The University of the State of New York

The State Education Department
State Review Officer
www.sro.nysed.gov

No. 21-094

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 Mark Gutman, Esq.

Judy Nathan, Interim Acting General Counsel, attorneys for respondent, by Brian Davenport, Esq.

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from the decision of an impartial hearing officer (IHO) which denied her request for reimbursement from respondent (the district) for her son's tuition costs at Happy Hour 4 Kids (HH4K) for the 2020-21 school year. The 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 been the subject of a prior State-level administrative appeal involving the 2019-20 school year (Application of the Dep't of Educ., Appeal No. 20-158) and, as a result, the parties' familiarity with the facts and procedural history preceding this case—as well as the student's educational history—is presumed and will not be repeated herein unless necessary to provide context to the disposition of the issues presented in this appeal. Briefly, as described in the prior State-level review proceeding, the student was unilaterally placed at Academic West during the first portion of the 2019-20 school year and the parents prevailed in an impartial hearing seeking tuition reimbursement for 2019-20; however, the unilateral placement at Academic West was unsuccessful and the student was removed in fall 2019 at approximately same time that the due process hearing concluded (Application of the Dep't of Educ., Appeal No. 20-158). At that

juncture, the parent sought another public school placement from the district, and soon thereafter the student was unilaterally placed at HH4K in December 2019 for the latter portion of the 2019-20 (third grade) school year (Parent Exs. D at pp. 1-2; E at p. 1; see Application of the Dep't of Educ., Appeal No. 20-158).[1] The parent commenced a second due process proceeding and prevailed again before another IHO after she determined that the district conceded during the hearing that it failed to offer the student a FAPE for the 2019-20 school year and that HH4K was an appropriate unilateral placement for the latter portion of the 2019-20 school year (Application of the Dep't of Educ., Appeal No. 20-158).[2]

With respect to the current administrative proceeding, the CSE convened once more on April 23, 2020 to conduct an annual review and develop an IEP for the student for the 2020-21 school year (fourth grade) (see generally Parent Ex. D). The April 2020 CSE found that the student continued to be eligible for special education services as a student with an emotional disturbance (id. at p. 1).[3] In addition, the April 2020 CSE recommended that the student receive five periods per week of integrated co-teaching (ICT) services for English language arts (ELA), math, social studies and science together with two 30-minute sessions of individual occupational therapy (OT) per week, two 30-minute sessions of individual speech-language therapy per week, one 30-minute session of group counseling per week, and two 30-minute sessions of individual counseling per week (id. at pp. 13-14).

In a letter to the district dated June 18, 2020, the parent indicated that she disagreed with the April 2020 CSE's recommendation that the student be placed in an ICT "classroom" and that she had not yet "received any placement recommendation letter" for the student (Parent Ex. E at p. 1). The parent further notified the district of her intent to unilaterally place the student at HH4K for the 2020-21 school year and that she would seek reimbursement for the costs of tuition and transportation from the district (id.).

The district issued a prior written notice and a "school location letter," both dated August 21, 2020, in which the district summarized the April 2020 CSE's recommendations and notified the parent of the particular public school site to which the district assigned the student to attend for the 2020-21 school year (Dist. Exs. 3-5).

A. Due Process Complaint Notice

In an amended due process complaint notice, dated September 2, 2020, the parent argued that the district failed to offer the student a free appropriate public education (FAPE) for the 2020-

[1] The Commissioner of Education has not approved HH4K as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

[2] The district had unsuccessfully defended the case on the basis that res judicata should preclude the second proceeding, but the IHO and SRO rejected that argument (Application of the Dep't of Educ., Appeal No. 20-158).

[3] The student's eligibility for special education as a student with an emotional disturbance is not in dispute (see 34 CFR 300.8[c][4]; 8 NYCRR 200.1[zz][4]).

21 school year (Parent Ex. B).[4] The parent further argued that the April 2020 CSE failed to recommend an "appropriate placement" for the student (id. at p. 4). Specifically, the parent argued that the April 2020 CSE inappropriately recommended that the student be placed in an ICT classroom in a nonspecialized district public school, despite the student's "extreme needs" and "struggles" (id. at p. 3). The parent also argued that although she advised the CSE that the student regularly engaged in physically aggressive behavior due to emotional dysregulation, the CSE failed to recommend a behavior paraprofessional for the student (id.). The parent contended that despite the student's "extreme behavioral issues" and classification as a student with an emotional disturbance, the student's April 2020 IEP did not reflect that the student needed "strategies, including positive behavioral interventions, supports and other strategies to address behaviors that impede the student's learning or that of others" nor dis the IEP indicate that the student needed a behavioral intervention plan (BIP) (id.). Next, the parent asserted that following the April 2020 CSE meeting, she did not receive a "school placement letter" (id.). With respect to the unilateral placement, the parent asserted that HH4K was an appropriate placement for the student because it provided the student with an individualized educational program, had behavioral experts on staff who implemented and updated the student's BIP, and that the student made "immense progress" (id. at p. 4). The parent further contended that equitable considerations weighed in her favor because she cooperated with the CSE and gave timely notice of her intent to unilaterally place the student at HH4K for the 2020-21 school year (id. at pp. 4-5).

As relief, the parent requested an order directing the district to pay for the cost of the student's tuition, related services, and transportation to and from HH4K for the 2020-21 school year (Parent Ex. B at p. 5). The parent also requested an interim decision directing the district to fund the student's pendency placement at HH4K until the conclusion of the hearing based on the unappealed September 2, 2020 IHO decision granting the parent tuition reimbursement for HH4K for the 2019-20 school year (id. at pp. 2, 5).

B. Impartial Hearing Officer Decision

On December 7, 2020 and December 14, 2020, respectively, the parent and district signed a document entitled "PENDENCY PROGRAM" whereby the district agreed to provide direct payment of the costs of the student's tuition at HH4K from the date of the filing of the original due process complaint notice related to the student's 2020-21 school year dated July 1, 2020 based on pendency (see Pendency Agreement; Tr. 4).[5] The parties agreed that pendency was based upon the September 2, 2020 IHO decision related to the student's 2019-20 school year which decision

[4] The original due process complaint notice related to the student's 2020-21 school year was dated July 1, 2020 and entered into the hearing record (Parent Ex. A). Additionally, in an order of consolidation dated July 9, 2020, the IHO who was appointed to hear the matter involving the student's 2019-20 school year denied the parent's request for consolidation of this matter with a due process complaint notice filed regarding the student's 2019-20 school year (see July 9, 2020 Interim Decision on Consolidation).

[5] The pendency document was submitted as part of the administrative record pursuant to 8 NYCRR 279.9.

was upheld by an SRO (Pendency Agreement; Application of the Dep't of Educ., Appeal No. 20-158).[6]

An impartial hearing convened on January 5, 2021, which concluded on March 5, 2021 after two days of proceedings (Tr. pp. 1-108). In a final decision dated March 13, 2021, the IHO determined that the district failed to establish that it offered the student a FAPE for the 2020-21 school year due to a lack of sufficient evidence (IHO Decision at p. 8). The IHO noted that producing a school location letter was not sufficient to establish that the district offered an appropriate placement (id.).

With respect to the unilateral placement portion of the Burlington/Carter analysis, the IHO found that based on the testimony and documents presented during the impartial hearing by the parent, HH4K was not an appropriate program for the student (IHO Decision at p. 14). Initially, the IHO noted that the parent failed to present the student's teacher, behavior technicians, board certified behavior analyst (BCBA), speech-language therapist, occupational therapist or paraprofessional as witnesses during the impartial hearing (id. at p. 9; see Tr. p. 59). The IHO also noted that there was no evidence that the BCBA who reviewed the data of the behavior technicians actually visited the student's class or observed the student (id.). Next, the IHO found that despite the recommendation for counseling in the April 2020 IEP and the student's disability category of emotional disturbance, the student did not have a counselor at HH4K in July 2020 and still did not have a counselor eight months into the school year (id.). The IHO further found that there was no credible evidence that the three behavior technicians at HH4K were qualified to work with the student in any capacity, including teaching academics, providing counseling or implementing any behavior plan for the student (id. at p. 10). Next, the IHO found that it was not possible to determine whether the student made progress because neither the director nor program director of HH4K had a clear understanding of the student's academic achievements (id. at pp. 10-11). In addition, the IHO found that the grouping of students at HH4K was inappropriate both "socially and academically" because students were grouped by age and diagnosis (id. at p. 11). Next, the IHO noted that despite the neuropsychological evaluation report indicating that the student required a social skills group twice per week, the student's schedule consisted of only 45 minutes dedicated to a "social-skills group" which included lunch, recess and social skills (id. at pp. 11-12). Next, the IHO found that although the student engaged in property destruction and dangerous behavior, the student did not have opportunities for sensory regulation at HH4K (id. at p. 12). The IHO further found that HH4K was not appropriate because it failed to include a gym for "[a]daptive" physical education, a sensory gym or physical therapy (PT) which was necessary for the student who was classified as a student with an emotional disturbance and had received a diagnosis of an intermittent explosive disorder (id. at p. 13). Ultimately, the IHO found that the record was devoid of evidence that the programming at HH4K addressed the student's social/emotional needs, especially the student's oppositional defiance disorder (id. at p. 14). The IHO also found that there was no evidence as to a professional person working with the student on a BIP (id.). The IHO also found that statements made by the program director at HH4K with respect to the student's progress both academically and behaviorally were not credible (id.). The IHO also found that there was no "logical need" for a paraprofessional in the classroom at HH4K

[6] The district noted on the "pendency program" that pendency is only retroactive to November 20, 2020, the date of Application of the Dep't of Educ., Appeal No. 20-158 (see Pendency Program Agreement).

because there were four students and four adults in the classroom (id.). With respect to the parent's request for tuition reimbursement at HH4K, the IHO found that the witnesses failed to present credible testimony for a base tuition of $150,000 (id.).

Having found the that the parent failed to establish that the unilateral placement was appropriate, the IHO denied the parent's request for tuition reimbursement for HH4K for the 2020-21 school year (IHO Decision at p. 15).

IV. Appeal for State-Level Review

The parent appeals, arguing that the IHO erred in finding that HH4K was not an appropriate unilateral placement. The parent limits the scope of her appeal and argues that the IHO held HH4K to an improper standard, misstated the facts and refused to admit crucial evidence. Specifically, the parent asserts that the IHO erred in excluding relevant documentary evidence which would refute the IHO's finding the HH4K staff was not properly credentialed as well as support the parent's claim that HH4K was an appropriate unilateral placement for the student. The parent also asserts that the IHO inaccurately applied the Burlington/Carter standard because the IHO failed to consider the student's progress in the school year prior to the 2020-21 school year when determining the appropriateness of HH4K. The parent also argues that the IHO expressed a "clear bias and blatant disregard for impartiality and truthfulness" in explaining the program director's testimony regarding the student's progress and finding her testimony not credible. Lastly, the parent argues that the IHO erred in demanding that the parent justify the costs of the student's tuition at HH4K and determining that the tuition costs of HH4K were "excessive" because equitable considerations "do not fall on the [p]arent."

In an answer, the district argues that the request for review should be dismissed and that the IHO's decision should be upheld to the extent that it denied the parent's request for tuition reimbursement for HH4K for the 2020-21 school year because the parent failed to sustain her burden of establishing that HH4K was an appropriate unilateral placement to meet the student's needs. The district further argues that the parent's claims that the IHO misapplied the law, restricted the witnesses' testimony and excluded evidence, are not relevant to the issue of whether HH4K was an appropriate unilateral placement for the student. The district also argues that the parent's claim that the IHO exhibited bias is unsupported by the record. Lastly, the district contends that the IHO was within his discretion to make a determination that a paraprofessional was not needed in the classroom at HH4K and that the evidence in the hearing record did not support the parent's request for tuition reimbursement in the amount of $150,000.

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]).[7]

A board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents, if the services offered by the board of education were inadequate or inappropriate, the services selected by the parents were appropriate, and equitable considerations support the parents' claim (Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 [1993]; Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369-70 [1985]; R.E., 694 F.3d at 184-85; T.P., 554 F.3d at 252). In Burlington, the Court found that Congress intended retroactive reimbursement to parents by school officials as an available remedy in a proper case under the IDEA (471 U.S. at 370-71; see Gagliardo, 489 F.3d at 111; Cerra, 427 F.3d at 192). "Reimbursement merely requires [a district] to belatedly pay expenses that it should have paid all along and would have borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148).

The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see R.E., 694 F.3d at 184-85).

VI. Discussion

A. Preliminary Matters

1. Compliance with Practice Regulations

Before turning to the merits of the parent's appeal, it is necessary to address the compliance of the request for review with Part 279.

State regulation provides that a request for review "shall clearly specify the reasons for challenging the [IHO's] decision, identify the findings, conclusions, and orders to which exceptions are taken, or the failure or refusal to make a finding, and shall indicate what relief

[7] 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).

should be granted by the [SRO] to the petitioner" (8 NYCRR 279.4[a]). Additionally, the request for review "must conform to the form requirements in section 279.8 of this Part" (id.). Section 279.8 requires that a request for review shall set forth:

> (1) the specific relief sought in the underlying action or proceeding;
>
> (2) a clear and concise statement of the issues presented for review and the grounds for reversal or modification to be advanced, with each issue numbered and set forth separately, and identifying the precise rulings, failures to rule, or refusals to rule presented for review; and
>
> (3) citations to the record on appeal, and identification of the relevant page number(s) in the hearing decision, hearing transcript, exhibit number or letter and, if the exhibit consists of multiple pages, the exhibit page number.

(8 NYCRR 279.8[c]).

First, I note that the request for review fails to comply with the 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 the instant 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 numbering the issues which the parent is advancing on appeal. 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.[8]

In general, the failure to comply with the practice requirements of Part 279 of the State regulations may result in the rejection of the submitted documents or a determination excluding issues from the scope of review on appeal (8 NYCRR 279.8[a]-[b]; see Davis v. Carranza, 2021 WL 964820, at *12 [S.D.N.Y. Mar. 15, 2021] [upholding an SRO's conclusions that several claims had been abandoned by the petitioner]; M.C. v. Mamaroneck Union Free Sch. Dist., 2018 WL 4997516, at *23 [S.D.N.Y. Sept. 28, 2018] [upholding dismissal of allegations set forth in an appeal to an SRO for "failure to identify the precise rulings presented for review and [failure] to cite to the pertinent portions of the record on appeal, as required in order to raise an issue" for review on appeal]; T.W. v. Spencerport Cent. Sch. Dist., 891 F. Supp. 2d 438, 440-41 [W.D.N.Y.

[8] Part 279 of the practice regulations was amended, effective January 1, 2017, and while the former regulations mandated that "pleadings shall set forth the allegations of the parties in numbered paragraphs" (8 NYCRR 279.8[a][former 3]), that requirement was explicitly repealed in the practice regulations as amended (see 8 NYCRR Part 279). The regulations, as amended, neither require nor preclude a party from using numbered paragraphs in their pleadings but they mandate that the parties number the issues that they advance for review on appeal (8 NYCRR 279.8[c][2]).

2012] [upholding dismissal of a petition for review that was untimely and exceeded page limitations]).

Here, the level of compliance with the request for review continues to be problematic in that the parent's attorney has previously been cautioned regarding his noncompliance with current practice regulations on several occasions. In Application of a Student with a Disability, Appeal 21-062, the undersigned identified the same issues as in the instant case for failing to comply with the form requirements of Part 279 of State regulations and provided the parent's attorney with the Office of State Review's website, which provides additional guidance on how to prepare pleadings in compliance with practice regulations and assistance, including sample forms for what is expected in a request for review and memorandum of law.

Similarly, in Application of a Student with a Disability, Appeal No. 21-085, parent's counsel was admonished for his noncompliance. The undersigned noted that numerous attorneys at the law firm representing the parent have engaged in a similar pattern of noncompliance with the requirements of Part 279. The undersigned further cautioned the parent's counsel that "these practices must be corrected in future filings or risk outright dismissal."

Upon receipt of the current decision in together with the prior admonitions in Application of a Student with a Disability, Appeal No. 21-062 and Application of a Student with a Disability, Appeal No. 21-085, parent's counsel should be sufficiently warned of the potential (now likely) consequence of his repeated failures to conform papers submitted to the Office of State Review with the regulations currently in effect. Under the circumstances, I will refrain from rejecting the parent's pleading for failure to comply with practice regulations but strongly caution parent's counsel to prepare his submissions with more care in any future matters filed with the Office of State Review as repeated excusal of practice regulation violations without prejudice is not tenable indefinitely. To this end, counsel for the parent is urged to carefully review and comply with the current requirements of Part 279 of State regulations and examine the requests for review and model forms that have been published as guidance by the Office of State Review (see https://www.sro.nysed.gov/book/prepare-appeal).

2. Scope of Review

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

A review of the allegations in the parent's request for review reveals that the parent has not challenged several of the IHO's adverse determinations related to the appropriateness of HH4K for the student. Specifically, the parent has not appealed the IHO's determinations that the student did not have counseling as a related service or that HH4K was inappropriate both "socially and

academically" for the student (IHO Decision at pp. 10-11). Further, the parent has not challenged the IHO's determination that despite the neuropsychological evaluation report indicating that the student required a social skills group twice per week, the student's schedule consisted of only 45 minutes dedicated to "social-skills group" which included lunch, recess and social skills (id. at pp. 11-12).[9] Additionally, the parent did not appeal the IHO's finding that the student did not have sensory regulation opportunities, a gym for adapted physical education, a sensory gym or PT at HH4K (id. at p. 12). The parent also does not appeal the IHO's finding that the record was devoid of evidence that the program at HH4K addressed the student's social/emotional needs, especially the student's oppositional defiance disorder or that there was no evidence regarding a professional person working with the student on a BIP (id. at p. 14). Lastly, the parent does not appeal the IHO's finding that there was no "logical need" for a paraprofessional in the classroom at HH4K (id.).

Finally, the district has not cross-appealed from the IHO's determination that it failed to offer the student a FAPE for the 2020-21 school year. Therefore, the IHO's determinations on these issues have become final and binding and they will not be reviewed on appeal (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; see M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6-*7, *10 [S.D.N.Y. Mar. 21, 2013]).

3. IHO Bias

With respect to the parent's argument that the IHO expressed a clear bias and blatant disregard for impartiality when alleging facts in this decision, 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 (see, e.g., Application of a Student with a Disability, Appeal No. 12-064).

In this case, the hearing record does not support a finding that the IHO failed to act impartially or exhibited a clear bias. Furthermore, there is no allegation that the IHO displayed

[9] The IHO listed several recommendations from the 2018 neuropsychological evaluation report and made specific findings on which recommendations were not provided to the student at HH4K in his analysis of the appropriateness of HH4K (IHO Decision at pp. 11-13). On appeal, the parent generally indicates, without specificity, that the IHO made a finding that HH4K "d[id] not meet the recommendations of the 2018 neuropsychological evaluation…[D]espite being an inaccurate description, that is also not the legal standard" (Req. for Rev. at ¶ 27). The IHO's explanation is far more detailed and clear than the parent's, and the parent does not assert that the IHO was not permitted to consider the student's needs and the recommendations of the evaluator related thereto, which appear to be relevant to the disputed issues. Accordingly, this allegation as written is too broad and vague to be a permissible challenge to the IHO's determinations. It is not an SRO's role to research and construct the appealing parties' arguments or guess what they may have intended (see, e.g., Gross v. Town of Cicero, 619 F.3d 697, 704 [7th Cir. 2010][appellate review does not include researching and constructing the parties' arguments]; Fera v. Baldwin Borough, 2009 WL 3634098, at *3 [3rd Cir. Nov. 4, 2009][a party on appeal should at least identify the factual issues in dispute]; Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 841 [10th Cir. 2005][generalized assertion of error on appeal is not sufficient]).

any bias during the impartial hearing. To the contrary, the parent indicated in her memorandum of law that the IHO's conduct during the hearing "did not exhibit bias" but that "bias can be inferred from [the IHO's] decision" (Parent Mem. of Law. at p. 10). To the extent that the parent disagrees with the IHO's credibility findings or conclusion reached by the IHO based on statements in the hearing record, such disagreement does not provide a basis for finding actual or apparent bias by the IHO (see Chen v. Chen Qualified Settlement Fund, 552 F.3d 218, 227 [2d Cir. 2009] [finding that "[g]enerally, claims of judicial bias must be based on extrajudicial matters, and adverse rulings, without more, will rarely suffice to provide a reasonable basis for questioning a judge's impartiality"]; see also Liteky v. United States, 510 U.S. 540, 555 [1994] [identifying that "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion"]; Application of a Student with a Disability, Appeal No. 13-083).

While the IHO may have been terse in his discussion of the student's progress based on the testimony of the director and program director from HH4K, 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 or in his decision. As a result, there is no basis to conclude that the IHO acted with bias in this matter.

4. Misapplication of the Legal Standard

With respect to the parent's argument that the IHO misapplied the Burlington/Carter standard, a review of the evidence in the hearing record indicates that the parent's argument is without merit. On appeal, the parent argues that during the impartial hearing, the IHO limited the testimony from the program director at HH4K to discussing the student's progress during the 2020-21 year and refused to hear testimony regarding the student's progress prior to the 2020-21 school year (Tr. p. 68). Essentially, the parent's argument amounts to a theory that the student's progress during a preceding school year should bind the IHO to the same determination for the 2020-21 school year. However, the parent offer no legal support for such bootstrapping. For purposes of a tuition reimbursement claim, each school year must be treated separately (see M.C. v. Voluntown Bd. of Educ., 226 F.3d 60, 67 [2d Cir. 2000] [examining the prongs of the Burlington/Carter test separately for each school year at issue]; Omidian v. Bd. of Educ. of New Hartford Cent. Sch. Dist., 2009 WL 904077, at *21-*26 [N.D.N.Y. Mar. 31 2009] [analyzing each year of a multi-year tuition reimbursement claim separately]; Student X v. New York City Dep't of Educ., 2008 WL 4890440, at *16 [E.D.N.Y. Oct. 30, 2008]). The IHO did not abuse his discretion and correctly rejected this theory. The parent's evidence with respect to prior progress is not considered because the parent's due process complaint notice in this proceeding only raised claims concerning the 2020-21 school year, each school year is separately considered in any event, and only claims with respect to the 2020-21school year are properly resolved in this proceeding. In short, if the parent wished to establish the student's progress at HH4K to support the 2020-21 tuition reimbursement claim, she should have listened to the IHO's concern and produced evidence of the student's progress at HH4K during the 2020-21 school year. Therefore, the parent's arguments to the contrary are without merit.

B. Appropriateness of the Unilateral Placement

Turning to the parent's substantive challenges to the IHO's conclusion that HH4K was not an appropriate unilateral placement for the student, a private school placement must be "proper

under the Act" (Carter, 510 U.S. at 12, 15; Burlington, 471 U.S. at 370), i.e., the private school offered an educational program which met the student's special education needs (see Gagliardo, 489 F.3d at 112, 115; Walczak, 142 F.3d at 129). A parent's failure to select a program approved by the State in favor of an unapproved option is not itself a bar to reimbursement (Carter, 510 U.S. at 14). The private school need not employ certified special education teachers or have its own IEP for the student (Carter, 510 U.S. at 13-14). Parents seeking reimbursement "bear the burden of demonstrating that their private placement was appropriate, even if the IEP was inappropriate" (Gagliardo, 489 F.3d at 112; see M.S. v. Bd. of Educ. of the City Sch. Dist. of Yonkers, 231 F.3d 96, 104 [2d Cir. 2000]). "Subject to certain limited exceptions, 'the same considerations and criteria that apply in determining whether the [s]chool [d]istrict's placement is appropriate should be considered in determining the appropriateness of the parents' placement'" (Gagliardo, 489 F.3d at 112, quoting Frank G. v. Bd. of Educ. of Hyde Park, 459 F.3d 356, 364 [2d Cir. 2006]; see Rowley, 458 U.S. at 207). Parents need not show that the placement provides every special service necessary to maximize the student's potential (Frank G., 459 F.3d at 364-65). When determining whether a unilateral placement is appropriate, "[u]ltimately, the issue turns on" whether the placement is "reasonably calculated to enable the child to receive educational benefits" (Frank G., 459 F.3d at 364; see Gagliardo, 489 F.3d at 115; Berger v. Medina City Sch. Dist., 348 F.3d 513, 522 [6th Cir. 2003] ["evidence of academic progress at a private school does not itself establish that the private placement offers adequate and appropriate education under the IDEA"]). A private placement is appropriate if it provides instruction specially designed to meet the unique needs of a student (20 U.S.C. § 1401[29]; Educ. Law § 4401[1]; 34 CFR 300.39[a][1]; 8 NYCRR 200.1[ww]; Hardison v. Bd. of Educ. of the Oneonta City Sch. Dist., 773 F.3d 372, 386 [2d Cir. 2014]; C.L. v. Scarsdale Union Free Sch. Dist., 744 F.3d 826, 836 [2d Cir. 2014]; Gagliardo, 489 F.3d at 114-15; Frank G., 459 F.3d at 365).

The Second Circuit has set forth the standard for determining whether parents have carried their burden of demonstrating the appropriateness of their unilateral placement.

> No one factor is necessarily dispositive in determining whether parents' unilateral placement is reasonably calculated to enable the child to receive educational benefits. Grades, test scores, and regular advancement may constitute evidence that a child is receiving educational benefit, but courts assessing the propriety of a unilateral placement consider the totality of the circumstances in determining whether that placement reasonably serves a child's individual needs. To qualify for reimbursement under the IDEA, parents need not show that a private placement furnishes every special service necessary to maximize their child's potential. They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction.

(Gagliardo, 489 F.3d at 112, quoting Frank G., 459 F.3d at 364-65).

Testimony from the director and program director describes HH4K as a 12-month 1:1 therapeutic school setting for 21 students ages 5 to 11 years old of "varying disabilities and

diagnoses" including autism, ADHD, and oppositional defiant disorder (see Tr. pp. 32, 40, 54, 59, 60-61). According to the program director, HH4K used applied behavior analysis (ABA) principles and focused on developing functional skills across all settings (Tr. pp. 59-60). She continued that BCBAs developed "all of the programming" and together with the registered behavior technicians (RBTs) "collect[ed] data on everything that we're doing with the children" (Tr. pp. 59-60, 78-79).[10] The director testified that HH4K functioned similar to a school placement in that students generally attended Monday through Friday from 9 a.m. to 3 p.m., during which they received "academic instruction as well as behavioral support" (Tr. p. 32). The director stated that academic instruction was "individually tailored" for each student, and when students were not receiving instruction from the lead teacher, they received instruction—including academic instruction—from one of the RBTs (Tr. pp. 50-51). All of the students at HH4K received speech-language therapy, and the majority received OT (Tr. pp. 54-55).[11]

In particular, the parent appeals from the IHO's determinations that HH4K was not an appropriate unilateral placement for the student during the 2020-21 school year because of the credentials of HH4K staff and that the program director's testimony about the student's academic and behavioral progress was not credible.

Turning first to the IHO's determination regarding the qualifications of HH4K staff, the director testified that during the 2020-21 school year HH4K placed the student in a class of four students and five adults (Tr. pp. 43-44). According to the director, in the student's class the lead teacher provided instruction by rotating through each student every 45 minutes, the RBTs also rotated through the remaining students, and the additional paraprofessional in the room stayed with the student (see Tr. pp. 36, 44, 46-50). The student had both 1:1 RBTs who "work[ed] on instruction with him" as well as a 1:1 paraprofessional "to deal with occasional explosive behavior outbursts" and for when he "need[ed] physical intervention to remain safe and keep others safe around him" (see Tr. pp. 33, 42, 43). According to the director, the student's "lead teacher" held a master's degree, although he did not know in what area (Tr. p. 46). Regarding the other adults in the room, the director testified that all of the RBTs held bachelor's degrees and were "certified" RBTs, although he did not know the nature of their educational degrees (see Tr. pp. 46-49).[12] The program director testified that to obtain their "registration" as an RBT, all but one of the RBTs had completed a 40-hour training program HH4K used entitled "Rethink," after which there was "a competency assessment and an exam that ha[d] to be passed" (Tr. pp. 64-65). Although the student received academic instruction from the RBTs, the director acknowledged that they were not certified teachers and he did not know whether any of the RBTs were certified to provide special

[10] The director referred to the classroom RBTs as "behavioral therapists," "educational therapists," and "academic therapists" (see Tr. pp. 33, 42, 44). For consistency in this decision, those staff will be referred to as RBTs (see Tr. pp. 44, 47-49).

[11] Despite past closures due to COVID-19, the director stated that HH4K had been "fully on site" since July 2020, although HH4K did develop a "[r]emote [s]chedule" for the 2020-21 school year (Tr. pp. 41-42, 55-56; see Parent Ex. M).

[12] While he was not sure of the educational degree the paraprofessional held, the director stated that the paraprofessional was also an RBT (Tr. p. 49).

education instruction (Tr. p. 51). The program director stated that all of the RBTs worked "directly under" BCBAs (Tr. p. 78).

The IHO was critical of the training the RBTs received, and their qualifications to work with the student and address his needs (see IHO Decision at pp. 9-10, 12, 14). The parent did not present much evidence regarding the type of training program, what the training entailed, and what agency provided the actual certification; however, the standard for parents to show that the unilateral placement is appropriate does not include a requirement that the school employ certified RBTs or special education teachers. Furthermore, teachers at a unilateral placement need not be State-certified (Carter, 510 U.S. 7, 14 [noting that unilateral placements need not meet state standards such as state certification for teachers]); however, there must be objective evidence of special education instruction or supports that are specially designed by the student's providers at the private school who have reasonable qualifications (see Hardison v. Bd. of Educ. of the Oneonta City Sch. Dist., 773 F.3d 372, 387 [2d Cir. 2014]). In the instant case, although the objective evidence regarding the RBT 40-hour training program and the certification exam is sparse, the evidence also did not clearly establish that HH4K was merely a "glorified and overpriced babysitter location" (Tr. p. 105) because of the RBTs' training, role in the student's classroom, or ability to provide instruction to the student. While I would have encouraged greater record development regarding specific staff members and their personal qualifications in this instance, as the available evidence is both very sparse and at the same time unrefuted, I find it difficult to reach the conclusion that 40 hours of RBT training was sufficient to show that they were qualified to instruct the student without knowing more about the particular individuals and their other skillsets. The testimonial evidence provided very little assistance in that regard.

Relatedly, the parent contends that the IHO erred by excluding evidence about the qualifications of HH4K staff and the appropriateness of HH4K. Specifically, the parent argues that the IHO failed to enter multiple documents into the hearing record, including Parent Exhibits F and L, which are the program description for HH4K and a remote learning program description for HH4K, respectively. However, review of the documents indicates that the IHO did not abuse his discretion by refusing to enter these documents into the hearing record, as they contain a general description of the program and are not individualized to the student. Although the parent argues that these documents also prove the qualifications of the HH4K staff, they appear to be generic promotional materials, do not identify the student's teachers, and provide no more information about the staff holding the RBT certification, as such, the IHO did not err in excluding them.[13] In addition, Parent Exhibits Q and R are also not necessary for my review as they are either similarly general, or not specific to the school year in question. Consequently, I find that the IHO did not abuse his discretion in excluding these exhibits. In the end, the staffing qualifications issue is not dispositive of all of the hurdles that the parent faces in establishing that HH4Ks was appropriate for the student.

Next, the parent appeals the IHO's determination that the program director's testimony regarding the progress the student made academically and behaviorally was "not credible" (IHO Decision at p. 14). Academically, the program director testified that "across the board" in reading,

[13] The remainder of the evidence in the hearing record does not indicate that all staff at HH4K hold all of the certifications and training listed in the promotional materials.

writing, and math in particular, the student continued to make progress, gain knowledge and was "excelling" (Tr. pp. 69-70). Regarding the student's behavior, the program director testified that HH4K took data on a daily basis to determine the changes and modifications staff made to determine whether what they were doing was working, and to determine a baseline of where they were starting (Tr. pp. 74-75). As to behavioral progress, the program director testified since July 2020 the student was "steadily decreasing the amount of time that he [was] engaging in some of the behaviors," specifically, the student had engaged in high rates of spitting but was no longer exhibiting that behavior (Tr. pp. 68-69, 75-76). Additionally, the program director's testimony reflected that the student was engaging in lower rates of aggressive behavior toward others, although he continued to engage in using inappropriate language, property destruction and "dangerous behavior" (Tr. pp. 69, 75-76, 83-84). While the program director stated that the student was making "steady progress" when he was "available," there were "a lot of times when those behaviors [got] in the way" of the student being able to sit and participate in learning (Tr. p. 70). However, the program director opined that the student was "starting to develop some coping mechanisms" that he had learned at HH4K (Tr. p. 69).

The program director opined that HH4K was able to meet the student's needs with the supports in place, he required a "very restrictive setting" and he was "making some significant progress" (Tr. p. 76). However, the hearing record does not contain any behavioral data, progress reports, report cards, or other documentation to overcome the IHO's finding that the program director's testimony regarding the student's progress was not credible (see Parent Exs. A-E; G-I; K; M-P; R; Dist. Exs. 1-5). Rather, the only other information in the hearing record regarding progress aside from the program director's testimony, is the testimony from the director and the parent, which upon review, is vague at best. For example, the director stated that he could speak "very generally" and opined that the student had "made some good progress" in that the "instances of significant violence ha[d] decreased" although the director was not "able to speak to the actual data in terms of percentages of decrease" (Tr. p. 41). From his casual observation, the amount of times that the student required "full physical assistance to remain regulated ha[d] decreased" since the student had been at the school (Tr. p. 41). With respect to academic skills, the director added that "generally, [the student's] academics [were] improving" (Tr. p. 41). The parent testified that since starting at HH4K, the student had been "doing great" in that he was "excited" about his teachers and academics and was more aware of and understood "right from wrong" behaviorally (Tr. pp. 91-92). She stated that the student had exhibited academic progress in writing, math, and reading because he was taking more time to learn rather than becoming upset and frustrated, and that he was "happy" (Tr. pp. 91-93). An SRO gives due deference to the credibility findings of an IHO unless non-testimonial evidence in the hearing record justifies a contrary conclusion or the hearing record, read in its entirety, compels a contrary conclusion (see Carlisle Area Sch., 62 F.3d at 524, 528-29; P.G. v. City Sch. Dist. of New York, 2015 WL 787008, at *16 [S.D.N.Y. Feb. 25, 2015]; M.W. v. New York City Dep't of Educ., 869 F. Supp. 2d 320, 330 [E.D.N.Y. 2012], aff'd 725 F.3d 131 [2d Cir. 2013]; Bd. of Educ. of Hicksville Union Free Sch. Dist. v. Schaefer, 84 A.D.3d 795, 796 [2d Dep't 2011]; Application of a Student with a Disability, Appeal No. 12-076). The IHO was in the best position to evaluate the testimony and did not find it credible, and absent other information describing the specific skills HH4K was addressing and how the student made progress toward those skills, the evidence is not sufficient to overturn the IHO's finding on this issue. Further, although the parent cites to the January 2019 CSE's determination that the student's reading and math skills were at a second grade level and its April 2020 determination that his reading skills were at a third grade level and his math skills at a fourth grade level as evidence that

the student made progress, the student did not begin attending HH4K until December 2019, and the hearing record affords no basis to assign any progress the student might have made in reading and math solely to the program he received at HH4K (see Tr. pp. 96-97; compare Parent Ex. C at p. 12, with Parent Ex. D at p. 18).

Therefore, the evidence in the hearing record is not sufficient to overturn the IHO's finding that the program director's testimony regarding the student's progress was not credible. Furthermore, as described above, the parent has failed to appeal many of the IHO's adverse factual findings regarding the appropriateness of the student's programming at HH4K during a portion of the 2020-21 school year and those determinations have become final and binding upon the parent. On this evidentiary record, there is insufficient basis to overturn the IHO's denial of the parent's request for tuition reimbursement at HH4K.

VII. Conclusion

Having determined that there is insufficient reason to overturn the IHO's determination that the parent failed to sustain her burden to establish the appropriateness of the student's unilateral placement at HH4K for the 2020-21 school year for an award of tuition reimbursement, the necessary inquiry is at an end and I need not reach the issue of whether equitable considerations weighed in favor of the parent's request for relief (M.C. v. Voluntown Bd. of Educ., 226 F.3d 60, 66 [2d Cir. 2000]).

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

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
June 7, 2021

JUSTYN P. BATES
STATE REVIEW OFFICER