 social history, the parent reported the student's history of language-based learning disabilities, rare metabolic disorder which could be associated with developmental delays, and that the student needed to be monitored regularly for health issues related to the disorder (Dist. Ex. 12 at p.1). The parent identified the student's presenting behaviors such as difficulty following directions, trouble in finding the words she wanted to use, low self-

¹¹ The February 2017 IEP described the teacher progress summary as team teachers providing "grades and anecdotal summary" of the student's then-current classroom activity (Dist. Ex. 15 at p. 3). Aside from the teacher reports reflected in the meeting information attached to the IEP, a separate teacher progress summary document and August 2016 physical examination report were not submitted a part of the hearing record (see IHO Exs. I-XV; Parent Exs. B-G; I-L; O-T; W-X; Z-EE; HH-JJ; MM-NN; Dist. Exs. 1-36; Tr. pp. 1-1812).

¹² The district's psychological evaluation report reflects evaluation dates from November 2016 and a report date of December 14, 2016 (Dist. Ex. 14 at p. 1). The district's speech-language evaluation report reflects evaluation dates of November and December 2016 (Dist. Ex. 13). The February 2017 IEP describes these reports as dated November 30, 2016 (compare Dist. Ex. 15 at p. 3, with Dist. Ex. 13 at p. 1; 14 at p. 1). For consistency in this decision, the psychological and speech-language evaluation reports will be referred to as the November 2016 evaluations and reports.

esteem, difficulty paying attention and staying on task, difficulty with transitions, disorganization, poor awareness of time, and that she was easily distracted (*id.* at p. 5). The parent also reported that the student had difficulty making friends and was not sought by peers for friendships (*id.*).

With respect to the November 2016 speech-language reevaluation, the district speech pathologist stated that as part of the evaluation she administered three tests: the Comprehensive Assessment of Spoken Language (CASL) because it was administered previously and would provide a way to show growth in those areas, the Test of Adolescent/Adult Word Finding-2 (TAWF-2) Brief Test because she remembered seeing something in the student's file about word finding difficulties, and the Social Language Development Test – Adolescent because of parental concerns regarding social language issues (Tr. pp. 366-68; *see* Dist. Ex. 13). Overall the November 2016 speech-language reevaluation found the student demonstrated age appropriate speech-language skills (Dist. Ex. 13 at p. 4). Administration of several subtests of the CASL revealed the student's variable skills from the low average range to the high average range (*id.* at pp. 1-2). On the nonliteral language subtest, which assesses the ability to comprehend the intended meaning of a spoken utterance in cases where the literal meaning did not convey the intended message (figurative language, indirect requests, sarcasm) and often involves the use of metalinguistic skills, the student performed in the high average range (*id.* at p. 2). Regarding the meaning from context subtest, which is a measure of inference ability that does not require the use of world knowledge to arrive at the full meaning of the spoken text, the examiner noted that while the student's score on this subtest (85) was in the average range, it indicated that she had some difficulty responding with words that were specific enough to receive credit (*id.* at p. 3). On the pragmatic judgement subtest, which is designed to measure the knowledge and use of pragmatic rules of language, the student's subtest score (97) was in the average range and the examiner noted that this score was similar to the last administration and indicated maturation and growth (*id.*). To assess the student's word finding skills, the TAWF-2 was administered, and the student received a word finding index standard score (90) in the average range (*id.*). The Social Language Development Test is a diagnostic test of social language skills for secondary students with tasks focusing on taking someone else's perspective, making correct inferences, solving problems with peers, interpreting social language and understanding idioms, irony, and sarcasm (*id.*). The student's overall standard score (107) was in the average range, and she obtained scores of 106 on the social interaction (ability to consider the perspective of a peer and make a comment to support a peer) and interpreting ironic statements (ability to understand idioms, irony and sarcasm) subtests (Dist. Ex. 13 at pp. 3-4). According to the report, the student's performance on the problem solving subtest (standard score 90) fell in the low average range, although her performance on a subtest measuring her ability to interpret social language (standard score 109) was in the high average range (*id.*).

The November 2016 classroom observation report stated that, overall, the student was observed to follow all teacher directions, actively take notes, and participate in all class assignments (Dist. Ex. 9 at p. 2).

The November 2016 educational evaluation found the student's reading skills to be an area of relative strength while her math skills were not as well developed (Dist. Ex. 10 at p. 4). The student performed in average range on all subtests of the Wechsler Individual Achievement Test III (WIAT-III) with the exception of spelling (above average) and math problem solving (below average) (*id.* at pp. 1-3). The student's writing fluency subtest standard score (77) from the Woodcock Johnson III Tests of Achievement was in the below average range (*id.* at pp. 2-3). The

student reportedly declined to take breaks during testing, requested several questions to be repeated, and at times recognized she had made errors, self-corrected and slowed down (id. at pp. 1-3).

i. Executive Functioning

With respect to executive functioning, the school psychologist explained this term included maintaining focus for extended periods of time, "shifting" from one activity to another, initiation, working memory—holding things in your memory and manipulating them, and organization (Tr. pp. 272-73). The school psychologist noted that the process of writing an essay—organizing thoughts, putting language together, chunking it into categories, and remembering grammar, capitalization and punctuation involved executive functioning skills (Tr. pp. 273-74).

A review of the November 2016 psychological evaluation report, as detailed above, shows that the student participated in assessments in the areas of abstract reasoning, working memory (auditory and visual), and processing speed (Dist. Ex. 14 at pp. 4-7). The school psychologist testified that within the psychological evaluation processing speed was assessed with coding and symbol search subtests and she noted that there was a weakness on coding—an activity that included some shifting from the top chart of visual information to the bottom for writing—and she explained that that activity may be difficult for someone with executive function difficulties (Tr. pp. 99-100). In the evaluation report, the examiner stated that the student performed better on symbol search, a novel task which required her to scan a group of items and indicate whether target symbols were present, in comparison with her performance on coding, a more complex task which required sustained attention to detail in order to utilize a key to copy symbols that correspond with simple geometric shapes and numbers (Dist. Ex. 14 at p. 4). The examiner concluded that while the student performed stronger on the task that required less attention to detail, "she displayed the overall ability to perform while under time pressure" (id. at p. 6).

In addition, the school psychologist testified that, as part of the fall 2016 psychological evaluation, the Behavior Assessment System for Children-Third Edition (BASC-3) measured hyperactivity and attention problems and stated that they were "sort of...the big areas of executive function" (Tr. p. 275). The parent reported that the student's attention difficulties were in the at-risk range and the report did not indicate the student endorsed attention as an area of weakness (see Dist. Ex. 14 at pp. 4-5). As detailed above, the November 2016 speech-language evaluation included a subtest that assessed student's ability to comprehend the intended meaning of a spoken utterance which often involved the use of metalinguistic skills (Dist. Ex. 13 at p. 2).

Under examination by the IHO, the school psychologist acknowledged that in light of the executive functioning weaknesses identified in past evaluations, further executive function evaluations could have been administered (Tr. pp. 276-77; see Dist. Ex. 6 at pp. 5-7). However, to the extent that the district's November 2016 psychological evaluation may have lacked the extensive assessments of the student's executive function skills which the parents desired, as described above the February 2017 CSE had current evaluative information and teacher reports regarding the student's executive functioning skills in the classroom in order to develop the student's present levels of performance in this area (compare Dist. Ex. 15 at pp. 1-2, 4-5, with Dist. Ex. 14 at pp. 4-7). Specifically, the February 2017 IEP indicated that the student's binder and notes were organized but her ability to identify due dates and assignments and to turn in completed work

was an area of weakness (Dist. Ex. 15 at p. 5). According to the IEP, the student would benefit from learning how to develop strategies such as keeping an assignment pad with a checklist and consistently updating it, and that consistent check-ins and reminders from teachers were helpful in assignment completion (id.). Further, the CSE developed three annual goals related to the student's study skill needs and provided program modifications such as wait time for responses, refocusing and redirection, preferential seating, long term assignments broken down into manageable tasks, check for understanding, directions repeated and rephrased, additional set of books, visual prompts, a graphic organizer, and a copy of class notes to address the student's executive functioning needs (id. at pp. 8-10). Therefore, the evidence in the hearing record supports a finding that the student's executive functioning needs were sufficiently assessed prior to the development of the 2017-18 IEP.

ii. Language

The parents argue that the November 2016 speech-language evaluation "missed a critical diagnosis" of a mixed expressive/receptive language disorder that was subsequently offered by the independent speech-language pathologist. They further assert that the IHO erred in not relying on the parents' witness' testimony that the district's November 2016 speech-language evaluation was "not a reliable measure of pragmatic language" and should not have been relied on to discontinue the student's speech-language services; however, the evidence in the hearing record supports the IHO's finding.

As described above, the district speech-language pathologist administered the CASL and the TAWF-2 to the student in fall 2016 (Dist. Ex. 13 at pp. 1-3). The speech-language pathologist described the CASL as an assessment that "look[ed] at language a little bit more broadly" . . . and that it was "a little more comprehensive" than the other two assessments administered (Tr. p. 368). She testified that she specifically selected the CASL because it had been administered previously and it "was a nice way to show if there was growth in . . . those areas" (Tr. p. 367). According to the speech-language pathologist, the student had shown improvement in some areas since the prior administration of the test, and all of the student's subtest scores were in the average range, with her score on the nonliteral language subtest in the high average range (Tr. pp. 369-71). The speech-language pathologist testified that the November 2016 test result when compared to the student's prior test results showed that she had "went up or remained the same," which indicated growth (Tr. p. 373-74). The speech-language pathologist further stated that results of the language-based portions of the WISC were all in the average range, which although not directly correlated with the subtests she administered, they were consistent with the results of her testing (Tr. pp. 375-76; see Dist. Ex. 14). As such, the speech-language pathologist agreed with the February 2016 CSE's recommendation to discontinue speech-language therapy, because the testing that she had done with the student "revealed that the skills were solid in all areas" that were tested including a "more comprehensive test" in addition to the specific word finding assessment and the assessment of the student's social language skills (Tr. p. 382). Therefore, contrary to the parents' assertion, the results of the district speech-language pathologist's November 2016 standardized evaluation of the student's language skills did not provide reason for her to conclude that the student was exhibiting a mixed expressive/receptive language disorder at that time (see Dist. Ex. 13).

Turning to the pragmatic language portion of the district's evaluation, the parents' consultant described pragmatics as "all of the purposes or reasons that we use language" and that

it involved "knowing how to talk to different people, for different purposes, in different ways" (Tr. pp. 857, 869). The consultant defined social pragmatic language as "the ability to appropriately communicate in social situations" which generally encompassed three components: "[t]he ability to use language for different purposes in different settings; the ability to shift the language that you use according to the circumstances and the person to whom you are speaking and the needs of the listener; and being able to follow the rules for interpersonal discourse, conversational skills - choosing the word, choosing the intonation pattern, and matching your face to the circumstances" (Tr. pp. 877-78).

The consultant stated that one common format for language evaluations was test administration and score reportage and another was test administration and data-collection, analysis and interpretation (Tr. pp. 886-87). She suggested that the district's November 2016 speech-language reevaluation including the CASL and the Social Language Development Test was an example of test administration and score reportage, and that its report was an example of test performance rather than of language functioning in academic or social settings (Tr. pp. 902-04). According to the consultant, the district's speech-language evaluation report generally lacked qualitative information, the nature of the demands, and the quality of the student's performance, and therefore in her opinion the testing was too narrow and not sufficiently descriptive or robust to serve as a reason to disqualify the student from receiving services (Tr. pp. 903-06, 1190-91).

However, during cross examination the consultant acknowledged that the Social Language Development Test, while negatively critiqued, was "used all the time" and she indicated that she did not know of other test measures to make a legitimate judgement of a child's social communication skills (Tr. pp. 1171-73). The consultant testified that in her opinion pragmatic social communication skills do not lend themselves well to statistics and suggested that through observing the student in various settings one could make a judgement regarding the student's social communication skills (Tr. pp. 1172-73).

Notwithstanding the above, as part of the district's November 2016 speech-language evaluation, the student was assessed in the areas of figurative language, indirect requests, sarcasm, inference ability, the use of pragmatic rules of language, interpreting social language, and taking someone else's perspective (Dist. Ex. 13 at pp. 2-4). The speech-language pathologist reported that during the assessment, the student required some redirection, at times interrupted testing with seemingly unrelated questions and comments, appeared "happy and smiling," although some of her responses indicated the presence of anxiety, concluding she "demonstrated good social language skills (i.e., eye contact, turn taking, topic maintenance)" (*id.* at pp. 1-2). During the February 2017 CSE meeting, the evaluating speech-language pathologist specifically reported that the student's pragmatic judgement, knowledge of social rules, and social interaction skills relative to perspective-taking were in the average range, and her ability to interpret figurative language such as sarcasm and social language was within the high average range (Dist. Ex. 15 at p. 2). The CSE meeting information reflected that the student's regular education teacher reported that the student benefitted from peer support, and her guidance counselor indicated that the student had "a nice group of friends" (*id.* at pp. 1-2).

Although not the method of assessment preferred by the parents or their consultant, review of the evidence in the hearing record shows that the district had available both standardized assessments of the student's receptive, expressive, and pragmatic language skills and anecdotal

reports of her ability to adequately communicate in the classroom, make friends, and interact with peers and adults (Dist. Ex. 13; see Dist. Ex. 15 at pp. 1-4). Therefore, review of the hearing record supports the finding that the district adequately assessed the student in the requisite areas of language and I do not find the consultant's critiques—which were not available to the February 2017 CSE—as a sufficient reason to disturb the IHO's findings on this issue.

b. 2018-19

In addition to the above assessments, the March 2018 CSE reviewed the results of the private November 2017 neuropsychological evaluation (Dist. Ex. 19 at pp. 1-2). In sum, the November 2017 evaluation results revealed the student demonstrated intact intellectual, memory, and motor functioning, identified weaker processing speed relative to her other skills, and found the student to have learning issues in the area of math, difficulties with executive functioning and attention, and weaknesses in comprehension of information and verbal fluency (Dist. Ex. 18 at p. 7). The examiner noted that these weaknesses could negatively impact the student's ability to keep up with the classroom pace as well as conversations (id.). The November 2017 evaluation report recommendations included support for language and social skills including language therapy 2-3 times per week and weekly social skills group, behavioral support for her ADHD symptoms, continued support in math, speech-language services to work on pragmatic language, organizational/study/note-taking strategies, strategies to strengthen the process of writing, and continued individual counseling (see id. at pp. 8-9).

Review of the March 2018 IEP present levels of performance shows that they referenced the "outside testing" results, including the student's average skills in reading and writing, her difficulty with math, and her study skills performance in resource room (Dist. Ex. 19 at p. 5). According to the IEP, the student needed to improve her responses in social situations and to develop a stronger sense of self (id. at p. 6).

In May 2018, the CSE reconvened for a program review to consider and discuss additional documentation the parents had gathered from the student's doctors and providers (Dist. Ex. 20 at p. 1; see Parent Exs. O; Q; R; S). In response to parent concerns that the student had been "spacing out" lately the student was seen by a pediatric neurologist who found results of an "EEG test" were "normal" and he "excluded the diagnosis of absence seizures" (Parent Ex. R at p. 1). Given the student's past history, the pediatric neurologist offered the student a diagnosis of ADHD, recommended the student work on metacognition and executive functioning skills, and also medical treatments including neurofeedback techniques and cognitive rehabilitative approaches (id. at pp. 1-2). The documentation the parents obtained also included several letters in support of the recommendation of speech, language, and memory therapy (see Parent Exs. O; Q; S).

The CSE reconvened in October 2018 to review the results of the July 2018 independent language evaluation (Dist. Ex. 24 at p. 1; see Dist. Ex. 23). The July 2018 language evaluation results found weaknesses in the student's flexible word use, conversation skills, comprehension of multiple meanings, and problem solving skills including making inferences, determining solutions, problem solving, interpreting perspectives, and transferring insights (all below average), and also in the area of spoken analogies (significantly below average) (Dist. Ex. 23 at pp. 3-10, 12-13). The independent speech-language pathologist determined that the student met the criteria for a diagnosis of mixed expressive/receptive language disorder and provided recommendations

including the continuation of individual language therapy, participation in a social skills group, and accommodations including models for task expectations, graphic organizers, parsing of large assignments into smaller parts, links and relationships between old and new information, and access to class notes (id. at pp. 10-11).

According to the CSE meeting information, the independent speech-language pathologist discussed her assessment results, which identified the student's difficulty with understanding "information coming in" and her need to "work on determining what is most important and how to pull it together in a certain way" (Dist. Ex. 24 at p. 1). The student's teachers and the school psychologist then discussed the student's in-class performance and her participation in counseling (id. at p. 2). One of the speech-language pathologists who participated in the meeting indicated that the student's language needs would be best met within the context of the current curriculum and suggested that the CSE adjust the student's goals to consider the recommendations from the independent speech-language pathologist (id.). The parent disagreed, requesting that the student receive individual speech-language therapy provided by "someone 'who is trained in metacognition'" (id.). The CSE chairperson responded that the student did not require speech-language therapy as the CSE "did not hear of deficits that c[ould] not be addressed in the current program" noting that additional annual goals to address question analysis, annotating text, and previewing vocabulary were added based on the recommendations from the independent language evaluation and the student's needs would be addressed by the services provided in the learning center (Dist. Ex. 24 at p. 2; compare Dist. Ex. 23 at p. 11, with Dist. Ex. 24 at p. 11). Review of the meeting information shows that the parents and the CSE did not dispute the student's weaknesses or deficit areas, but rather the extent to which they affected the student's ability to access the general education curriculum and which services would best address them, and not that the CSE lacked sufficient evaluative information (see Dist. Ex. 24 at p. 2). Therefore, the evidence in the hearing record shows that the CSEs considered all of the evaluative information the parents brought forth at the CSE meetings in March, May, and October 2018, which, as the IHO determined, was sufficient to identify the student's needs and enable the CSE to develop an IEP for the 2018-19 school year.

c. 2019-20

The CSE convened in June 2019 to conduct an annual review and develop the student's IEP for the 2019-20 school year (Dist. Ex. 29 at pp. 1-20). In addition to the previously reviewed evaluative information and current teacher and provider reports, the CSE reviewed a June 2018 letter from the student's private psychotherapist which the parent shared with the committee (Dist. Ex. 29 at pp. 2-3, 6; see Parent Ex. W). Within the letter, the psychotherapist noted that she had worked with the student since October 2015 and the student had shown limited social and emotional development; appeared "happy" at school yet was suffering from extreme isolation, anxiety, and depression, as she did not have the language skills necessary to make and maintain friendships; that the psychotherapist also indicated the student required extensive speech-language intervention in order to develop her language skills (Parent Ex. W). According to the June 2019 IEP meeting information, the parent reported that the student's social isolation was "significant," she was not included in peer groups, was never invited anywhere, and experienced social anxiety requiring social communication intervention (Dist. Ex. 29 at p. 3). Additionally, the private consultant reported that the student exhibited difficulty with appropriate social communication skills, language, and managing peer conversations and sarcasm (id.). In contrast, the special

education teacher reported that the student socialized with peers, and the school psychologist stated that despite initial indications the student "was depressed and felt different from her peers," she had "made growth," expressed feeling better about school, had "turned a corner" by discussing self-esteem issues, and at that time had "a group of peers during lunch" (*id.* at p. 2). The school psychologist reported that she had not heard any negative comments from the student, her teachers reported that there were peers she felt comfortable working and eating lunch with, and she interacted socially and shared what was talked about which was "appropriate age level conversation" (*id.* at p. 3).

Review of the meeting information summary shows that the CSE also discussed the district's overall position that the student put in her best effort, her reading and writing skills were average to above average, she had done well in math, she exhibited strong organizational skills, was motivated to do well, prepared for texts and quizzes, benefitted from the use of program modifications, and had "kept up with grade level curriculum" (Dist. Ex. 29 at pp. 1-2). The independent speech-language pathologist reviewed the July 2018 language evaluation results and what she was working on with the student in private therapy sessions, including her need to increase listening comprehension, ability to use strategies for learning, memory for vocabulary, studying and test taking, and that she had difficulty with word retrieval, literal interpretation of information that affected reading and writing tasks, problem solving skills for reading, and determining and synthesizing critical details (*id.* at p. 2). According to the meeting information, the parent and the consultant questioned the student's independent level of progress, how much support was required for writing assignments, and what support was needed in the "tutoring center" (*id.*).

Overall discussion at the meeting reflects that the CSE obtained information about the student's academic and social/emotional performance from both in-school and outside-of-school perspectives that was somewhat inconsistent, and "based on feedback and discussion," the district offered to conduct additional speech-language testing (*see* Dist. Ex. 29 at pp. 2-3). The chairperson indicated that if the parent disagreed with the results, she could request "independent testing" (*id.* at p. 3). However, despite the discrepancy between how the parent and district staff viewed the student's performance, review of the evidence in the hearing record shows that the June 2019 CSE had sufficient evaluative information about the student's in-school needs in order to develop an IEP for the student for the 2019-20 school year and does not provide a basis with which to overturn the IHO's finding on this issue.

2. Annual Goals

The parents contend that the IHO erred in finding that the annual goals in place for the student for the 2017-18, 2018-19, and 2019-20 school years were appropriate. The parents assert that the annual goals were based upon evaluations that did not assess the student in all areas of need and that an appropriate IEP would have addressed the areas of need identified in the July 2018 independent language evaluation (*see* Dist. Ex. 23), specifically vocabulary and lexical development, syntactic development, formulation strategies to aid with verbal organization, thinking skills for language comprehension and reasoning, strategies for active listening comprehension, and written language development as areas for which the student should have had annual goals.

An IEP must include a written statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and meet each of the student's other educational needs that result from the student's disability (see 20 U.S.C. § 1414[d][1][A][i][II]; 34 CFR 300.320[a][2][i]; 8 NYCRR 200.4[d][2][iii]). Each annual goal shall include the evaluative criteria, evaluation procedures and schedules to be used to measure progress toward meeting the annual goal during the period beginning with placement and ending with the next scheduled review by the committee (8 NYCRR 200.4[d][2][iii][b]; see 20 U.S.C. § 1414[d][1][A][i][III]; 34 CFR 300.320[a][3]).

While the IEPs in question may not have contained an annual goal for all of the areas of need identified in the July 2018 independent language evaluation, a review of the hearing record reveals, as detailed below, that the CSEs developed and modified the student's annual goals consistent with her progress toward achieving those goals and that the IEPs included annual goals which addressed the majority of the student's needs.

a. 2017-18

As discussed above, the February 2017 CSE considered the results of the November 2016 psychological and speech-language evaluations, and teacher and parent input in developing the IEP for the 2017-18 school year, which identified the student's needs in initiating tasks and completing assignments, attention and comprehension in reading, math problem solving, writing fluency and the writing process, and self-esteem (Dist. Ex. 15 at pp. 1-3, 5-6). According to the school psychologist the annual goals written for the 2017-18 school year were based on the student's needs or weaknesses identified in the evaluations (Tr. p. 118).

The February 2017 IEP contained ten annual goals including three in the area of study skills, one in reading, two in writing, two in math, and two in social/emotional/behavior (Dist. Ex. 15 at pp. 7-9). The February 2017 IEP included a study skills annual goal involving independently seeking assistance for academic difficulties and according to the school psychologist this annual goal was important and relevant because the student was a "little bit shy" at the start of ninth grade and had some difficulty navigating the building (Tr. p. 106; Dist. Ex. 15 at p. 8). The additional study skills annual goals included in the February 2017 IEP involved identifying, stating and applying appropriate strategies needed to complete assignments and keeping track of short- and long-term assignments and due dates (Dist. Ex. 15 at p. 8). The school psychologist stated that these were important for students with executive functioning difficulties as they helped the student understand assignments and in the ninth grade there were different teachers and new kinds of assignments (Tr. pp. 106-07).

The February 2017 IEP included a reading annual goal targeting the student's ability to determine a theme and central idea and analyze its development including its relationship to the characters, setting and plot, and writing annual goals targeting the use of the writing process of planning, revising, editing and rewriting in assessing if audience and purpose have been addressed and the selection, analysis, and development of accurate facts, details, and quotations to explain a topic or support a claim (Dist. Ex. 15 at p. 8). The February 2017 IEP contained math annual goals addressing the student's needs in solving multi-step algebraic word problems and using the four basic operations to answer questions containing fractions (id.). Review of the February 2017 IEP

present levels of academic performance shows that the annual goals addressed the student's identified academic needs (see id. at pp. 5, 8).

The social/emotional/behavioral annual goals included in the February 2017 IEP targeted helping the student explore her own personal qualities and how they impacted her interactions with others and identifying at least six positive qualities and how they impacted her successful accomplishment of tasks, which were needs identified in the February 2017 IEP present levels of social development (Dist. Ex. 15 at pp. 5-6, 8-9). According to the school psychologist the annual goals were appropriate as they served the purpose of building the student's self-esteem and helping her to see that she was completing tasks successfully because of her positive qualities (Tr. pp. 104-05).

The hearing record reveals that the district reported the student's progress toward these annual goals on a quarterly basis during the 2017-18 school year and that at year's end the student was progressing satisfactorily on most of her annual goals and had achieved one of her social/emotional annual goals (Dist. Ex. 22 at pp. 1-6).

b. 2018-19

The March 2018 CSE reviewed the results of the student's November 2017 private neuropsychological evaluation and input from the student's then-current teachers and the parent, and identified needs in the areas of attention, memory, reading informational text, solving algebraic problems with fractions, formulating ideas in the writing process, pragmatic skills, self-esteem, and her stress level and emotional support (Dist. Ex. 19 at pp. 1-2, 5-6).

The March 2018 IEP included annual goals in the areas of study skills, reading, writing, math, social/emotional, and transition planning (Dist. Ex. 19 at pp. 7-8).

A study skills annual goal involved actively reviewing notes in content area classes (e.g. science and social studies) by making Quizlets or review cards of current units (id. at p. 8). The school psychologist stated that the best place to work on this annual goal was in the learning center because of the individualized attention the student would have received (Tr. pp. 123, 131). The March 2018 contained two reading annual goals targeting skills used in reading narrative or informational text and one writing annual goal involving providing evidence that supports the thesis or the argument being made (Dist. Ex. 19 at p. 8). The math annual goals involved solving questions containing fractions in algebraic equations and factoring various types of expressions including squares, binomials, and trinomials (id.). Review of the IEP present levels of academic performance shows that the academic annual goals targeted the student's areas of need (see id. at pp. 5, 8).

The school psychologist stated that in response to parent and student concerns that the student wasn't sure how to react sometimes in social situations, the CSE added an annual goal addressing simulated, hypothetical social situations (being teased, insulted, or bumped by another) and identifying options for response with favorable outcomes (Tr. pp. 127-28; see Dist. Ex. 19 at p. 8). In describing how she worked on this goal, the school psychologist indicated that exploring ways to respond to these social situations was a way to address the student's pragmatic language

needs (Tr. pp. 268-70).¹³ The school psychologist further explained that social/emotional annual goals were not like academic goals in which, for example, one moves up some reading levels, and that working on someone's self-esteem "can be a task" and so she wanted the student to continue work on the annual goal involving identifying positive qualities and their impact on successful completion of tasks (Tr. p. 127; see Dist. Ex. 19 at p. 8).

The March 2018 IEP also included a career/vocational/transition annual goal involving completing an interest inventory to include student strengths and weaknesses (Dist. Ex. 19 at p. 8). The school psychologist stated that this annual goal was important because as a high schooler the student was exploring and thinking about postsecondary transition, and it would help her to start thinking about what her interests were for the future (Tr. p. 129).

In May 2018 the CSE reconvened for a program review and discussed the parent's concern that the student was "spacing out" recently, attention issues, and the need for the development of metacognitive and executive functioning skills (Dist. Ex. 20 at pp. 1-2). The school psychologist responded by suggesting that to develop the student's metacognition and executive functioning skills, she could learn to use a self-monitoring checklist in the learning center (id. at p. 1). The May 2018 IEP included two additional annual goals: one study skills annual goal addressing the student's need to periodically check herself to ensure she was actively processing information when working on homework or reviewing material, and one writing annual goal involving using a thesaurus to vary word choices in essay writing (compare Dist. Ex. 19 at p. 8, with Dist. Ex. 20 at p. 8).

The October 2018 CSE convened to conduct a requested review of the July 2018 independent language evaluation report, discussed the student's progress for the year thus far, and identified continued needs in the areas of attention, executive functioning, comprehension, and various language components such as word retrieval, using language flexibly and descriptively, making inferences, and problem solving (Dist. Ex. 24 at p. 1). One of the speech-language pathologists who participated in the meeting suggested that the committee adjust the student's annual goals in order to "consider" the recommendations of the independent speech-language pathologist and thus address her current needs (id. at p. 2). The October 2018 CSE added additional reading annual goals to the student's IEP regarding previewing and defining unknown words and phrases to increase comprehension, analyzing how complex characters or a series of ideas/events are developed and how they interact, and previewing and annotating questions in order to accurately determine what the question is asking of the reader (compare Dist. Ex. 20 at p. 8, with Dist. Ex. 24 at pp. 2, 11). The meeting information also indicates that the CSE discussed the student's difficulty talking in front of others and anxiety in social situations (Dist. Ex. 24 at p. 2). The school psychologist explained that to address the student's anxiety, the October 2018 CSE added a social/emotional annual goal to the student's IEP involving identifying triggers for her anxiety and strategies for coping with those feelings (Tr. pp. 139, 142-43; compare Dist. Ex. 20 at p. 8, with Dist. Ex. 24 at p. 12).

¹³ Although the school psychologist's testimony about the student's social/emotional annual goal that simulated hypothetical social situations referred to the May 2018 IEP, this annual goal was also included in the March 2018 IEP (Tr. pp. 268-70; compare Dist. Ex. 19 at p. 8, with Dist. Ex. 20 at p. 8).

Again, the evidence in the hearing record reveals that the district reported the student's progress toward her annual goals on a quarterly basis during the 2018-19 school year and that at year's end the student had achieved nine of her annual goals and was progressing satisfactorily toward achieving the other six annual goals (Dist. Ex. 27 at pp. 1-7).

c. 2019-20

The June 2019 CSE convened to conduct the student's annual review and develop the student's IEP for the 2019-20 school year (Dist. Ex. 29). Review of the meeting information and present levels of performance included in the IEP revealed that the CSE identified the student's continued needs in reading nonfiction, comprehension skills, the writing process, self-esteem, and social/emotional development (*see id.* at pp. 1-3, 9-11). Accordingly, the CSE "reviewed and revised" the student's annual goals (*id.* at p. 3).

The June 2019 IEP contained 15 annual goals in the areas of study skills, reading, writing, math, social/emotional/behavioral, and career/vocational/transition with 6 of the 15 being new annual goals (*compare* Dist. Ex. 24 at pp. 11-12, *with* Dist. Ex. 29 at pp. 12-14).¹⁴ Two new study skills annual goals involved creating a structured graphic organizer to help outline essays and checking over work prior to turning it in for credit (Dist. Ex. 29 at p. 12). The school psychologist stated at the hearing that these study skills annual goals would help the student become more independent in her writing, which was important when taking Regents exams or when completing larger writing assignments (Tr. pp. 156-58). The June 2019 IEP contained two new writing annual goals addressing identifying and revising written work for clarity, relevance, and grammatical structure and initiating and completing a multi-step writing task independently (Dist. Ex. 29 at p. 13). A new social/emotional annual goal involved independently utilizing coping skills when experiencing heightened anxiety in school (*id.*). The June 2019 IEP also included a new career/vocational annual goal involving taking the district course "Managing Your Future," where the student would write a college essay and resume and explore possible courses of study (*id.* at pp. 13-14).

While I have considered the critiques of the parents' witnesses with respect to the student's IEP annual goals (*see e.g.* Tr. pp. 961-62, 1201-02, 1290, 1292-96), to the extent that the IEPs did not include every particular annual goal the parents may have desired, I note that an IEP does not need to identify annual goals for every one of a student's deficits in order to offer a FAPE (*see R.B. v. New York City Dep't of Educ.*, 2013 WL 5438605, at *14 (S.D.N.Y. Sept. 27, 2013), *aff'd*, 589 Fed. App'x 572 (2d Cir. Oct. 29, 2014)).¹⁵

¹⁴ The remaining nine annual goals were updated from the student's prior IEP either changing the substance of the annual goal, the grade level of the text being worked on, or the criteria used to determine if the goal was achieved, except for the annual goals in the area of math which were unchanged (*compare* Dist. Ex. 24 at pp. 11-12, *with* Dist. Ex. 29 at pp. 12-14).

¹⁵ Additionally, I note that the June 2018 IEP provides small group counseling to address social/emotional needs, and supplementary aids and services and program modifications/accommodations including wait time for oral and written responses, refocusing and redirection, preferential seating, long term assignments broken down in to manageable tasks, check for understanding, edit checklists for writing assignments, teacher connection of content

Therefore, review of the evidence in the hearing record supports the IHO's finding "that for the 2017-18, 2018-19, and 2019-20 school years the CSE developed and modified the student's annual goals consistent with her progress towards achieving those goals and according to discussions held during the meetings, such that the [d]istrict did not deny the student a FAPE on that basis."

3. Additional Challenge

The parents argue that the IHO erred in finding that the district's programming for the student was reasonably calculated, as none of the IEPs addressed the student's needs related to her medical condition, which was "known to be associated with language disorders, executive functioning deficits, and anxiety."

a. Social Communication and Language

The parents specifically assert that they had provided the district with documentation showing the student's need for language therapy, but that the IEPs did not address her deficits in social communication. Notwithstanding this assertion, the evidence in the hearing record shows that at the time of the development of the 2017-18, 2018-19, and 2019-20 IEPs, the CSEs had evaluative information that identified the student's needs in social communication and pragmatic language (Parent Ex. W; Dist. Exs. 12 at pp. 1, 5; 13 at pp. 1-4; 14 at pp. 1,6; 18 at pp. 1-13; 23 at pp. 1-14). A review of the IEPs shows that they included services, supports and annual goals to address these identified needs (Dist. Exs. 15; 19; 20; 24; 29).

The February 2017 CSE had assessment results showing the student was functioning in the average to high average range in the areas of understanding figurative language including sarcasm, inferential skills based on context, pragmatic judgement, knowledge of social rules, interpreting social language, and perspective taking (Dist. Ex. 15 at p. 2; see Dist. Ex. 13 at pp. 1-4). The February 2017 CSE recommended for the student resource room services, ICT services for language arts, and individual counseling services, which according to the CSE meeting information was added to the student's IEP "as she transitions to the high school" (Dist. Ex. 15 at pp. 1-2, 9).

The school psychologist, who provided counseling services to the student during the 2017-18 school year, testified that socially the beginning of her ninth grade school year was a "little bit tough" for the student, in navigating lunch and with whom to sit (Tr. pp. 104, 116). According to the school psychologist the February 2017 IEP provided two individual sessions of counseling per month where the student spent a good amount of time with activities and games that helped her to get to know herself, her strengths and weaknesses (Tr. pp. 107-09). The school psychologist also explained that occasionally she pulled from a program called Room 28 which she described as a social-language curriculum, where the student was able to explore the good qualities about herself (Tr. p. 109). In addition, the February 2017 IEP included accommodations such as wait time for

to real world applications, access to computer/laptop/iPad/word processor, role model peer partnership for group work in core courses, directions repeated and rephrased, visual prompts, a graphic organizer, and a copy of class notes to address executive functioning needs (Dist. Ex. 29 at pp. 14-16).

oral and written responses, checks for understanding, and directions repeated and rephrased to assist with language comprehension and expression (Dist. Ex. 15 at pp. 9-10).

At the March 2018 meeting the parent shared her concerns regarding the student's social challenges in making friends and trying to fit in (Dist. Ex. 19 at p. 1). According to the CSE meeting information, the school psychologist explained that recent testing had highlighted some of the student's weak pragmatic skills and that group counseling services would help to build those social skills (*id.* at p. 2). The school psychologist stated that in response to parent and student concerns that the student was not sure how to react sometimes in social situations, the March 2018 CSE added an annual goal addressing simulated, hypothetical social situations (being teased, insulted or bumped by another) and identifying options for response with favorable outcomes (Tr. pp. 127-28; *see* Dist. Ex. 19 at p. 8). Additionally, the school psychologist indicated that through exploring ways to respond to these social situations this annual goal was a way to address the student's pragmatic language needs (Tr. pp. 269-70). The school psychologist testified that she was trained through the district in social thinking curriculum (Tr. p. 270).

The school psychologist explained that the continuation of the ICT services in the language arts class was recommended for the student to work on one writing annual goal and two reading annual goals (Tr. p. 130). In addition to the February 2017 IEP's recommended services, supports and accommodations, the March 2018 CSE included for the student ICT services for math and weekly instruction in the learning center in a small group, and replaced individual counseling with weekly counseling in a group of five (*compare* Dist. Ex. 15 at pp. 9-10, *with* Dist. Ex. 19 at pp. 1, 9-10).

At the May 2018 CSE meeting the parent shared with the committee letters recommending language therapy for the student and inquired what services would be available to the student to address her language difficulties (Dist. Ex. 20 at pp. 1-2; *see* Parent Exs. O; Q at pp. 1-3; S). The district speech-language pathologist stated that the testing from fall 2016 showed the student's general and social language skills were in the average range, such that she had met the goals of special education: "to bring a child's skills to average and assure that they are about to access the curriculum" such that speech-language services were not required (Dist. Ex. 20 at p. 2). The parent disagreed and requested an IEE to gather more information (*id.*).

According to the October 2018 CSE meeting comments, the July 2018 independent language evaluation of the student identified weaknesses in word retrieval, flexible language, describing features, making inferences, and problem solving (Dist. Ex. 24 at p. 2; *see* Dist. Ex. 23). Teacher reports indicated that the student was reticent to participate in class and got nervous talking in front of people (Dist. Ex. 24 at p. 2). The school psychologist reported at the October 2018 CSE meeting that the student participated in individual and group counseling, was working on developing her interpersonal effectiveness and social problem solving, enjoyed making casual conversation with her peers in the group when time allowed, and would work applying various social skills (*id.*). The October 2018 IEP provided that the student would receive one 40-minute small group counseling per week and two 15-minute counseling sessions per month (*id.* at p. 13).

At the impartial hearing, the school psychologist explained that she taught the student to pick up on social cues and that social skills were taught in counseling sessions through prompts, having the student pay attention to how long a person was talking and whether the other person

was engaged or whether they looked bored, reading body language, and watching videos of teenagers socializing (Tr. pp. 193-94, 216). The school psychologist testified that she believed that pragmatic language issues could be addressed through counseling since she was trained to do so and since it had to do with socializing, there were certain skills associated with that which she could watch for, assess, and then help teach (Tr. p. 164). The school psychologist stated that those were things which she worked on directly with the student in her counseling sessions (Tr. pp. 164-65). In addition, the student continued to receive ICT services for language arts and the support and accommodations listed above to support her language needs, as well as the continuation of her annual goal addressing social situations (compare Dist. Ex. 20 at pp. 12-14, with Dist. Ex. 24 at pp. 1, 12-14).

According to the June 2019 CSE meeting information, the school psychologist reported that the student was positive in group counseling sessions, and interacted appropriately although at times became "somewhat tangential" when she was excited about a topic (Dist. Ex. 29 at p. 2). The school psychologist relayed that developing friendships with peers had been addressed and that the student had a group of peers during lunch (id. at pp. 2-3). The June 2019 IEP included the recommendation of weekly counseling in a group of five and the previously noted accommodations to address her social communication needs as well as additional accommodations to provide the student with appropriate partners for group work (compare Dist. Ex. 24 at pp. 12-14, with Dist. Ex. 29 at pp. 1, 14-16). To the extent that on appeal the parents assert that the August 2019 privately obtained social thinking dynamic assessment revealed language and social skill deficits which the parents' witness testified had academic implications for the student in areas such as creative writing, reading comprehension, math, problem solving, and critical thinking, I note that assessment was conducted after each of the IEPs in question here were developed and therefore, that specific information was not available at the time the IEPs for the school years in dispute were developed (see Tr. pp. 1247-51, 1258-60; Parent Ex. DD at pp. 1-2). More importantly, as discussed in detail above, the evidence in the hearing record shows that the district's IEPs addressed the student's needs related to social communication and language, and also in reading comprehension, writing, math, problem solving, and critical thinking, albeit not with the supports and services preferred by the parents.

b. Executive Functioning and Medical

According to the February 2017 CSE meeting information and the February 2017 IEP the student demonstrated weaknesses in reading comprehension, maintaining her attention, solving math word problems (particularly multi-step problems), interpreting graphs, writing fluency, and identifying due dates and turning in completed work (Dist. Ex. 15 at pp. 2, 5). The parent added that the student had difficulty in completing homework, organizing materials, initiating tasks, and processing information (id. at pp. 2, 5). To address those needs, the February 2017 IEP recommended ICT services for language arts, resource room services, and individual counseling as well as accommodations such as wait time for oral and written responses, refocusing and redirection, preferential seating, chunking of large assignments, checks for understanding, directions repeated and rephrased, use of graphic organizers, and copy of class notes (id. at pp. 1, 9-10). The school psychologist noted that the accommodation of breaking down long term assignments would be helpful for students with executive functioning difficulties (Tr. p. 132). Further, the February 2017 IEP included annual goals targeting independently seeking assistance for specific academic difficulties, identifying/stating/applying appropriate strategies for

completing assignments, and using a planner for short- and long-term assignments, which according to the school psychologist addressed executive functioning difficulties (Tr. pp. 106-07; Dist. Ex. 15 at p. 8).

The special education teacher, who provided ICT and resource room services to the student, stated that she worked with the student on her study skills annual goals including independently seeking assistance, through keeping track of assignments and due dates in a planner, organizing and prioritizing assignments, and seeking adult support (Tr. pp. 525-26, 530-34). In addition, the special education teacher used a number of teaching strategies with the student to address her attending in reading comprehension and the organization of her written work (Tr. pp. 535-38).

Directly related to the student's medical condition, the February 2017 IEP included medical alerts and accommodations to notify parents when there was an illness in the classroom or building, access to food and water, a directive to immediately notify the nurse if the student appeared to show symptoms of hypoglycemic shock, and an individualized health plan (Dist. Ex. 15 at pp. 1, 10).

The March 2018 CSE meeting comments stated that updated testing as well as teacher and parent reports indicated that the student demonstrated attention and memory difficulties (Dist. Ex. 19 at pp. 1-2). The March 2018 IEP provided daily ICT services for language arts and math, weekly learning center services in a small group and group counseling as well as the accommodations and supports included in the student's prior IEP (compare Dist. Ex. 15 at pp. 9-10, with Dist. Ex. 19 at pp. 1, 9-10). The March 2018 IEP included two reading annual goals addressing the student's executive functioning and attentional concerns and involved stopping multiple to summarize the content of a text and pre-reading text-based questions (Dist. Ex. 19 at p. 8).

A May 2018 report from a pediatric neurologist, shared by the parent at the May 2018 CSE meeting, recommended the student work on metacognition and executive functioning skills (Parent Ex. R at pp. 1-2; Dist. Ex. 20 at p. 1). District staff agreed that the student's attention was inconsistent and recommended developing the student's metacognition and executive functioning skills by learning to use a self-monitoring checklist in the learning center (Tr. pp. 212-13; Dist. Ex. 20 at pp. 1, 10). The school psychologist stated that whether listening in class or reading a textbook, that the learning center was useful in figuring out what was salient and important, and she also noted that in the learning center the student would work on study skills, executive function "type things," organizing and prioritizing work (Tr. pp. 144, 182). The May 2018 CSE added to the IEP the recommendation of individual counseling and the school psychologist testified that she worked with the student in counseling sessions on her metacognition and executive function skills (Tr. p. 181; compare Dist. Ex. 19 at p. 9, with Dist. Ex. 20 at pp. 1, 9). Also, the May 2018 CSE added an annual goal involving the student periodically stopping (every five to ten minutes) to question if she was actively processing the information when working on homework or reviewing material (compare Dist. Ex. 19 at p. 8, with Dist. Ex. 20 at p. 8).

The October 2018 CSE reviewed results of the July 2018 independent language evaluation in which the examiner noted that the student's difficulties in attention and executive functioning made it difficult for her to understand in-coming information (Dist. Ex. 24 at p. 1; see Dist. Ex. 23). Therefore, the CSE developed annual goals to improve the student's question analysis, ability

to annotate text, and preview vocabulary (Dist. Ex. 24 at pp. 2, 11). At the October 2018 CSE meeting district staff reported that the student used copies of notes as well as graphic organizers to help her be more independent in the writing process (*id.* at p. 2). In response to the student's deficits in writing fluency and her need for support in organization, the October 2018 IEP included the accommodation of access to computer, laptop, iPad, or word processor during writing assignments (*id.* at pp. 2, 14). For the remainder of the 2018-19 school year the CSE recommended the provision of ICT services in language arts and math, small group instruction in the learning center on a daily basis, and continued the numerous supplemental aids/program modifications to address the student's executive functioning needs (compare Dist. Ex. 20 at pp. 9-11, with Dist. Ex. 24 at pp. 13-14).

The June 2019 CSE recommended that the student receive daily ICT services for ELA and math, daily resource room services in a group of eight, and weekly counseling in a group of five, (Dist. Ex. 29 at p. 14). The June IEP included annual goals involving creating structured graphic organizers to outline essays and initiating, completing and editing multi-paragraph writing tasks, continuing supplementary aids and program modifications to support the student's executive functioning needs (*id.* at pp. 13-16). Additionally, to address the student's medical needs, the June 2019 IEP added the provision of 1:1 aide services for the student during after-school activities to monitor dehydration, air conditioning in core courses during warm weather, and the support of meetings with school nurse and teachers and providers to review the student's diagnosis, impact on learning and school functioning, and review emergency health care needs and plan (*id.* at pp. 15-17).

Overall, the school psychologist explained that to address the student's executive functioning needs her IEPs included study skills annual goals, writing annual goals, and counseling sessions and she also noted in her special education classes the student's special education teachers would work with her on how to start her writing and organize her writing (Tr. pp. 185-86, 246-47). Review of the evidence in the hearing record shows that the CSE was responsive to the student's identified executive functioning and medical needs and adjusted her IEPs accordingly.

c. Anxiety

With respect to the how the district addressed the student's anxiety, the February 2017 IEP included annual goals involving identifying personal qualities and how they impacted her interactions with others and identifying positive qualities and how they impacted her successful accomplishment of tasks (Dist. Ex. 15 at pp. 8-9). The school psychologist testified that socially, the beginning of her ninth-grade school year was a "little bit tough" for the student in navigating lunch and with whom to sit (Tr. pp. 104, 116). According to the school psychologist—who provided the student's counseling services during the 2017-18 school year—the February 2017 IEP provided two sessions of individual counseling per month where the student spent a good amount of time with activities and games that helped the student to get to know herself and her strengths and weaknesses (Tr. pp. 104, 107-09). The school psychologist explained that she discovered a bit of anxiety in the student during counseling sessions in which she worked with the student on making friends and that to address that anxiety she used a cognitive behavioral therapy curriculum called "Mastering Anxiety" (Tr. p. 110). The school psychologist explained that while she had a curriculum that she used, if something happened on a particular day, she was able to stop and "deal with whatever is going on" (Tr. p. 111). The school psychologist testified that over the course of

the year the student felt more comfortable with being in high school and a bit more confident and knew what she could do (Tr. pp. 111-12).

Although the March 2018 CSE recommended that the student receive group and not individual counseling, the school psychologist testified that individual counseling was reintroduced in the May 2018 IEP to monitor any anxiety the student was having (Tr. pp. 135, 137; see Dist. Exs. 19 at pp. 1, 9; 20 at pp. 1, 9). The school psychologist continued to provide the student's counseling services during tenth grade and at the October 2018 CSE meeting, shared that the student had reported she got nervous talking in front of others in class and even in social settings and that this anxiety could distract her from what she wanted to say (Tr. pp. 137-38; Dist. Ex. 24 at p. 2). The school psychologist explained that to address the student's anxiety, the October 2018 CSE added a social/emotional annual goal to the student's IEP involving identifying triggers for her anxiety and strategies for coping with those feelings (Tr. p. 143; compare Dist. Ex. 20 at pp. 1, 8, with Dist. Ex. 24 at pp. 2, 12).

A June 2019 letter to the CSE from a therapist who had worked with the student since October 2015, indicated that while the student may appear "happy" at school, she was suffering from extreme isolation, anxiety, and depression; lacked the language skills necessary to make and maintain friendships; and had shown limited social and emotional development (Parent Ex. W; Dist. Ex. 29 at p. 2). The parent reported that the student had social anxiety and that social isolation was significant (Dist. Ex. 29 at p. 3).

The school psychologist reported at the June 2019 CSE meeting that initially the student was depressed, felt different from peers, and found it difficult to find peers with whom to socialize (Dist. Ex. 29 at p. 2). She noted that this year was "smoother" for the student and "with better affect," noting that the student expressed feeling better about school with some level of stress with academic expectations, could now tell what made her anxious, and that her self-esteem was being addressed and had "turned a corner" (id.). Additionally, the school psychologist reported that the student had not attended individual counseling sessions but chose to work with teachers, was positive in group sessions, and had developed a group of peers during lunch (id.). The June 2019 CSE discontinued individual counseling but recommended continuing one session per week of counseling in a small group, and added counseling consult for the teaching team and/or outside therapists twice per month September through October and once monthly thereafter (compare Dist. Ex. 24 at pp. 1, 13, with Dist. Ex. 29 at pp. 1, 3, 14, 17). In conjunction with the continued academic supports for the student provided through ICT services in math and language arts, and resource room services, the June 2019 CSE added an accommodation that the teacher assign an appropriate partner to work with the student in core classes because sometimes people formed groups so quickly that the student was unable to find a peer of her choice (Tr. pp. 258-59; compare Dist. Ex. 24 at pp. 13-14, with Dist. Ex. 29 at pp. 1, 14-15). In addition, the June 2019 IEP introduced an annual goal that required the student to independently utilize coping skills when experiencing heightened anxiety in school (compare Dist. Ex. 24 at p. 12, with Dist. Ex. 29 at p. 13). Overall, the evidence in the hearing record as discussed above, shows that the CSE responded to the student's needs as observed in school and made modifications to her IEP annual goals, supports, and services in order to develop appropriate programs for the school years in question.

4. Transition Services

The district cross-appeals from the IHO's determination that the district failed to conduct transition and vocational assessments of the student.

Under the IDEA, to the extent appropriate for each individual student, an IEP must focus on providing instruction and experiences that enable the student to prepare for later post-school activities, including postsecondary education, employment, and independent living (20 U.S.C. § 1401[34]; *see* Educ. Law § 4401[9]; 34 CFR 300.43; 8 NYCRR 200.1[fff]). Accordingly, pursuant to federal law and State regulations, an IEP for a student who is at least 16 years of age (15 under State regulations), or younger if determined appropriate by the CSE, must include appropriate measurable postsecondary goals based upon age appropriate transition assessments (20 U.S.C. § 1414[d][1][A][i][VIII]; 34 CFR 300.320[b]; 8 NYCRR 200.4[d][2][ix]).¹⁶

An IEP must also include the transition services needed to assist the student in reaching those goals (20 U.S.C. § 1414[d][1][A][i][VIII]; 34 CFR 300.320[b]). In this regard, State regulations require that an IEP include a statement of a student's needs as they relate to transition from school to post-school activities (8 NYCRR 200.4[d][2][ix][a]),¹⁷ as well as the transition service needs of the student that focuses on the student's course of study, such as participation in advanced placement courses or a vocational education program (8 NYCRR 200.4[d][2][ix][c]). The regulations also require that a student's IEP include needed activities to facilitate the student's movement from school to post-school activities, including instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, when appropriate, the acquisition of daily living skills and a functional vocational evaluation (8 NYCRR 200.4[d][2][ix][d]), as well as a statement of responsibilities of the school district (or participating agencies) for the provision of services and activities that "promote movement" from school to post-school.

The hearing record reveals that student's IEPs for the 2017-18, 2018-19, and 2019-20 school years, beginning with the February 6, 2017 IEP, all included measurable postsecondary goals and a coordinated set of transition activities for the student (Dist. Exs. 15 at pp. 7, 12; 19 at pp. 7, 12; 20 at pp. 7, 12-13; 24 at pp. 10, 16; 25 at pp. 10, 16-17; 29 at pp. 11-12, 18-19). However, the IHO noted that although the district may have conducted transition and vocational assessments of the student, the district did not offer evidence that those measures occurred (IHO Decision at p. 32). The IHO concluded without that evidence, he could not evaluate the sufficiency of those assessments or the adequacy of the recommended transition services for the student (*id.*). Accordingly, the IHO directed the district to conduct transition and vocational assessments of the student for review by the CSE (*id.*). A review of the evidence in the hearing record shows that it

¹⁶ In addition, State regulations require districts to conduct vocational assessments of students age 12 to determine their "vocational skills, aptitudes and interests" (8 NYCRR 200.4[b][6][viii]).

¹⁷ These are supposed to be listed in the present levels of performance section of a student's IEP (*see* 8 NYCRR 200.4[d][2][ix][a]).

does not include such assessments, and therefore does not provide a basis to depart from the IHO's decision on this issue.

C. Implementation

As described above, the parents assert that the district did not implement the student's IEPs, identifying specific challenges for each of the school years at issue. For the 2016-17 school year, the parents raise allegations related to implementation of a monthly parental speech-language consult, social skills and language groups, and the student's speech-language annual goals. For the 2017-18 school year, the parents allege that the student's resource room was provided in an 8:1 student-to-teacher ratio, instead of the recommended 5:1 student-to-teacher ratio. For the 2018-19 school year, the parents assert that the district did not provide ICT services for ELA. For the 2019-20 school year, the parents assert that the district did not implement recommended ICT services in either ELA or math.

At the outset of this discussion, in its answer the district argues that some of the parents' claims are outside the scope of the impartial hearing. More specifically, the district objects to the parent raising allegations related to the provision of mandated speech-language consults to the parents during the 2016-17 school year, implementation of the 2016-17 IEP speech-language annual goals, the ratio of the resource room services during the 2017-18 school year, and implementation of ICT services for math.^{18, 19} 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 these issues or file another amended due process complaint notice to add this claim. Nor can it be said that the district "opened the door" to these claims 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). Accordingly, they are outside the scope of the hearing and will not be further considered.

¹⁸ The district does not identify if it is referring to the January 14, 2019 or August 15, 2019 due process complaint notice. However, review of both due process complaint notices reflects that the district is correct that these specific issues were not raised (see IHO Ex. I; Dist. Ex. 1).

¹⁹ On appeal the parents allege that "[f]ollowing the termination of speech/language services in February, 2017, the speech/language goals stated on [the student's] IEP were no longer implemented" and in the amended due process complaint notice appear to assert that there were two IEPs resulting from the February 6, 2017 CSE meeting; one to be in effect for the remainder of the 2016-17 school year that did not include speech-language therapy and which had removed the speech-language annual goals, and one to be implemented beginning in September 2017 (Req. for Rev. at p. 9; see Dist. Ex. 1 at pp. 3-5). However, the hearing record contains only one IEP dated February 2017, which contains multiple pages that clearly reflect an implementation date of September 6, 2017 (see IHO Exs. I-XV; Parent Exs. B-G; I-L; O-T; W-X; Z-EE; HH-JJ; MM-NN; Dist. Exs. 1-36). Even if there existed a second February 2017 IEP that was to be implemented for the remainder of the 2016-17 school year and which would have been within the statute of limitations, in the amended due process complaint notice the parents asserted that the speech-language annual goals and therapy services were removed from that IEP, such that there could be no failure to implement those goals as argued on appeal (Dist. Ex. 1 at pp. 3-5).

In addition, on appeal the parents allege that, during the 2019-20 school year, the district failed to provide the student with ICT services in either ELA or math; however, the amended due process complaint notice was dated August 15, 2019, prior to the start of the 10-month 2019-20 school year (see Dist. Ex. 1). Accordingly, any implementation claim for the 2019-20 school year was not ripe for review at the time the parents completed the amended due process complaint notice (see Somoza, 538 F.3d at 114-15 & n.8 [under the IDEA a cause of action accrues on the date that a party knew or should have known of the alleged action that forms the basis of the complaint]; M.E. v. New York City Dep't of Educ., 2018 WL 582601, at *12 [S.D.N.Y. Jan. 26, 2018] [parents "must allege that the school is 'factually incapable' of implementing the IEP" to be considered "more than speculation"]). Accordingly, the parents' claim that the district did not implement the student's ICT services during the 2019-20 school year is also outside the scope of the impartial hearing and will not be considered.

a. 2016-17

As discussed above, the parents' claims related to implementation of the IEP during the 2016-17 school year, after January 14, 2017, are not barred by the statute of limitations and must be addressed.

With respect to the parents' specific claims on appeal concerning the district's failure to implement the October 2016 IEP from January 14, 2017 through the remainder of the 2016-17 school year, the parents assert that although the October 2016 IEP provided that the student would receive one 40-minute session per week of speech-language therapy in a small group, and one 40-minute session per week of social skills group instruction, the district did not provide the student with a "language group" for the speech-language therapy services. The parents also allege that they requested a different social group than the one the student had been placed in by the district, but there was only one social skills group available.

With regard to the implementation of a student's IEP, a denial of a FAPE occurs if there was more than a de minimis failure to implement all elements of the IEP, and instead, the school district failed to implement substantial or significant provisions of the IEP (Houston Indep. Sch. Dist. v. Bobby R., 200 F.3d 341, 349 [5th Cir. 2000]; see also Fisher v. Stafford Township Bd. of Educ., 289 Fed. App'x 520, 524 [3d Cir. Aug. 14, 2008]; Couture v. Bd. of Educ. of Albuquerque Pub. Schs., 535 F.3d 1243 [10th Cir. 2008]; Neosho R-V Sch. Dist. v. Clark, 315 F.3d 1022, 1027 n.3 [8th Cir. 2003]).

By way of background, during the 2015-16 school year the student attended an NPS and received services pursuant to an IESP (see Dist. Ex. 7 at pp. 1-2). In January 2016 the CSE modified the student's IESP to reflect recommendations that for the remainder of the 2016-17 school year the student would receive one 30-minute session per week of speech-language therapy in a small group "at school or facility," and one 60-minute session per week of social skills instruction in a small group at Dramatic Pragmatics (id. at pp. 1, 8).²⁰ The student received social

²⁰ According to meeting information included in the October 2016 IEP, the CSE convened on March 16, 2016 for the student's annual review and to develop an IESP for the 2016-17 school year (Parent Ex. D at p. 2). At that time, the CSE discussed the student's then-current social skills and speech-language therapy services, as well as annual goals, program and testing accommodations (id. at pp. 2-3). The meeting information summary indicated

skills instruction at Dramatic Pragmatics from January 2016 through summer 2016 (Tr. pp. 1432-33, 1439; Parent Ex. E at p. 2).²¹

The parent testified that in September 2016 the student continued to receive social skills group instruction at Dramatic Pragmatics (Tr. p. 1439). The district's speech-language pathologist testified that the student was on her caseload at the beginning of the 2016-17 school year and that she had "attended several language sessions" (Tr. pp. 344, 350-51). According to the speech-language pathologist, the student received services in two different groups: one that "dealt more with the social language, the pragmatic language, with two boys who were both in her grade," and that on a different day of the week, the student was "placed in a group with two girls that were also in her grade" where she received instruction that was more focused on "basic language" although also stated "any language session that you have is really addressing the social skills of the communication within that session" (Tr. pp. 351-52).

On October 5, 2016 the CSE convened for a program review (Parent Ex. D). The parent testified that, at the meeting, the CSE determined the student no longer needed to attend Dramatic Pragmatics for social skills group instruction, as the speech-language pathologist indicated that the district "had a group here; we do that here" (Tr. p. 1439; Parent Ex. D at pp. 1-2). The October 2016 IEP provided that the student would receive one 40-minute session per week of speech-language therapy in a small group, and one 40-minute session per week of social skills instruction in a small group; both services to be provided at the district's middle school (Parent Exs. D at p. 10; E at p. 1). In an email to the director dated October 6, 2016, the parent expressed her concerns with the CSE's determination to discontinue the student's social skills group instruction at Dramatic Pragmatics and provided several reasons why she believed the student should continue in her social skills group at Dramatic Pragmatics (Parent Ex. E at p. 2). The following day the director replied, indicating that the reason the district had agreed to Dramatic Pragmatics the prior school year was because the NPS the student attended did not have a social skills group the student could have been a part of, but since the student was now attending the district's middle school, those services would be provided during the school day, as "part of the group with her peers which [would] also help her transition to a new school" (*id.* at p. 1). The parents disagreed and privately continued the student's services at Dramatic Pragmatics because the student "was making progress" (Tr. pp. 1439-40; Parent Ex. E at p. 1).

In a November 17, 2016 email to the speech-language pathologist, the parent inquired whether there was "another social skills group" that was available for the student (Parent Ex. F at p. 1). Later that day, the speech-language pathologist replied, indicating that there was not another group, asking if there was a problem, and informing the parent that the student had "seemed very

that "[a]ll present agreed with the plan developed at this meeting"; however, the IESP resulting from the March 2016 CSE meeting that was in effect at the beginning of the 2016-17 school year was not included in the hearing record (see IHO Exs. I-XV; Parent Exs. B-G; I-L; O-T; W-X; Z-EE; HH-JJ; MM-NN; Dist. Exs. 1-36). The parent testified that at the March 2016 CSE meeting the CSE decided that for the upcoming school year the student would continue at Dramatic Pragmatics to receive social pragmatic language instruction, and "language services" (Tr. pp. 1432-33, 1437-39).

²¹ The parents privately funded the services the student received at Dramatic Pragmatics during summer 2016 (Parent Ex. E at p. 2).

happy during yesterday's group" (*id.*). The parent responded "[t]hat group [was] not reasonably appropriate for [the student] for a myriad of reasons," stating that there needed to be an "alternative" and that the student needed to be placed "elsewhere" (*id.*). In a November 28, 2016 email to the director, the parent indicated that the student's social skills group "was not reasonably appropriate" and as there was not another group that would have been appropriate for her "level and gender" an "alternative plan" for the student needed to be discussed (Parent Ex. G at p. 2). In the meantime, the parent informed the director that the student was "not going to attend the current social skills group at the school" (*id.*). The next day, the director responded and indicated she would obtain more information from the speech-language pathologist and school psychologist, and requested that the parent inform her as to why she felt the group was inappropriate (Parent Ex. G at p. 1; *see* Tr. p. 96). By email dated December 7, 2016 the parent asked the director the status of the social skills group, and indicated that the student had not received services from the district since October and also that the school did "not have an appropriate social skills group" (Parent Ex. G at p. 1). In a reply later that day, the director informed the parent that she had spoken with the speech-language pathologist and the school psychologist and reported that both felt "that the current group [was] appropriate" indicating that they could speak further about the issue the following day (*id.*).

The speech-language pathologist testified that the student had attended approximately six to eight sessions before she was informed that the parents "did not want [the student] to continue to receive speech and language services" (Tr. pp. 501-02). According to the parent, the student began to receive "language group" instruction shortly after the October 2016 CSE meeting, but did not start participating in the social skills group until the middle to end of November 2016 (Tr. pp. 1580-81, 1585-86). The parent testified that the student attended approximately four to six sessions of the social skills group at which time the parent "requested a different group" (Tr. pp. 1581-82). The parent confirmed that "around December" 2016 she informed the district that the student would not "receive any more social-skills group therapy" until the district had "an appropriate group" (Tr. pp. 1444, 1583, 1587-88). The speech-language pathologist testified that there was not another social skills group at the middle school, and that the student was not "accessing her services" at the time of the February 2017 CSE meeting (Tr. pp. 441, 459).

While it appears that the parent and the district disagreed about the appropriateness of the grouping for the student's social skills instruction, the hearing record shows that the parent informed the district that the student would not be attending the particular social skills group the district had assigned her to and therefore the student did not receive the October 2016 IEP social skills group mandate as of December 2016 (Parent Ex. D at p. 10; *compare* Tr. pp. 1583, 1587-88 and Parent Exs. F; G *with* Tr. pp. 351-52, 501-02).²² Under these circumstances, the hearing record supports finding that the district met its obligation to arrange for this service.

However, it is unclear why the student did not continue to receive the mandated small group speech-language services that addressed her "basic language" skill needs. The speech-language pathologist testified that the student attended "several language sessions" in fall 2016

²² As discussed above, the February 2017 CSE discontinued the recommendation for speech-language therapy services; however, the February 2017 IEP indicated a start date of September 5, 2017 (Dist. Ex. 15 at pp. 1, 9, 10).

and she believed both services were discontinued in the fall at the request of the parent because the parent did not think the grouping was appropriate, but she further testified that she did not "recall exactly what was said" (Tr. pp. 351-54). She later testified that she was informed by someone that the parents wanted to discontinue speech-language therapy services and that there was "nothing else after that" (Tr. pp. 501-02).²³ As discussed above the documentary evidence in the hearing record shows that the parents only disputed the social skills group portion of the speech-language services, and does not reflect that the parents refused the district's attempts to implement the student's language group services. Weighing the testimony of the speech-language pathologist against the documentary evidence, the district does not carry its burden of proving that the group speech-language services were implemented for a period of approximately five months, which constitutes more than a de minimus failure by the district to implement the student's October 2016 IEP.

b. 2018-19

Next, the parents assert that the IHO erred by not finding that the district failed to provide the student with recommended ICT services in ELA beginning in January 2019 for the remainder of the 2018-19 school year and that this failure constituted a denial of a FAPE.

In January 2019, the October 2018 IEP was the operative IEP (see Dist. 24). The October 2018 IEP provided for one 40-minute session per day of ICT services in the classroom for both ELA and math (id. at pp. 1, 5, 13).²⁴

According to the special education teacher, at the beginning of the 2018-19 school year the student "started out in a co-taught English class" (Tr. pp. 517, 780). The special education teacher and the student had a discussion regarding how during the 2018-19 school year there had been a "schedule change, where [the student] ended up moving out of the ICT English class, the co-taught English class, into a non co-taught English class with the same English teacher" (Tr. pp. 517, 658-59, 662-64, 780-81). The special education teacher did not know who made the decision during the 2018-19 school year for the student to "move[] out of the integrated co-teach and into a general education ELA class"; however, it was her understanding that for the next school year the student chose to go into an honors English class rather than an ICT class (Tr. pp. 663-64, 780).

It cannot be argued that removal of ICT services for ELA did not constitute a change in the student's educational programming (see e.g. Letter to Fisher, 21 IDELR 992). Additionally, changes to an IEP without holding a CSE meeting, may only be made if the parent and the district agree not to convene a CSE meeting for the purpose of making such changes, and instead "develop

²³ Although the parent testified that she had concerns about the district speech-language pathologist's ability to address the student's specific needs, she also stated that during the 2016-17 school year the district provided the student with "language services" from approximately October 2016 to February 2017 (Tr. pp. 1590-94). Despite the apparent discrepancy in the hearing record as to specifically when the student's language group services were discontinued, the district did not offer evidence that it provided the language group services to the student after December 2016.

²⁴ This is contrary to the parents' assertion in the request for review that in January 2019 the operative IEP was dated March 16, 2018 (Req. for Rev. at p. 9).

a written document to amend or modify the child's current IEP" (20 USC §1414[d][3][D]). In this instance, the hearing record does not include a written amendment to the student's IEP and it is unclear from the hearing record whether the district or the student requested the change in English classes during the 2018-19 school year.

Nevertheless, even if the district's failure to memorialize this change in programming in the student's IEP rose to the level of a denial of FAPE, as discussed below, the hearing record supports finding that the student was successful in her English class and this departure from the October 2018 IEP does not warrant relief, such as compensatory education.

D. Relief

The parents argue that the IHO erred in failing to rule on the parents' request for reimbursement of private services and compensatory education services. On review, the IHO's decision not to address relief was reasonable as the IHO did not find a denial of FAPE on the part of the district. However, having determined that the district failed to implement recommended speech-language therapy services during the 2016-17 school year and ICT services in ELA during the 2018-19 school year, an assessment must be made as to whether and what relief would be appropriate for those failures.

1. Compensatory Education

The parents seek reimbursement for all expenses incurred in connection with services provided and an award of compensatory education of three and a half years of weekly social thinking therapy at prevailing rates and three years of language therapy twice per week at Dramatic Pragmatics. Initially, to the extent the parents' request is related to their allegations regarding the district's evaluations and recommendations for the student, which as discussed above did not result in a denial of a FAPE to the student, the parents' request must be rejected. The assessment of an appropriate compensatory remedy must be tied to the denial of FAPE, in this instance, the lack of speech-language therapy services during the 2016-17 school year and ICT services in ELA during the 2018-19 school year.

Compensatory education is an equitable remedy that is tailored to meet the unique circumstances of each case (Wenger v. Canastota, 979 F. Supp. 147 [N.D.N.Y. 1997]). Compensatory education relief may be awarded to a student with a disability who remains eligible for instruction under the IDEA (see 20 U.S.C. §§ 1401[3], 1412[a][1][B]; Educ. Law §§ 3202[1], 4401[1], 4402[5]). The purpose of an award of compensatory education is to provide an appropriate remedy for a denial of a FAPE (see E.M. v. New York City Dep't of Educ., 758 F.3d 442, 451 [2d Cir. 2014] [holding that compensatory education is a remedy designed to "make up for" a denial of a FAPE]; Newington, 546 F.3d at 123 [stating that "[t]he IDEA allows a hearing officer to fashion an appropriate remedy, and . . . compensatory education is an available option under the Act to make up for denial of a [FAPE]"]; see also Doe v. E. Lyme Bd. of Educ., 790 F.3d 440, 456 [2d Cir. 2015]; Reid v. Dist. of Columbia, 401 F.3d 516, 524 [D.C. Cir. 2005] [holding that, in fashioning an appropriate compensatory education remedy, "the inquiry must be fact-specific, and to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place"]; Parents of Student

W. v. Puyallup Sch. Dist., 31 F.3d 1489, 1497 [9th Cir. 1994]). Likewise, SROs have awarded compensatory services to students who remain eligible to attend school and have been denied appropriate services, if such deprivation of instruction could be remedied through the provision of additional services before the student becomes ineligible for instruction by reason of age or graduation (Bd. of Educ. of City Sch. Dist. of Buffalo v. Munoz, 16 A.D.3d 1142 [4th Dep't 2005] [finding it proper for an SRO to order a school district to provide "make-up services" to a student upon the school district's failure to provide those educational services to the student during home instruction]). Accordingly, an award of compensatory education should aim to place the student in the position he or she would have been in had the district complied with its obligations under the IDEA (see Newington, 546 F.3d at 123 [holding that compensatory education awards should be designed so as to "appropriately address[] the problems with the IEP"]; see also Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1289 [11th Cir. 2008] [holding that "[c]ompensatory awards should place children in the position they would have been in but for the violation of the Act"]; Bd. of Educ. of Fayette County v. L.M., 478 F.3d 307, 316 [6th Cir. 2007] [holding that "a flexible approach, rather than a rote hour-by-hour compensation award, is more likely to address [the student's] educational problems successfully"]; Reid, 401 F.3d at 518 [holding that compensatory education is a "replacement of educational services the child should have received in the first place" and that compensatory education awards "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA"]).

Initially, as detailed in the student's IEPs, she was taking the coursework required to graduate from high school with a Regents diploma (Dist. Ex. 29 at p. 18; 24 at p. 16; 20 at p. 12; see Tr. pp. 610-11). The student had excelled academically during the 2018-19 school year and her final grade point average of 93.86 placed her on the "High Honor Roll" (Dist. Ex. 26). The student's report card for the start of the 2019-20 school year, the latest picture of the student in the hearing record, shows a similar grade point average of 94.67 (Dist. Ex. 32).

Specifically with respect to the student's success in English during the 2018-19 school year, when the student moved from a class supported by ICT services to a general education ELA class, the IEP annual goals progress report reflected that the student had either achieved or was progressing satisfactorily toward all of her IEP annual goals related to reading and writing (see Dist. Ex. 27 at pp. 2, 4). The student's final 2018-19 school year report card reflects that in English 10 she received grades of 92, 91, 92, and 90 for quarters 1-4, respectively, and a final average of 91 (Dist. Ex. 26). The special education teacher testified that the student was successful in the "general education" tenth grade English class, and that the student and her tenth grade English teacher agreed that the student would be a good candidate for English 11 Honors for the 2019-20 school year, the class in which she subsequently enrolled (Tr. pp. 658-59, 662-65, 780-81).

In contrast to the above, the parent's consultant testified that the amount of work that the student put in to achieve those grades was significant to her, noting that the student did not achieve her grades independently (Tr. pp. 1218-19). The hearing record reflects the parents' perspective regarding the amount of work that the student put in and pointed to the accommodations that the student needed in order to achieve her high grades and pass her Regents examinations during the 2018-19 school year (see e.g. Tr. pp. 1513, 1525, 1527, 1533-34, 1538-40, 1545-46; Parent Ex. Z; Dist. Exs 24 at pp. 1-2; 29 at pp. 1-3).

However, considering the hearing record as a whole, the student appears to have benefited from the move from a general education class in which she received ICT services to a general education ELA class without ICT services and no compensatory education is warranted for the district's failure to implement this service or amend the student's IEP to reflect the change (see Phillips v. District of Columbia, 932 F. Supp. 2d 42, 50 & n.4 [D.D.C. 2013] [collecting authority for the proposition that an award of compensatory education is not mandatory in cases where a denial of a FAPE is established]). While the parent's frustration with the district is understandable, the purpose of compensatory education would not be met by awarding services to the student under these circumstances (see C.W. v Rose Tree Media Sch. Dist., 395 Fed. App'x 824, 828 [3d Cir. Sept. 27, 2010] ["The purpose of compensatory education is not to punish school districts for failing to follow the established procedures for providing a [FAPE], but to compensate students with disabilities who have not received an appropriate education."]).

I next turn to the question as to the missed speech-language therapy during the 2016-17 school year. The hearing record shows that the student missed one 40-minute small group speech-language therapy session per week, from January 14, 2017 through June 22, 2017 (Parent Ex. D at pp. 1, 10). During this period of time, the student received private speech-language therapy provided by Dramatic Pragmatics, making any determination as to the position the student would have been in had the district complied with its obligations under the IDEA difficult to achieve.

The October 2016 IEP, which was the operative IEP at the time of the missed services, included speech-language annual goals related to improving the student's vocabulary in relation to grade level text, using antonyms, synonyms, heteronyms, homonyms, and multiple meaning words, and identifying and describing word retrieval strategies (Parent Ex. D at pp. 8-9). The IEP also included annual goals, categorized as social/emotional/behavioral goals, that related to social problem solving, making inferences in response to listening to grade level text, and improving pragmatic language and perspective taking skills (id. at p. 9).

In December 2015 the student began receiving speech-language therapy at the Dramatic Pragmatics Speech and Language Center to address social cognition and communication, and language processing and formulation needs (Parent Ex. K). The parents' consultant described Dramatic Pragmatics as "speech-language pathologists who have a great focus on social communication disorders" and "developing more effective cognitive and linguistic skills" (Tr. pp. 857, 862-63). The parent testified that in January 2016, the student's instruction at Dramatic Pragmatics focused on learning "basic communication skills" that involved role play of social interactions with peers (see Tr. pp. 1434-37). According to the parent, Dramatic Pragmatics prepared a progress report and developed "language-specific" goals that were based on the specific curriculum used at Dramatic Pragmatics and the student's needs, which were included in the 2016-17 IEP (Tr. pp. 1437-38; see Dist. Ex. 17 at pp. 3-4). The June 2017 IEP annual goals progress report does not include any progress monitoring information regarding the student's progress toward her speech-language annual goals, and only that the student did not attend the social language group long enough to gauge her progress towards the social communication and pragmatic language goals (Dist. Ex. 17 at pp. 3-4). On the other hand, an August 2017 Dramatic Pragmatics progress report indicated that the student continued to exhibit social communication and language needs, and that goals addressed at that time were for the student to use learned strategies to read verbal and nonverbal cues, identify social problems and apply social thinking

strategies to the scenario, improve conversational management abilities, make inferences from social scenarios, and demonstrate self-advocacy skills across a variety of situations (Parent Ex. K).

Overall, the evidence in the hearing record shows that reimbursement of an equivalent amount of speech-language therapy services the parent obtained for the student from Dramatic Pragmatics is an appropriate remedy for the period of time the student did not receive the recommended speech-language therapy from the district. Accordingly, the district is directed to reimburse the parent for 23 sessions (of up to one-hour) of speech-language therapy delivered to the student by Dramatic Pragmatics during the period between January 14, 2017 and June 22, 2017 upon presentation of invoices and proof of payment.

2. Independent Educational Evaluation (IEE)

The parents appeal from the IHO's finding that the parents were not entitled to the requested neuropsychological IEE because the parents never expressed disagreement with a district evaluation. The parents contend that the district failed to initiate a due process proceeding after the parents expressed disagreement with the district evaluation. The district argues to uphold the IHO Decision and asserts that the request for the neuropsychological evaluation was improper because it was not based on a disagreement with the district's evaluations, but was based on a disagreement relating to the CSE's recommendation.

Turning to the district's appeal relating to the IEEs, 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 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]).

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]). 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]).

The May 2018 CSE meeting comments stated that the parent believed that the student had language difficulties and asked what services the school could provide to address those difficulties (Dist. Ex. 20 at p. 2). The speech-language pathologist shared that when retested in 2016, the student's speech-language abilities (general and social language) were in the average range and therefore the service was not required (id.). Following this discussion, the May 2018 CSE meeting comments indicated that the parent expressed her disagreement and requested an independent evaluation "to gather more information" (id.).

In a May 30, 2018 email, the director directed the parent to see the attached regulations regarding independent evaluations (Parent Ex. OO).²⁵ In an email response later that same day, the parent referred the director to "see the formal request below" in which the parent thanked the director for the IEE information and requested the list of qualified providers the district had established to conduct psychoeducational evaluations and speech-language evaluations (id.).

In a June 12, 2018 email, the parent thanked the director for the list of speech-language providers and noted that her "initial formal request" sent on May 30 was for a list of psychoeducational and speech-language evaluators (Parent Ex. NN). The parent stated that the committee disagreed with the parent-provided private "neuropsych evaluation" and its specific recommendations and that therefore an independent "neuropsych eval" was needed to provide data and requested the district send her providers "in those areas as well" (id.).

In a June 25, 2018 email the director notified the parent that she could request an independent evaluation if she disagreed with what the district conducted and stated that she

²⁵ The exhibit did not include an attachment (Parent Ex. OO).

believed that the parent disagreed with the 2016 district speech-language evaluation results (Parent Ex. NN). The director noted that here the parent was asking for an independent "psycho-ed" evaluation while the parent provided the "outside testing" (id.). The director explained that the parent disagreed with the CSE's recommendations (or lack thereof) and that the parent could not request an IEE because the CSE did not follow the "outside" evaluator's recommendations (id.). In an email response the same day, the parent stated that her request for a psycho-educational IEE was based on the need for additional independent data, that she responded specifically to the question of what she disagreed with, and that since the district refused to send providers, she would choose her own (id.).

In a June 29, 2018 email the director sent the parent a copy of the definition of an IEE and explained that the parent's reason for requesting an IEE—because the CSE did not recommend everything that the private evaluator recommended—was "a very different case than the reason for requesting an IEE" (Parent Ex. NN). The director explained that if the parent disagreed with the CSE recommendations, then she had rights under the procedural safeguards and that if desired the director would be available to discuss the matter further (Parent Exs. T; NN).

As an initial matter, the hearing record shows that the parent expressed a disagreement with the district's evaluation of the student as early as the May 2018 CSE meeting (Dist. Ex. 20 at p. 2). Although the parent initially only requested an independent speech-language and psychoeducational evaluation, on June 12, 2018, the parent requested a neuropsychological evaluation (Parent Exs. NN; OO). The director acknowledged the parent's disagreement with the speech-language portion of the district's evaluation; however, it appears that the director advised the parent that she could not request an independent neuropsychological evaluation based on that disagreement, focusing on the parent's reason for requesting an independent neuropsychological evaluation (Parent Ex. NN). The district, and the IHO, accepted this rationale; however, State regulation concerning IEEs provides that, if a parent requests an IEE, the district must either ensure the IEE is provided at public expense "or file a due process complaint notice to request a hearing to show that its evaluation is appropriate or that the evaluation obtained by the parent does not meet the school district criteria" (8 NYCRR 200.5[g][1][iv] [emphasis added]; see 34 CFR 300.502[b][2]). Additionally, although the district "may ask for the parent's reason why he or she objects to the public evaluation," an explanation by the parent "may not be required and the school district may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint notice to request a hearing to defend the public evaluation" (8 NYCRR 200.5[g][1][iii]; see 34 CFR 300.502[b][4]). Accordingly, while the parent's rationale for requesting an IEE at public expense would have been relevant to the district's defense of its evaluation, it does not provide a basis for the district failing to either request a hearing to show that its evaluation was appropriate or to ensure the IEE is provided at public expense. Due to the district's failure, the parents are entitled to an IEE, including an independent neuropsychological evaluation, at public expense.

VII. Conclusion

Having determined that the evidence in the hearing record shows that the district failed to implement the student's group language therapy from January to June 2017, the student is entitled to an independent neuropsychological evaluation, and otherwise supports the IHO's determinations that the district was required to conduct transition and vocational assessments and that it offered

the student a FAPE for the 2017-18, 2018-19, and 2019-20 school years, the necessary inquiry is at an end.

I have considered the remaining contentions and find it is unnecessary to address them in light of my determinations above.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

THE CROSS-APPEAL IS DISMISSED.

IT IS ORDERED that the IHO's decision dated September 29, 2020, is hereby modified to reflect that the district failed to implement the speech-language therapy sessions recommended in the October 2016 IEP for the period from January 14, 2017 through June 22, 2017; and

IT IS FURTHER ORDERED that, unless the parties shall otherwise agree, the district shall reimburse the parent for 23 sessions (of up to one-hour) of speech-language therapy delivered to the student by Dramatic Pragmatics during the period between January 14, 2017 and June 22, 2017 upon presentation of invoices and proof of payment; and

IT IS FURTHER ORDERED that, unless the parties shall otherwise agree, the district shall fund an independent neuropsychological evaluation of the student consistent with the body of this decision.

Dated: **Albany, New York**
 December 11, 2020

STEVEN KROLAK
STATE REVIEW OFFICER