



# The University of the State of New York

## The State Education Department

State Review Officer

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No. 21-062

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

### **Appearances:**

The Cuddy Law Firm, PLLC, attorneys for petitioner, by Junel Abreu, Esq.

Judy Nathan, Interim Acting General Counsel, attorneys for respondent, by Nathaniel Luken, 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. Petitioner (the parent) appeals from the decision of an impartial hearing officer (IHO) which found that respondent (the district) failed to offer or provide the student with an appropriate educational program and services for the 2017-18, 2018-19, and 2019-20 school years and denied in part certain compensatory education relief. The appeal must be sustained in part.

### **II. Overview—Administrative Procedures**

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee 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 a diagnosis of Williams Beuren Syndrome Duplication (WS)<sup>1</sup> and attention deficit hyperactivity disorder (ADHD) (Parent Exs. O at p. 1; Y at pp. 10-11).<sup>2</sup>

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<sup>1</sup> WS is "a neurological disorder characterized by impairments in pragmatic language, social judgment, interpersonal skills and academic functioning" (Parent Ex. Y at p. 10).

<sup>2</sup> In addition to these medical diagnoses, the neuropsychologist that conducted a neuropsychological evaluation of the student in November 2020 concluded that he had "provisional diagnoses" of social (pragmatic) communication disorder, persistent depressive disorder (dysthymia) with anxious distress – moderate/early onset, specific learning disorder with impairment in reading, specific learning disorder with impairment in written expression, and specific learning disorder with impairment in math (Parent Exs. X at p. 14; Y at pp. 11-12, 14).

The hearing record includes evidence of several meetings of the CSE, which tended to create IEPs for the student annually in late fall. On December 6, 2016, the CSE convened to develop an IEP for the remainder of the 2016-17 school year (second grade) (see generally Dist. Ex. 1). The CSE determined that the student was eligible for special education and related services as a student with a speech or language impairment and further that he was "academically delayed" in all subject areas - reading at a mid-kindergarten level and performing math at a first-grade level (*id.* at pp. 1, 2, 20). Additionally, the CSE identified the student's behavioral needs including that he exhibited impulsivity, and required frequent redirection and refocusing, and adult support during peer interactions (*id.* at pp. 2, 3). The December 2016 CSE recommended that the student receive integrated co-teaching (ICT) services in English language arts (ELA) and math (Dist. Exs. 1 at p. 16; 2 at p. 1). It was also recommended that the student receive one 30-minute session per week of group counseling and two 30-minute sessions per week of group speech-language therapy (*id.*). In addition, the December 2016 CSE recommended full-time paraprofessional services in a group due to the student's toileting needs and behaviors (*id.*).

On November 28, 2017, the CSE convened to develop an IEP for the remainder of the 2017-18 school year (see Parent Ex. D; Dist. Ex. 3). The student was in the third grade and reading at the "beginning of first grade" level and assessed to be at the first-grade level in math (Parent Ex. D at pp. 1, 3, 15; Dist. Ex. 3 at pp. 1, 18). The November 2017 CSE recommended ICT services for ELA and math together with two 30-minute sessions per week of group speech-language therapy and full-time health paraprofessional services (Parent Ex. D at pp. 11, 14; Dist. Ex. 3 at p. 14). In July 2018, the student began receiving tutoring services at the Huntington Learning Center (HLC) (Parent Ex. J at p. 1).

The following year the CSE met on November 5, 2018, to develop an IEP for the remainder of the 2018-19 school year (fourth grade) (see Parent Ex. E; Dist. Ex. 6). Academic and cognitive functioning assessments were administered to the student in October 2018 which revealed that the student's reading comprehension was at the 3.4 grade level, math problem solving was at the 3.8 grade level, word reading was at the 2.2 grade level, numerical operations was at the 4.5 grade level, and spelling was at the 2.5 grade level, and his overall cognitive functioning was in the "[l]ow [a]verage [r]ange of [i]ntelligence" (Parent Ex. E at p. 2; Dist. Ex. 6 at p. 2; see Dist. Ex. 8). Additionally, the CSE determined that the student was reading independently at the mid-second grade level and his math skills were at the third-grade level (Parent Ex. E at pp. 2, 18; Dist. Ex. 6 at pp. 2, 18). The November 2018 CSE recommended a 12:1 special class placement for ELA and math together with one 30-minute session per week of group counseling, two 30-minute sessions per week of group speech-language therapy, and 0.8 health and behavior paraprofessional services in a group (Parent Ex. E at p. 14; Dist. Ex. 6 at p. 14).

On October 29, 2019, the CSE convened to develop an IEP for the remainder of the 2019-20 school year (fifth grade) (see Parent Ex. F; Dist. Ex. 9). The IEP present levels of performance noted that the student's reading skills were at the end of a first-grade level and his math skills were at a fourth-grade level (Parent Ex. F at pp. 1-2; Dist. Ex. 9 at pp. 1-2).<sup>3</sup> The October 2019 CSE recommended a 12:1 special class placement for ELA and math together with one 30-minute session per week of group counseling, two 30-minute sessions per week of group speech-language

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<sup>3</sup> The instructional/functional levels listed on the October 2019 IEP noted that the student's reading skills were at the third-grade level (Parent Ex. F at p. 13).

therapy, and 0.8 health and behavior paraprofessional services in a group (Parent Ex. F at pp. 9, 12; Dist. Ex. 9 at p. 13). On March 12, 2020 the HLC conducted an academic evaluation of the student (see Parent Ex. I).

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

In a due process complaint notice, dated March 12, 2020, the parent alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2017-18, 2018-19 and 2019-20 school years (see generally Parent Ex. A). Specifically, the parent alleged that the CSE failed to conduct certain evaluations during the 2017-18 school year such as an evaluation of the student's emotional and mental health, a psychiatric evaluation, and a functional behavioral assessment (FBA) (Parent Ex. A at p. 5). Without reference to a specific school year, the parent argued that the CSE failed to conduct a neuropsychological evaluation, a speech-language therapy evaluation, an occupational therapy (OT) evaluation, and an assistive technology evaluation (id.). The parent also argued that the CSE failed to conduct a triennial re-evaluation in January 2020 (id. at p. 6). According to the parent, the district failed to respond to a January 11, 2020 request for independent educational evaluations (IEEs) (Parent Ex. A at pp. 6-7).

For each of the school years at issue, the parent argued that the CSE failed to offer the student an appropriate placement, recommended the same vague and unmeasurable goals, recommended an inappropriate frequency of speech-language therapy, and recommended an inappropriate frequency of counseling services (id. at pp. 7-8).

The parent sought pendency requesting that the student remain in his current public-school placement (Parent Ex. A at p. 9). As relief, the parent requested an order directing the district to fund the following IEEs: neuropsychological, speech-language, assistive technology, FBA, and OT (id.). Additionally, the parent requested that the CSE reconvene and develop an appropriate IEP that included multisensory instruction, meaningful and measurable goals, updated present levels of performance, a behavioral intervention plan (BIP), progress reporting, and 12-month services (id. at pp. 9-10). Further, the parent requested an order for the CSE to locate an appropriate public-school setting within 15 days, and if one was not located, to refer the student to the Central Based Support Team (CBST) for a recommendation for an approved, nonpublic school (NPS), and if no approved NPS was available within 15 days, to order the district to fund a private school of the parent's choice (id. at p. 10). The parent also sought compensatory education services in speech-language therapy, assistive technology training, counseling services, OT, physical therapy (PT) services, parent counseling and training, and academic tutoring, and an order directing the district to fund transportation of the student to and from the requested compensatory services in the form of Metrocards (id.). Finally, the parent sought reimbursement for the academic tutoring that she obtained through the HLC in the amount of \$30,264.00 (id.).

### **B. State Complaint Post-dating Due Process Complaint Notice**

On August 3, 2020, the parent filed a State administrative complaint with the Commissioner of Education alleging that the district failed to immediately appoint an IHO after the filing of the March 13, 2020, due process complaint notice (see generally Parent Ex. K). In a letter dated August 27, 2020, the New York State Education Department (NYSED) Office of

Special Education, Special Education Quality Assurance determined that an IHO was not timely appointed (see Parent Ex. L).<sup>4</sup>

### **C. Impartial Hearing Officer Decisions**

An impartial hearing convened regarding the due process complaint on August 28, 2020, and concluded on December 17, 2020, after six days of proceedings (Tr. pp. 1-83).

On August 27, 2020, the parent made a written application to the IHO for a pendency placement (see generally Parent Ex. B). The district did not object to the parent's request, and on August 28, 2020, the IHO issued an interim decision finding that the student's pendency placement was based upon the October 2019 IEP (Tr. p. 6; IHO Ex. III at pp. 5-6).

On August 28, 2020, the parent made another written application to the IHO for an interim decision for the funding of certain IEEs (see generally Parent Ex. C). More specifically, the parent requested neuropsychological, speech-language therapy, assistive technology, OT, and FBA IEEs (Parent Ex. C at p. 1). The district did not object to the parent's request for IEEs (Tr. pp. 17-19). On September 10, 2020, the IHO issued an interim decision directing the district to fund the following IEEs: neuropsychological evaluation, speech-language evaluation, assistive technology evaluation, FBA and BIP if warranted, and OT evaluation (IHO Ex. IV at p. 6).

On January 8, 2021, the parent filed a second due process complaint notice with respect to a denial of FAPE for the 2020-21 school year and sought relief in the form of a placement for the student, compensatory educational services and IEEs (Jan. 10, 2021 Interim IHO Decision at p. 1). In an interim decision dated January 10, 2021, the IHO found that the present case and case involving the 2020-21 school year did "not involve common questions of law and fact" (id. at p. 2). In addition, at the time of the filing of the January 8, 2021 due process complaint notice the present matter was awaiting a final decision (id.). Accordingly, the IHO declined to consolidate the two proceedings and the two cases proceeded separately (id. at pp. 2-3).

With respect to the instant proceeding, in a final decision dated January 13, 2021, the IHO determined that the district failed to offer the student a FAPE for the 2017-18, 2018-19, and 2019-20 school years (IHO Decision at pp. 12, 14, 25).<sup>5</sup> The IHO noted that at the impartial hearing, the district did not present a case and did not defend against the parent's allegations that the district

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<sup>4</sup> In another letter dated October 8, 2020, the NYSED Office of Special Education, Special Education Quality Assurance stated that the district's noncompliance with the appointment of an IHO was being addressed in accordance with the district's Compliance Assurance Plan issued on May 3, 2019, for addressing due process complaints (Parent Ex. N at pp. 1, 4). The letter indicated that "[i]n May 2019, the NYSED in accordance with its oversight and monitoring responsibilities under IDEA, placed [the district] under a Compliance Assurance Plan (CAP). This CAP requires [the district] to implement systemic corrective action addressing due process issues, including increasing the availability of less-adversarial resolution methods such as mediation and IEP facilitation, revise its compensation policy for impartial hearing officers, change its IHO appointment process, and resolve [the district impartial hearing office's] significant delays in inputting data, to ensure that its due process system provides timely and meaningful due process to parents of students with disabilities" (Parent Ex. N at p. 4).

<sup>5</sup> The IHO Decision is not paginated, and the Office of State Review has paginated the decision beginning with the cover sheet as page 1 and continuing consecutively through the end of the decision on page 28.

denied the student a FAPE (IHO Decision at pp. 6, 10). The district did not object to the compensatory educational services sought by the parent and did not object to the parent's request for reimbursement of the HLC tutoring (*id.* at p. 10). The IHO found that the hearing record indicated that there was a "lack of progress over the past several school years," and the special education support did not benefit the student "who remain[ed] delayed in all areas" (*id.* at pp. 12, 14).

The IHO made numerous findings with respect to the parent's request for compensatory educational services and evaluations. He awarded the following relief:

1. In response to a request for 276 hours, the IHO awarded 104 hours of parent counseling and training services "to allow [the] [p]arent to receive an hour weekly of [parent counseling and training], over a two year period" (IHO Decision at pp. 18, 25);
2. 104 hours of individual psychotherapy services as requested by the parent "to allow the [s]tudent to receive an hour weekly of service, over a two year period" (IHO Decision at pp. 18, 25);
3. In response to a request for 230 hours, the IHO awarded 104 hours of individual speech-language therapy to "to allow the [s]tudent to receive an hour weekly of service, over a two year period" (IHO Decision at pp. 19, 25); and
4. Finally, the IHO awarded 520 hours of compensatory individual tutoring services over two years (IHO Decision at pp. 20-21, 25).

However, the IHO also denied relief in part, determining that family therapy was not "necessary" to remedy a FAPE denial by the district, an award of assistive technology training was not "warranted," an assessment by "certified reading specialist to provide specialized reading instruction" was not "warranted," and a PT evaluation was not "warranted" (IHO Decision at pp. 18-19).

For each of the compensatory education services granted, the IHO held that the parent had until June 30, 2022 to obtain the services (IHO Decision at p. 25). Further, the IHO ordered the district to provide the parent with Metrocards to transport the student to and from the awarded compensatory services (*id.* at pp. 20, 25).

The IHO also ordered the district to reimburse the parent for the academic tutoring paid to the HLC during the 2017-18, 2018-19 and 2019-20 school years in the amount of \$30,364.00 (IHO Decision at pp. 21, 25). Finally, although the IHO agreed with the parent's allegation that the student was entitled to an appropriate placement, he found that the matter should be limited to the remediation of past harms, and he accordingly declined to order a specific placement prospectively, stating that it was the obligation of the CSE to make such recommendation (*id.* at pp. 22-24).

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

The parent appeals the IHO's denial of and reduction of the requested compensatory education services and the IHO's denial to direct the CSE to make certain prospective placement

and services recommendations in the student's IEP going forward. More specifically, the parent argues that the IHO arbitrarily reduced the requested compensatory services without any basis in the hearing record.

As relief, the parent seeks the following:

1. Placement of the student in small, structured classroom, with independent reading services for 30 minutes per day, positive behavior interventions, and 12-month services.
2. Two 30-45 minute sessions per week of individual counseling.
3. Social skills training at least once per week for at least one hour.
4. Two 45-minute sessions per week of individual speech-language therapy and one 60-minute session per week of speech-language therapy in a group.
5. Parent counseling and training one hour per week by a Board Certified Behavior Analyst (BCBA).
6. Meeting between parents and school personnel coordinated by the BCBA once per month for one hour.
7. Accommodations to improve organization, completion of written work, and processing of information.
8. Referral to the CBST for an approved NPS placement, and if the district is unable to locate an appropriate approved NPS, the district shall fund a non-approved private school placement of the parent's choice.
9. 276 hours of parent counseling and training.
10. 138 hours of individual psychotherapy.
11. 230 hours of speech-language therapy.
12. 135 hours of tutoring by HLC in math.
13. 545 hours of tutoring by HLC in reading.
14. 35 hours of family therapy.
15. PT evaluation.
16. Assessment by a certified reading specialist.
17. The following assistive technology devices: Microsoft Surface, 3, 13.5", Bose-QuietComfort 35 Wireless Headphones II, HP Envy Printer, and C-Pen Reader by Scanning Pens.

18. The following assistive technology applications and programs: Microsoft built in accessibility functions, Read and Write literacy software by Texthelp, Bookshare, Bookshare membership, Fast ForWord, Google Docs App, MindView, thoughtQ, Google Keep, Scanner Pro, and PDF Reader.
19. 20 hours of assistive technology training.

The district interposed an answer generally denying the allegations contained in the parent's request for review. First, the district argues that the IHO did not err in denying the parent's request for specific recommendations to be placed on the student's IEP. The district contends that the IHO should have limited his review "to remediation of past harms" and it is the responsibility of the CSE to make specific recommendations for the student's IEP (Answer at p. 4). Second, the district argues that the parent is not entitled to additional compensatory education services as the IHO ordered "substantial" compensatory educational services which was sufficient to address the district's deprivation of a FAPE to the student. In addition, the district contends that the parent's request for family therapy, a PT evaluation, assistive technology devices, and an assessment by a certified reading specialist were not requested in the parent's due process complaint notice, and the scope of the impartial hearing is limited to what was requested in the due process complaint notice. Further, the district contends that the referral to the CBST, assistive technology and assistive technology training is for the CSE to consider and recommend based upon the IEEs obtained. Finally, the district argues that the hearing record supports the IHO's discretionary reduction of hours, and that the IHO decision should be affirmed.

## **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" (Andrew 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 Andrew 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]).<sup>6</sup>

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. Form Requirements**

First, I note that the request for review fails to comply with the form requirements of Part 279 of State regulations. In particular, the practice regulations require that each issue [be] numbered and set forth separately ... identifying the precise rulings, failures to rule, or refusals to rule presented for review" (NYCRR 279.8 [c][2] [emphasis added]). In this case the parent's request for review simply enumerates every paragraph, regardless of whether it contains statements of fact, statements of law, or allegations of IHO error without separately enumerating the issues which the parent is challenging. Certain allegations of error on the part IHO are underlined, whereas others are not. While paragraph numbering is not prohibited, clear enumeration and identification of each issue is required and counsel for the parent has failed to do so. If the parent, or the parent's attorney for that matter, require additional guidance on how to prepare pleadings in compliance with practice regulations, assistance, including sample forms for what is expected in a request for review and memorandum of law, is available on the Office of State Review's website (see <https://www.sro.nysed.gov/book/prepare-appeal>). Although dismissal on this basis is permissible, as a matter within my discretion, I will allow the matter to proceed, as the request for review is sufficiently clear to proceed without unduly hampering my review in the stringent timelines required by State and federal regulations.

#### **2. Scope of Review**

State regulation governing practice before the Office of State Review further specify that "any issue not identified in a party's request for review, answer, or answer with cross-appeal shall be deemed abandoned and will not be addressed by a State Review Officer" (8 NYCRR 279.8[c][2], [4]; see 8 NYCRR 279.4[a]). Further, an IHO's decision is final and binding upon the parties unless appealed to a State Review Officer (34 CFR 300.514[a]; 8 NYCRR200.5[j][5][v]).

Here, neither party has appealed the IHO's findings regarding the district's denial of a FAPE for the 2017-18, 2018-19 and 2019-20 school years, the award of Metrocards for the student's transportation to and from the compensatory services, or reimbursement to the parent in the amount of \$30,364.00 for the HLC tutoring. As such, those findings have become final and binding on

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<sup>6</sup> 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 parties and will not be reviewed on appeal (8 NYCRR 200.5[j][5][v]; see M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at \*6-\*7, \*10 [S.D.N.Y. Mar. 21, 2013]).

## **B. Relief**

### **1. Compensatory Educational Services and Evaluations**

The parent argues that the IHO arbitrarily reduced the requested compensatory services without any basis in the hearing record, and therefore, failed to make the student whole for the district's denial of FAPE for the 2017-18, 2018-19, and 2019-20 school years.

Compensatory education is an equitable remedy that is tailored to meet the unique circumstances of each case where a denial of FAPE has occurred (see Doe v. East Lyme Bd. of Educ., 790 F.3d 440, 456 [2d Cir. 2015]; L.O. v. New York City Dep't of Educ., 822 F.3d 95, 125 [2d Cir. [2016] [remanding to District Court to determine what, if any, relief was warranted for denial of FAPE]; Wenger v. Canastota Cent. Sch. Dist., 979 F. Supp. 147 [N.D.N.Y. 1997]).

Compensatory education relief may also 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 & n.12 [2d Cir. 2014]; Newington, 546 F.3d at 123 [holding that compensatory education is a remedy designed to "make up for" a denial of a FAPE]; see also E. Lyme, 790 F.3d at 456; 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"]).

At the impartial hearing, the district did not object to the parent's request for compensatory services (Tr. pp. 53, 71-72, 79). The parent requested the following compensatory educational services: 276 hours of parent counseling and training, 230 hours of speech-language therapy, 138 hours of individual psychotherapy, 135 hours of tutoring in the HLC math program, and 545 hours of tutoring in the HLC reading program (see Tr. pp. 61, 71-72). In response, the district representative did not have a rebuttal or response to those specific requests (Tr. p. 72). In fact, at the impartial hearing the district representative acknowledged that "additional supports were needed for this student" (Tr. p. 53).

In its answer, the district argues that the hearing record supports the IHO's award of reduced compensatory services (Answer at pp. 6-7). It is the district's position that since the student was "receiving speech and language therapy since at least 2017," and "tutoring since 2018", the hearing record "supports the IHO's reduction of the hours requested by the [p]arent" (id. at p. 6). In furtherance of its argument, the district argues that from 2017 through 2020 the student's instructional levels improved thereby further supporting the IHO's reduction of the requested compensatory services. However, none of these arguments were advanced by the district at the impartial hearing and the IHO offered no explanation for how he arrived at each determination for compensatory education, consequently, the district cannot be heard to complain for the first time on appeal about the parent's requested relief.

As the particular hours of compensatory education relief requested by the parent were not disputed by the district at the impartial hearing, and there is ample support in the hearing record for the parent's requested relief, I will grant the parent's requested compensatory relief of 276 hours

of parent counseling and training,<sup>7</sup> 138 hours of psychotherapy,<sup>8</sup> 230 hours of speech-language therapy,<sup>9</sup> 135 hours of math tutoring by HLC, and 545 hours of reading tutoring by the HLC.<sup>10</sup>

Additionally, the parent asserts that the IHO failed to order a PT evaluation, an assessment by a certified reading specialist (Parent Exs. X at p. 18; Y at pp. 11, 16; Z at p. 10). At the impartial hearing the district did not object to the IEEs being a part of the hearing record and further did not object to any of the recommendations contained in the IEEs (Tr. pp. 17-19; IHO Ex. IV at p. 6). However, in its answer, the district argues that these forms of relief were not requested in the parent's due process complaint notice, and therefore, assert that the IHO did not err in denying these requests.<sup>11</sup>

The hearing record contains ample evidence of the student's need for the requested evaluations. First, the neuropsychologist noted in his report that students with WS "present with deficits in motor coordination as well as visual-spatial processing" (Parent Ex. Y at p. 11). The parent described the student as having poor coordination, and that he was "clumsy and accident

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<sup>7</sup> The neuropsychologist explained in his evaluative report that parent training and counseling was needed to help the parent respond to the student's anxiety, poor sense of self-efficacy, and avoidant behaviors (Parent Exs. X at p. 19; Y at pp. 17-18). The neuropsychologist also wrote that parent counseling and training is "vital to [ensuring] consistent management strategies [are] used at home and in school" (Parent Ex. Y at p. 13). He recommended two hours per week for three years from a psychologist or BCBA for a total amount of 276 hours (Parent Exs. X at p. 19; Y at pp. 17-18).

<sup>8</sup> The neuropsychologist noted that the student's WS, pragmatic language disorder, ADHD, and poor gross motor skills interfered with the student's social functioning (Parent Ex. Y at p. 11). The neuropsychologist wrote in his report that the student required 138 hours of compensatory counseling services to focus on his "emotional regulation, self-control and social skills" (Parent Exs. X at p. 18; Y at pp. 17-18).

<sup>9</sup> The neuropsychologist recommended a speech-language evaluation for an assessment of the student's pragmatic skills however, he also recommended 138 hours of compensatory speech-language therapy because the student's "communication deficits were exacerbated" by the district failing to timely evaluate the student and failing to provide adequate levels of services (Parent Exs. X at pp. 17-18; Y at pp. 14, 17-18). In the same neuropsychological evaluation, he also recommended 276 hours of compensatory speech-language therapy for the same reasons described above (*id.* at p. 18). Thereafter, a speech-language evaluation revealed that the student's general language ability and receptive language was in the "borderline/marginal/at-risk range of language functioning" and "very low to severely delayed reading and writing skills" which significantly impacted "his ability to access and participate in his academic curriculum, as reading and writing are necessary for all subjects" (Parent Exs. Z at pp. 8- 9; CC at pp. 3-4). The speech-language pathologist recommended 230 hours of compensatory speech-language therapy services to help the student build the "foundational language skills" he lacked (Parent Exs. Z at p. 9; CC at p. 3). For purposes of this review, the recommendation for compensatory services by the speech-language therapist shall be accepted as an accurate depiction of the student's needs.

<sup>10</sup> In his affidavit, the neuropsychologist recommended 690 hours of tutoring to "compensate" the student for receiving an inappropriate education (Parent Ex. X at p. 18). However, in his report there was a recommendation for 690 hours of individual tutoring and 1,380 hours of individual tutoring as a result of the student not receiving an appropriate education (Parent Ex. Y at pp. 17-18). For clarification purposes, the neuropsychologist testified at the impartial hearing that he was recommending a total of 690 hours of tutoring and the 1,380 hours was an "administrative error" (Tr. p. 75). Since the parent is requesting the tutoring by the HLC, the awarded amount shall be consistent with the recommendations by the HLC staff which is 135 hours in the math program and 545 hours for the reading program to bring the student to where he needs to be academically (Parent Exs. I at p. 2; P at p. 6).

<sup>11</sup> However, in the parent's closing brief, there were specific requests for assistive technology devices and software, an assessment by certified reading specialist and a PT evaluation (IHO Ex. V at pp. 8-9, 12, 17-18).

prone," and unable to ride a bicycle, or catch a ball from 10 feet away (*id.*). As a result of the student's "poor motor-coordination" the neuropsychologist recommended a PT evaluation to assess his current level of functioning and possible need for services (Parent Exs. X at p. 18; Y at pp. 11, 17). In the absence of any objections from the district during the impartial hearing to the recommendation for a PT evaluation, I see little reason to exclude it. The CSE's function would be to consider the evaluation once it has been conducted and thus in these circumstances, any concern about usurping the function of the CSE is unlikely to be realized. Moreover, the recommendation for a PT evaluation was in an IEE that was ordered by the IHO, which is relevant to the issue of granting appropriate relief, but it is not clear that an IHO would be prohibited from providing the relief as the parent was only required to state a "proposed resolution of the problem to the extent known and available to the party at the time" (8 NYCRR 200.5[i][1]; *see* 20 U.S.C. § 1415[b][7][A][ii]; 34 CFR 300.508[b]). Based upon this evidence in the hearing record, the IHO should have directed the district to conduct a PT evaluation so that the CSE could consider it.

Next, the speech-language pathologist recommended an assessment by a certified reading specialist to address the student's "literacy deficits" and to potentially provide the student with "specialized reading instruction" (Parent Exs. Z at p. 10; CC at p. 5). Again, in the absence of any objection by the district to the relief requested by the parent, or evidence contrary to the speech-language evaluation report, the IHO should have awarded an assessment of the student by a certified reading specialist so that the CSE could consider it rather than relying on a strained rationale of the parent's failure to specify in the due process complaint what the forthcoming results of the IEE might have recommended for further evaluation by the district.

## **2. Family Therapy**

Turning next to the parent's allegation that the IHO erred in refusing to grant family therapy, I will not disturb the IHO's denial of family therapy as such relief is not clear to me based upon the evidence that it is necessary to remediate the district's failure to offer the student a FAPE (IHO Decision at p. 18).

The neuropsychologist in his November 2020 evaluation stated that the student required "35 hours of family therapy" because "[h]ome and community based services would allow his family to help with generalization of skills" (Parent Ex. Y at p. 19).

In particular, with respect to family therapy, several courts have held that the IDEA does not require school districts, as a matter of course, to design educational programs to address a student's needs related to generalizing skills to settings outside of the school environment, particularly in cases where it is determined that services oriented toward skill generalization are not necessary to enable the student to receive educational benefits (*see F.L. v. New York City Dep't of Educ.*, 2016 WL 3211969, at \*11 [S.D.N.Y. June 8, 2016]; *L.K. v. New York City Dep't of Educ.*, 2016 WL 899321, at \*8-\*10 [S.D.N.Y. Mar. 1, 2016], *aff'd in part*, 674 Fed. App'x 100; *P.S. v. New York City Dep't of Educ.*, 2014 WL 3673603, at \*13-\*14 [S.D.N.Y. Jul. 24, 2014]; *M.L. v. New York City Dep't of Educ.*, 2014 WL 1301957, at \*11 [S.D.N.Y. Mar. 31, 2014]; *R.B. v. New York City Dep't of Educ.*, 2013 WL 5438605, at \*15 [S.D.N.Y. Sept. 27, 2013], *aff'd*, 589 Fed. App'x 572 [2d Cir. Oct. 29, 2014]; *K.L. v. New York City Dep't of Educ.*, 2012 WL 4017822, at \*14 [S.D.N.Y. Aug. 23, 2012], *aff'd*, 530 Fed. App'x 81; *C.G. v. New York City Dep't of Educ.*, 752 F. Supp. 2d 355, 360 [S.D.N.Y. 2010]; *see also Thompson R2-J Sch. Dist. v. Luke P.*, 540

F.3d 1143, 1152-53 [10th Cir. 2008]; Gonzalez v. Puerto Rico Dep't of Educ., 254 F.3d 350, 353 [1st Cir. 2001]; Devine v. Indian River County Sch. Bd., 249 F.3d 1289, 1293 [11th Cir. 2001]; JSK v. Hendry County Sch. Bd., 941 F.2d 1563, 1573 [11th Cir 1991]). While the Second Circuit has not specifically ruled on the issue of a district's obligations, or lack thereof, under the IDEA to provide for the generalization of skills as part of an educational program, it recently held that "parents are not entitled to reimbursement for services provided in excess of a FAPE" (L.K., 674 Fed. App'x at 101). Accordingly, to the extent that the family therapy sought in this case is for the purposes of generalization of skills learned at school and/or the maximization of potential, I am unable to find that this alone is a basis for the provision of such services and, consequently I decline to overturn the IHO on this issue based upon the evidence in the hearing record.

### 3. Prospective Relief

On appeal, the parent also seeks various forms of prospective relief. More specifically, the parent seeks placement of the student in a small, structured classroom with 1:1 or dyadic instruction, positive behavior interventions and 12-month services. The parent also seeks two 30-45 minute sessions per week of individual counseling; social skills training at least once per week for at least 60 minutes; two 45-minute sessions per week of individual speech-language therapy, and one 60-minute session per week of speech-language therapy in a group of three; multisensory instruction; daily independent reading for 30 minutes; monthly, 60-minute meetings with the parent and school personnel coordinated by a BCBA; use of a reward system for the student; and accommodations for organization, completion of written work, and processing information. Finally, the parent seeks a referral to the CBST to locate an appropriate, approved NPS placement, and if the district is unable to locate such placement the district shall fund a non-approved NPS of the parent's choice.<sup>12</sup>

Relief in the form of IEP amendments and the prospective placement of a student in a particular type of program and placement, such as the order sought by the parent in this matter directing the specific contents of a future IEP and nonpublic school placement, under certain circumstances, have the effect of circumventing the statutory process, pursuant to which the CSE is tasked with reviewing information about the student's progress under current educational programming and periodically assessing the student's needs (see Adams v. Dist. of Columbia, 285 F. Supp. 3d 381, 393, 396-97 [D.D.C. 2018] [noting with approval the hearing officer's finding "that the directives of IDEA would be best effectuated by ordering an IEP review and revision, rather than prospective placement in a private school"]; see also Student X v. New York City Dep't of Educ., 2008 WL 4890440, at \*16 [E.D.N.Y. Oct. 30, 2008] [noting that "services found to be

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<sup>12</sup> For a detailed discussion of relief in the form of future placement in a nonapproved nonpublic school, including the varying characterizations of the relief as either as prospective placement, tuition reimbursement or funding, or compensatory education, see Application of a Student with a Disability, Appeal No. 19-018 (also discussing at length the potential pitfalls that may arise as a result of an award of prospective placement). Here, were I to view the parent's request for future funding of the student's attendance at a nonapproved nonpublic school as compensatory education, the outcome would not differ. This is particularly so given the amount of compensatory education already awarded by the IHO (see IHO Decision at p. 25).

appropriate for a student during one school year are not necessarily appropriate for the student during a subsequent school year").

At this point, the school years at issue—2017-18, 2018-19 and 2019-20—are over and, in accordance with its obligation to review a student's IEP at least annually, the CSE should have already convened to produce an IEP for the 2020-21 school year (see also Eley v. Dist. of Columbia, 2012 WL 3656471, at \*11 [D.D.C. Aug. 24, 2012] [noting that prospective placement is not an appropriate remedy until the IEP for the current school year has been completed and the parent challenges the IEP for the current year]). As such, the more appropriate course is to limit review in this matter to remediation of past harms that have been explored through the development of the underlying hearing record and the resulting award of compensatory education by the IHO. Accordingly, there is no reason to grant the parent's request for a prospective placement. Moreover, there is no evidence in the hearing record regarding a nonapproved nonpublic school that the parent may wish the student to attend.

Additionally, the issue of the assistive technology services requested by the parent on a going forward basis is also prospective and, as described below, the recommendations should be considered by the CSE, which in turn should provide a response to the parent. The hearing record shows that after the IEE granted by the IHO was conducted, the independent neuropsychologist stated in his report that the student required a further assistive technology evaluation to determine if the student needs "tools to improve his reading, decoding, reading comprehension, spelling and written expression" (Parent Exs. X at p. 18; Y at p. 16). On November 20, 2020, an assistive technology evaluation was conducted by the same speech-language pathologist who conducted the November 2020 speech-language evaluation (see Parent Exs. Z-AA, CC). Since the speech-language pathologist evaluated and knew of the student's deficits in reading, writing, comprehension and organization, she trialed and recommend certain assistive technology devices to support the student (Parent Ex. AA at pp. 6-7). Additionally, the speech-language pathologist recommended software to "address and model spelling, vocabulary expansion, and syntax" (Parent Ex. CC at p. 7). The speech-language pathologist recommended the following equipment and software: Microsoft Surface, 3, 13.5", Bose-QuietComfort 35 Wireless Headphones II, HP Envy Printer, C-Pen Reader by Scanning Pens, Microsoft built in accessibility functions, Read and Write literacy software by Texthelp, Bookshare, Bookshare membership, Fast ForWord, Google Docs App, MindView, thoughtQ, Google Keep, Scanner Pro, and PDF Reader (Parent Exs. AA at pp. 7-9; CC at pp. 5-7). The hearing record demonstrates the student's need for the assistive technology devices and programs to benefit from instruction.<sup>13</sup> Further, the speech-language pathologist recommended 20 hours of assistive technology training "to ensure confident access" to the tools recommended in her evaluation (Parent Exs. AA at p. 9; CC at p. 7).<sup>14</sup>

The selections by the evaluator are very specific—in many instances right down to brand names of the devices and programs—but she did not explain why particularized constraints were

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<sup>13</sup> State regulations provide that assistive technology devices and services are generally required to the extent necessary to permit a student to benefit from instruction (8 NYCRR 200.4[d][2][v][b][6], [d][3][v]).

<sup>14</sup> The request for compensatory assistive technology training was contained in the parent's due process complaint notice (Parent Ex. A at p. 10).

necessary to be listed in the student's IEP (see Parent Exs. AA; CC). Consequently, these should be discussed by the CSE in the first instance as they are not truly compensatory education services but very particularized opinions of equipment to be placed on the student's IEP going forward. Accordingly, I will direct the CSE to review the evaluator's recommendations for a Microsoft Surface, 3, 13.5"; Bose-QuietComfort 35 Wireless Headphones II; HP Envy Printer; and C-Pen Reader by Scanning Pens. Additionally, the following assistive technology applications shall be awarded: Microsoft built in accessibility functions; Read and Write literacy software by Texthelp; Bookshare with Bookshare membership; Fast ForWord; Google Docs App; MindView; thoughtQ; Google Keep; Scanner Pro; and PDF Reader. Finally, the student shall review the evaluator's recommendations for 20 hours of assistive technology training to ensure access to the devices and programs.<sup>15</sup> However, now that a trial assessment has been conducted, it will not do for the CSE to be dilatory with respect to the student's needs for assistive technology. If the CSE does not adopt the assistive technology services as recommended by the speech language therapist (see Parent Ex. AA), the CSE shall provide a prior written notice that explains in detail the reasons why each item listed in Parent Ex. AA was rejected, and shall otherwise revise the student's IEP to add appropriate assistive technology services going forward. To be clear, the district must comply with the terms of this order even if such requirements for a response exceed those for a prior written notice set forth in State and federal regulations.

If the parent remains displeased with the CSE's recommendations for the student in some subsequent IEP(s), she may obtain appropriate relief by challenging the IEP(s) in a separate proceeding (see Eley v. Dist. of Columbia, 2012 WL 3656471, at \*11 [D.D.C. Aug. 24, 2012] [noting that prospective placement is not an appropriate remedy until the IEP for the school year for which such placement is sought has been developed and the parent challenges that IEP]).

## **VII. Conclusion**

Based upon the foregoing, the parent is not entitled to family therapy, or any prospective relief as detailed herein. However, the parent is entitled to the evaluations, a detailed review of and response to the assistive technology devices and programs recommended by the evaluator, and compensatory educational services enumerated above.

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.**

**IT IS ORDERED** that the IHO decision dated January 13, 2021 is modified by reversing those portions which denied the parent's requests for a PT evaluation and a reading assessment; and

**IT IS FURTHER ORDERED** that the district shall conduct a PT evaluation of the student within 30 days of the date of this decision; and

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<sup>15</sup> "[A]ssistive technology is not itself an appropriate award of compensatory education, but rather, is appropriately included as a supplement when necessary, to implement the awarded compensatory education." M.M. v New York City Dept. of Educ., 15 CIV. 5846 (PKC), 2017 WL 1194685, at \*9 [SDNY Mar. 30, 2017].

**IT IS FURTHER ORDERED** that the district shall conduct an assessment by a certified reading specialist within 30 days of the date of this decision; and

**IT IS FURTHER ORDERED** that the district shall convene the CSE within 30 days of the date of this order to consider providing the student with the following assistive technology devices: Microsoft Surface, 3, 13.5”; Bose-QuietComfort 35 Wireless Headphones II; HP Envy Printer; and C-Pen Reader by Scanning Pens; and

**IT IS FURTHER ORDERED** that the district shall convene the CSE with 30 days to consider providing the student with the following applications and programs: Microsoft built in accessibility functions; Read and Write literacy software by Texthelp; Bookshare and Bookshare membership; Fast ForWord; Google Docs App; MindView; thoughtQ; Google Keep; Scanner Pro; and PDF Reader; and

**IT IS FURTHER ORDERED** that the district shall convene the CSE with 30 days to consider providing student with 20 hours of assistive technology training; and

**IT IS FURTHER ORDERED** that the if the CSE refuses any of the assistive technology devices or services listed herein, the district shall provide a detailed reason for the refusal for each item requested, including the specific evaluative information relied upon for each refusal, which response shall be provided in a manner consistent with a prior written notice within 45 days from the date of this decision; and

**IT IS FURTHER ORDERED** that the student is entitled to the following compensatory educational services: 276 hours of parent counseling and training, 138 hours of psychotherapy, 230 hours of speech-language therapy, 135 hours of math tutoring by the HLC, and 545 hours of reading tutoring by the HLC.

**Dated:**           **Albany, New York**  
                          **April 29, 2021**

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**JUSTYN P. BATES**  
**STATE REVIEW OFFICER**