



The University of the State of New York

The State Education Department
State Review Officer

No. 07-004

Application of a CHILD WITH A DISABILITY, by his parent, for review of a determination of a hearing officer relating to the provision of educational services by the Board of Education of the City School District of the City of Glens Falls

Appearances:

Bartlett, Pontiff, Stewart & Rhodes, P.C., attorney for respondent, Martin D. Auffredou, Esq., of counsel

DECISION

Petitioner appeals from the decision of an impartial hearing officer which determined that petitioner's son was denied a free appropriate public education (FAPE) for the 2005-06 and 2006-07 school years but did not sustain all of petitioner's claims regarding the services recommended by respondent's Committee on Special Education (CSE). The appeal must be dismissed.

At the commencement of the impartial hearing on September 27, 2006, petitioner's son was 17 years old and attending tenth grade at respondent's high school (Tr. p. 24). A private neuropsychological evaluation conducted in October 2005 indicated that the student presented with characteristics consistent with a diagnosis of "autism (high functioning)" (Parent Exs. 37 at pp. 12-13; 63 at p. 2; Dist. Ex. 2 at p. 3). The student's eligibility for special education programs and classification as a student with autism are not in dispute (see 8 NYCRR 200.1[zz][1]).

Petitioner's son was reportedly nonverbal until age three (Parent Ex. 37 at p. 3). The student attended preschool (Tr. p. 202), where he received speech-language therapy, occupational therapy, physical therapy and counseling (Parent Ex. 50 at p. 2). He was subsequently classified as eligible for special education services as a student with multiple disabilities and enrolled in a 12:1+1 specialized classroom at respondent's elementary school (Parent Ex. 51 at p. 3). While in that setting his speech and language were described as delayed, he reportedly made minimal academic progress, and behavioral concerns were reported (id.). He attended first grade in a 15:1+1 classroom, where his behavior deteriorated to the extent that he required admission to a psychiatric hospital (id.). After discharge, the student was placed in a 6:1+1 classroom at a Board of Cooperative Educational Services (BOCES) center, where he received speech-language therapy, occupational therapy, physical therapy and counseling (id.). The student had two more psychiatric

hospital admissions, and then he was home schooled for second grade, during which time he reportedly received no special education services (Parent Exs. 37 at p. 4; 50 at p. 3). While hospitalized he received diagnoses of an attention deficit hyperactivity disorder (ADHD), oppositional defiant disorder (ODD), and disruptive behavior disorder, not otherwise specified (Parent Ex. 37 at p. 3).

After being home schooled (Parent Exs. 37 at p. 3; 50 at p. 3), the student was enrolled at the Oakhill School (Oakhill) in fall 1999 and remained there through June 2003 (Parent Ex. 50 at p. 3). Oakhill was described in the record as a "specialized school for children with severe emotional, behavioral and learning needs" (Parent Ex. 37 at p. 3). Prior to his enrollment at Oakhill, the student received intensive case management services from the Center for Children and Families, where he was given diagnoses of "attention deficit hyperactivity disorder and emotional disturbance" (Parent Ex. 50 at p. 3).

For the 2003-04 school year, the student attended eighth grade at respondent's middle school, where he was classified as a student with an emotional disturbance and placed in a 6:1+1 self-contained special education classroom and received speech-language therapy and counseling (Parent Exs. 37 at p. 2; 51 at p. 7).

In February and March 2004, when the student was 15 years old and in the eighth grade, as part of the student's "triennial review" respondent conducted a psychoeducational evaluation (Parent Ex. 95). Administration of the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV) yielded a full scale IQ score of 85, which was in the 16th percentile and in the low range of cognitive functioning (Parent Ex. 95 at p. 3). During this same evaluation, the student's eighth grade teacher completed the Scale for Assessing Emotional Disturbance (SAED) (Parent Ex. 95 at p. 4). Results of the teacher rating yielded an SAED quotient of 133, which was above the quotient average of 100, and identified significant concerns in all subscale areas, which include inability to learn (75th percentile), relationship problems (98th percentile), inappropriate behavior (91st percentile), unhappiness or depression (98th percentile) and physical symptoms of fear (98th percentile) (Parent Ex. 95 at pp. 3-4). The evaluator noted that the student continued to meet the criteria for classification as a student with an emotional disturbance and recommended a structured learning environment with a smaller student-to-teacher ratio, as well as counseling to address his social and emotional difficulties (Parent Ex. 95 at p. 6).

The student attended ninth grade at respondent's high school during the 2004-05 school year, where he was placed in a 12:1+1 special education classroom, was mainstreamed for physical education and electives, and received speech-language therapy, counseling, and skilled nursing services (Parent Ex. 37 at p. 2).

A BOCES vocational assessment report dated February 17, 2005 indicated that the student demonstrated significantly below average overall fine and gross motor skills, with his greatest strength being "low average" lower body coordination (Parent Ex. 47 at p. 4). Mild weaknesses were noted in the student's upper body coordination, ability to perform slow controlled fine movements, and bimanual speed and coordination (id.). More significant weaknesses were observed in the student's overall balance, fine motor speed and upper and lower body strength (id.). However, while working the student was able to pick up and manipulate large and small objects (id.). During the vocational assessment, the student expressed that he had an interest in building

or construction trades (Parent Ex. 47 at p. 5). The results of the student's inventory reflected that he also had interests in nature, creative arts, and food services, and that he would be most successful within planning, designing, material handling, and/or the tool and parts attendant aspects of his fields of interest (id.).

A subcommittee of the CSE met on June 14, 2005 to conduct an annual review and develop the student's individualized education program (IEP) for the 2005-06 school year (Dist. Ex. 3A). The student's special education teacher reported to the subcommittee that all of the student's grades were in the A to B range and that he was expected to be promoted to the tenth grade (Dist. Ex. 3A at p. 11). Respondent's physical education teacher indicated that the student was not cooperative with changing his clothes for physical education (id.). Respondent's speech pathologist indicated to the subcommittee that the student was somewhat resistant to participation in therapy (id.). A private consultant who was monitoring the student's specialized reading instruction program indicated that the student was making "steady progress" and was "working hard" (id.). Respondent's school psychologist indicated to the subcommittee that the student was making progress in his individual therapy sessions (id.). The subcommittee agreed that the student's classification should remain as a student with an emotional disturbance (Dist. Ex. 3A at p. 1). The June 14, 2005 IEP indicated that the student was working toward receiving an IEP diploma and that he was eligible for extended school year (ESY) services (id.). According to the June 14, 2005 CSE meeting information notes, petitioner agreed on the amount and kind of ESY services for the upcoming summer (Dist. Ex. 3A at p. 11).¹ Petitioner also agreed with the other members of the subcommittee that the June 14, 2005 IEP should include a half-day vocational education program (Dist. Ex. 3A at pp. 1, 11). Petitioner requested that the subcommittee consider reclassifying her son as a student with a learning disability and requested further evaluation (Dist. Ex. 3A at p. 12). The subcommittee chairperson agreed and indicated to petitioner that a CSE meeting would be necessary after evaluations were completed (id.).

A private pediatric occupational therapy evaluation of the student was conducted on July 13, 2005 (Parent Ex. 73). On the Berry Buktenica Developmental Test of Visual Motor Integration, a test that required the student to copy increasingly difficult forms from a picture, the student was noted to use an age-appropriate tripod grasp with his pencil throughout the evaluation (Parent Ex. 73 at p. 3). The private occupational therapist opined that the student's errors with testing were "secondary to sub-optimal effort and rapid answer making" (Parent Ex. 73 at p. 5). The private occupational therapist did not recommend occupational therapy (id.).

The student was referred by his physician for a private physical therapy evaluation on July 14, 2005 (Parent Ex. 46). As assessed by the Bruininks-Oseretsky Test of Motor Proficiency, the student demonstrated below average muscle strength (Parent Ex. 46 at p. 2). The private physical therapist noted that the student's gross motor skills were significantly below average for running speed, agility, balance, strength, and bilateral coordination (id.). The private physical therapist recommended that the student receive physical therapy two to three times per week, and that he receive services individually due to his emotional and behavioral concerns (id.). The private

¹ I note, however, that petitioner alleged at the impartial hearing that the CSE meeting minutes, in general, were inaccurate (Tr. pp. 1446-47).

physical therapist also provided instructions for a home exercise program and recommended that the student complete this program during the summer (id.).

A private speech-language pathologist and pediatric coordinator (Parent Ex. 51 at p. 13) conducted a "review of records" from the Sunnyview Hospital and Rehabilitation Center (Sunnyview) on July 14, 2005 and July 19, 2005 (Parent Ex. 51). The private speech-language pathologist noted that when the student became frustrated he may react by crying and/or with physical/verbal aggression (Parent Ex. 51 at p. 12). The evaluator indicated that petitioner reported that taking things or privileges away from her son, in addition to using calming techniques, was usually ineffective (id.). The report indicated that the student gravitated toward younger children, but found it easier to relate to adults (id.). The private speech-language pathologist noted that the student performed best in a structured setting with clear expectations and some flexibility (id.).

On July 18, 2005 another private speech-language pathologist from Sunnyview recommended that the student continue to receive speech-language therapy at school to address his oral motor weakness and articulation disorder (Parent Ex. 61 at p. 1). In addition, the private speech-language pathologist recommended that, at home, the student practice oral motor activities developed by the speech-language pathologist (id.).

On July 19, 2005 a speech and language learning evaluation of the student was conducted during the course of a full-day evaluation at Sunnyview by the same private speech-language pathologist who reviewed the student's records on July 14, 2005 (Parent Ex. 52 at p. 12; see Parent Ex. 51 at p. 13). Administration of the Peabody Picture Vocabulary Test III, Form A (PPVT-A) revealed that the student demonstrated a good understanding of single word vocabulary (Parent Ex. 52 at pp. 12-13). However, the evaluator noted that the student displayed an "impulsive response style" and looked toward the examiner for reassurance that his answers were appropriate (Parent Ex. 52 at p. 13). Administration of the Oral and Written Language Scales (OWLS) yielded standard (and percentile) scores of 77 (6th) in listening comprehension, 85 (16th) in oral expression, and an oral composite score of 79 (8th) (id.). The evaluator reported that the student's performance on the listening comprehension subtests was reflective of moderate deficits as information increased in length or complexity (id.). On the Clinical Evaluation of Language Fundamentals-4 (CELF-4), the student's performance yielded a core language composite score in the second percentile (severe deficit range), a receptive language composite score in the 0.4th percentile (severe deficit range) and an expressive language composite score in the fifth percentile (moderate deficit range) (Parent Ex. 52 at p. 14). His composite scores for language content and language memory (first percentile) and for working memory (second percentile) were in the severe deficit range (id.). On the comprehensive test of phonological processing, the student achieved a "below average" ranking in phonological awareness, phonological memory and rapid naming (Parent Ex. 52 at p. 20). The private speech-language pathologist and pediatric coordinator recommended that petitioner's son continue to receive speech-language therapy twice a week (Parent Ex. 52 at p. 25).

A private auditory processing evaluation of the student was conducted on August 19, 2005 (Parent Ex. 60). Given the student's language difficulties and borderline normal hearing, a diagnosis of auditory processing disorder (APD) could not be made (Parent Ex. 60 at p. 2). The private audiologist recommended preferential seating, directions provided in short sentences and repeated if necessary, placement in a structured classroom, repetition for new or difficult

information, and remedial reading, and he suggested that the student may benefit from auditory processing therapy (Parent Ex. 60 at pp. 3-5).

Respondent's CSE met on August 30, 2005 (Dist. Ex. 3B at p. 13). The speech-language pathologist reviewed the student's progress in his summer speech and reading program (id.). Petitioner indicated that she was pleased with the summer program and had seen confidence in her son (id.). The July 14, 2005 private physical therapy evaluation report (see Parent Ex. 46) was reviewed (Dist. Ex. 3B at p. 13). The CSE recommended that the student receive individual physical therapy three times per six-day cycle (Dist. Ex. 3B at pp. 1, 13). Continuation of a home exercise program, as recommended in the July 14, 2005 physical therapy evaluation report, was also recommended (Dist. Ex. 3B at p. 13). The private speech and language learning evaluation report was also reviewed (see Parent Ex. 52). The CSE recommended continuing individual speech-language therapy two times per week and implementation of a home-based oral motor exercise program as recommended by the private speech-language pathologist who had evaluated the student on July 18, 2005 (Tr. pp. 1249-50; Dist. Ex. 3B at p. 13; see Parent Ex. 61 at p. 1). The CSE meeting information notes indicated that petitioner reported that she had noted some improvement in her son's articulation skills (id.). The private auditory processing evaluation report of August 19, 2005 (Parent Ex. 60) was reviewed by the CSE, and the CSE recommended preferential seating and a follow-up hearing evaluation (Dist. Ex. 3B at p. 13). The CSE also reviewed the July 13, 2005 private pediatric occupational therapy evaluation report (Parent Ex. 73) and noted it indicated a discrepancy between the parental report and the student report regarding the student's description of tasks as boring and petitioner's indication that her son found the tasks difficult (Dist. Ex. 3B at pp. 13-14). The private therapist did not recommend occupational therapy for the student at that time, and the CSE did not recommend occupational therapy (Dist. Ex. 3B at p. 14; see Parent Ex. 73 at p. 5).

The CSE meeting information notes further indicated that petitioner expressed concern regarding the lack of occupational therapy services and that she indicated that she was going to obtain another occupational therapy evaluation at her own expense (Dist. Ex. 3B at p. 14). The CSE meeting information notes also indicate that petitioner requested that the student's diploma status be changed to a Regents diploma and the CSE agreed (id.). The CSE recommended that the student be placed in special education classes on the Regents level and receive the services of a 1:1 aide (id.). Regarding petitioner's request at the June 14, 2005 CSE meeting that her son's classification be changed to a student with a learning disability, the CSE agreed to discuss the request after a neuropsychological evaluation and updated psychiatric evaluation of the student were completed (Dist. Exs. 3A at p. 12; 3B at p. 14).

The student repeated ninth grade at respondent's high school in the 2005-06 school year (see Dist. Exs. 3D at p. 1; 3E at p. 1; 3F at p. 1). The record contains various correspondence between petitioner and district personnel throughout the 2005-06 school year (see Parent Exs. 38-39, 41-44, 58, 65-66, 68-74, 76-94, 96), including a letter dated September 28, 2005, wherein the director of special education responded to the "massive number of letters, e-mails and calls received" concerning the student between September 20, 2005 and September 27, 2005 (Parent Ex. 41).

Respondent's CSE met again for a program review on October 4, 2005 (Dist. Ex. 3C). Respondent's speech-language pathologist reviewed the private auditory processing evaluation

report conducted on August 19, 2005 (Dist. Ex. 3C at p. 14). Petitioner requested social skills training for her son and the CSE indicated that this service was being provided in her son's individual and group counseling (id.). The CSE agreed to add pragmatic language and sequential memory goals for speech-language therapy and for individualized reading instruction (id.). The use of Earobics, which is described as a computer-based program designed for auditory processing (Tr. p. 1341), and Lindamood-Bell reading instruction were discussed at the CSE meeting (id.). The CSE meeting information notes indicated that the student was making "good progress" using the Wilson reading program and that petitioner indicated that he was very proud of his progress (Dist. Ex. 3C at p. 15). The CSE agreed to the addition of books on tape for the student (id.).

When the CSE convened on October 4, 2005, a behavior plan was being drafted for petitioner's review and petitioner was asked about her progress in obtaining a private psychiatric evaluation (id.). Petitioner indicated that she still had to make arrangements for the evaluation (id.). The CSE inquired as to the progress the student was making in his home physical therapy program (id.). Petitioner reported that she was not sure how her son was doing with his home physical therapy program (id.). The CSE reviewed changes in the student's schedule with petitioner, advising her that adding physical therapy would interfere with the time scheduled for her son to do his homework in the school with his 1:1 aide (id.). The CSE chairperson informed petitioner and her advocate that they should meet to gather and bring any ideas that they wished to the next CSE meeting (Dist. Ex. 3C at p. 15). Pending results of further evaluations, the CSE recommended that the student's classification remain as a student with an emotional disturbance and that he continue to be provided with Regents-level courses (Dist. Ex. 3C at p. 1).

A private neuropsychological evaluation of the student was conducted over five sessions in October 2005 (Parent Exs. 37, 63; Dist. Ex. 2). The private pediatric neuropsychologist noted that petitioner's son did not have peer relationships appropriate for his developmental level and that he gravitated toward playing with children much younger than himself (Parent Exs. 37 at p. 12; 63 at p. 1; Dist. Ex. 2 at p. 2). She indicated that the student exhibited "little in the way of social or emotional reciprocity," which was described as emotional connection with others (id.). The student exhibited repetitive motor mannerisms such as rocking back and forth in his seat, tapping his foot incessantly and tapping his fingers (id.). The private pediatric neuropsychologist noted that rating scales from the student's mother and his teacher revealed significant concerns with executive difficulties (id.). Testing revealed that the student possessed an extremely variable profile of skills from significantly below average ability in executive measures to high average ability in story memory (Parent Exs. 37 at pp. 4, 12; 63 at pp. 1-2; Dist. Ex. 2 at pp. 2-3). The student's performance on the WISC-IV yielded a full scale IQ score of 91, indicating overall intellectual ability in the average range (Parent Ex. 63 at p. 2; Dist. Ex. 2 at p. 3). The private pediatric neuropsychologist opined that the student presented with characteristics consistent with meeting the criteria for diagnosis of autism (high functioning) and that this presentation of characteristics led to prior diagnoses of ADHD, disruptive behavior disorder, intermittent explosive disorder, and ODD (Parent Exs. 37 at pp. 12-13; 63 at p. 2; Dist. Ex. 2 at p. 3). The private pediatric neuropsychologist recommended, among other things, that the student's classification be changed to autism; that the student receive group speech-language therapy to address pragmatic language needs; continuation of the Wilson reading program; a small group fitness program for the student's physical education class; and that the student be involved in "a social skills/counseling group," where he would be able to observe and discuss appropriate and inappropriate behaviors (Parent Exs. 37 at pp. 13-14; 63 at pp. 2-3; Dist. Ex. 2 at pp. 3-4).

A functional behavioral assessment (FBA) and a behavioral intervention plan (BIP) dated December 20, 2005 indicated that sometimes the student would display verbally inappropriate behaviors and refuse to comply with adult directives (Dist. Ex. 4 at p. 3; Parent Ex. 53 at p. 3). The BIP included, among other things, positive intervention strategies to prevent the behavior, such as praising the student for positive behaviors, encouraging the student to use relaxation techniques to calm himself if he felt frustrated or upset, and giving the student a verbal reminder when he displayed an inappropriate behavior or did not follow staff directives (Dist. Ex. 4 at p. 5; Parent Ex. 53 at p. 5).

Respondent's CSE met on December 20, 2005 to review the private neuropsychological evaluation report and recommendations, to discuss the student's progress in physical education and to review the student's behavior plan (Dist. Ex. 3D at p. 16). Based upon the private neuropsychologist's diagnosis of autism, the student's classification was changed to a student with autism (Dist. Ex. 3D at pp. 1, 16). The CSE meeting information notes indicated that the student was making "adequate progress" in his 15:1 special education program at respondent's high school and that petitioner reported that her son appeared happy in his classes and seemed excited about learning (Dist. Ex. 3D at p. 16). At the December 2005 meeting, the CSE provided petitioner with information for registering with the Center for Autism and Related Disabilities (Center for Autism) at SUNY Albany in order to receive training and counseling services (id.).

The December 2005 CSE meeting information notes also indicated that the CSE discussed the student's continued difficulty with physical education (Dist. Ex. 3D at p. 16). Although the student was in a smaller physical education class of five students and was participating more, he still was not changing into his uniform, which was a requirement for course credit (id.). The student had been provided access to a private bathroom to change his clothes but did not use this accommodation (id.). The CSE discussed providing him with some other options (Dist. Ex. 3D at pp. 16-17). The CSE meeting information notes indicated that petitioner agreed with providing her son with other options for accommodations for him to change his clothes (Dist. Ex. 3D at p. 17). By letter dated January 13, 2006, petitioner requested that her son not attend physical therapy until his final exams were completed so he could use that time to study for his exams (Dist. Ex. 7).

Respondent's CSE met on January 24, 2006 (Dist. Ex. 3E). The CSE meeting information notes indicated that the student was making "academic gains" and passing all his classes, but physical education was still the most difficult area for him (Dist. Ex. 3E at p. 15). The CSE meeting information notes further indicated that petitioner was going to try and provide a consequence every time her son did not participate in physical education (id.). The notes further indicated that petitioner was asked if her son was participating in private counseling and she informed the CSE that she was not able to find a private counselor (id.). The school psychologist agreed to provide information to assist petitioner in locating a private counselor (id.). The CSE also indicated that the student was demonstrating an increase in appropriate peer socialization and interaction, and agreed that an assistive technology evaluation was going to be conducted by BOCES (id.).

Respondent's CSE met again on March 1, 2006 (Dist. Ex. 3F). The CSE meeting information notes indicated that the school physical therapist reported that the student's progress was inconsistent due to his unwillingness to fully participate in therapy sessions (Dist. Ex. 3F at p. 12). Petitioner reported that she was not sure if her son was doing the home portion of the physical therapy program (id.). The guidance counselor reviewed the accommodations available

to the student for his "College Board" application (id.). Petitioner indicated that she still had not arranged for additional counseling services (id.). Petitioner further indicated that she had not yet registered with the Center for Autism and also had not returned the necessary paperwork for the assistive technology evaluation (id.).

A physical therapy evaluation of the student was conducted on May 23, 2006 (Parent Ex. 45). The school physical therapist noted that the student had received three 30 minute sessions of physical therapy per six-day cycle from October 2005 through March 2006 (Parent Ex. 45 at p. 1). The school physical therapist noted that the student presented with increased muscle tightness in his ankles and with a decreased range of motion when using his heel cords (id.). The school physical therapist noted results of the Bruininks-Oseretsky Test of Motor Proficiency administered during an earlier evaluation (see Parent Ex. 46), but she also noted that the student's gross motor skills were sufficient for him to be able to access his educational environment (Parent Ex. 46 at pp. 2-3). She recommended that the student participate in functional sport activities to help improve his strength, coordination and balance (Parent Ex. 46 at p. 3). She also recommended continuing daily exercises to stretch the student's heel cords to maintain the range of motion he had gained (id.). By letter dated March 30, 2006, petitioner requested that her son be withdrawn from physical therapy (Dist. Ex. 8).

In May 2006, as the student was completing ninth grade, he was evaluated using the Woodcock Johnson Tests of Achievement - Third Edition (Dist. Ex. 5B at p. 4). His performance yielded subtest standard scores of 69 for letter word identification, 81 for reading fluency, 76 for passage comprehension, 77 for word attack, 87 for reading vocabulary, 74 for spelling, 100 for writing fluency, 83 for writing samples, 73 for math fluency, and 86 for applied problems. On the broad reading cluster he received a standard score of 76 (Dist. Ex. 5B at pp. 5-6).

An assistive technology assessment of the student was conducted on May 26, 2006 (Parent Ex. 62). The evaluator noted that computer access was available to the student for written assignments and that he reportedly was "able to type fairly quickly and accurately," but that "he would rather write by hand" (Parent Ex. 62 at p. 3).

Respondent's CSE met on June 15, 2006 and June 20, 2006 to complete an annual review of the student's program and to prepare his IEP for the 2006-07 school year (Dist. Ex. 5B at p. 1). At the June 15, 2006 CSE meeting, petitioner requested more services for the ESY program, including social skills training, socialization, autism training, physical therapy, and job coaching (id.). The CSE chairperson explained to petitioner that ESY services were to prevent substantial regression and that petitioner's son did not demonstrate regression in the areas for which she was requesting services (id.). The CSE meeting information notes indicated that petitioner had not enrolled with the Center for Autism which had been recommended in December 2005 (Dist. Ex. 5B at p. 12; see Dist. Ex. 3B at p. 16).

The CSE recommended that the student attend three self-contained special classes for social studies, math and English/language arts in a 15:1 student-to-staff ratio (Dist. Ex. 5B at p. 1). The CSE also recommended a consultant teacher for science in a 5:1 ratio, and a 1:1 special class for reading utilizing the Wilson reading program (id.). Recommended related services consisted of a 1:1 aide for the entire school day, individual counseling once per week, small group counseling twice per month, and speech-language therapy three times per six-day cycle in a group

in a special class and three times per six-day cycle in a separate location (Dist. Ex. 5B at pp. 1-2). The CSE recommended that the student be mainstreamed for all electives and that for physical education he be placed in a small class (Dist. Ex. 5B at p. 2). The IEP noted that the student was to receive preferential seating, books on tape, and an additional set of his textbooks for home, and that he was to be provided with refocusing and redirection throughout the school day (id.). Although the student had not yet earned any credits towards his diploma, the CSE continued to recommend a Regents diploma (Dist. Ex. 5B at p. 3).

The CSE listed coordinating transition activities on the student's IEP to assist the student going from school to post-school activities (Dist. Ex. 5B at p. 7). The student's IEP noted that he would be provided information on how to visit post-school programs and colleges (id.). The IEP further noted that he would have an opportunity to participate in career assessment interviews and evaluations to help him decide on a career path (id.). Clubs at school were to be available to give the student the opportunity to identify and discuss some of his interests (id.).

A private psychiatric evaluation of the student was conducted on July 31, 2006 (Parent Ex. 50 at pp. 2-7). The private psychiatrist indicated that the student demonstrated frustration when he could not complete a task or could not get his way, and that at times he would act out by hitting something or throwing an object (Parent Ex. 50 at p. 3). He noted previous treatment and diagnoses of autism, ADHD, communication disorder, language disorder and coordination disorder (Parent Ex. 50 at p. 5). He also noted that the student had significant language, communication, and social development deficits, which inhibited his ability to interpret social cues (id.). The private psychiatrist recommended an educational setting that would address the student's language deficits, including deficits of written expression and reading (Parent Ex. 50 at p. 6). He further recommended that the student receive social skills training and employment/job training as part of his educational curriculum to help him transition from the school to "independent adult life," that he receive social skills training at "Family Services," and that he be referred for individual therapy at the Center for Children and Families (id.).

By due process complaint notice dated August 14, 2006 petitioner requested an impartial hearing, asserting 20 claims with 16 recommendations for resolution (IHO Ex. 1). Among petitioner's claims, she contends that her son was denied an appropriate education "for his entire time in school" (IHO Ex. 1 at p. 3) and requests, in addition to her son being provided an appropriate education, that her son receive compensatory education and "corrective services" for the years that respondent allegedly denied the student an appropriate education (IHO Ex. 1 at pp. 3-4).

A preliminary conference was held on August 29, 2006 (IHO Decision at p. 1). The impartial hearing commenced on September 27, 2006 and concluded on October 13, 2006, after seven days of testimony. The impartial hearing officer rendered a 79-page decision on November 27, 2006. The impartial hearing officer noted that petitioner's claims regarding the appropriateness of the student's FBA and BIP, and a claim regarding the use of books on tape, were settled during the impartial hearing (IHO Decision at p. 2; see IHO Ex. 1 at p. 2; see also Tr. pp. 1387-88). The impartial hearing officer also noted that during the impartial hearing petitioner's advocate indicated that, although petitioner contended in her due process complaint notice that her son was denied an appropriate education "for his entire time in school" (see IHO Ex. 1 at p. 3), none of the proof at the impartial hearing was offered to show that any IEP for a school year prior to the 2005-06 school

year was inappropriate (IHO Decision at p. 3). The impartial hearing officer noted that it was clarified at the impartial hearing that petitioner was "essentially" seeking a fifth year of high school where the student would be 22 years of age at the end of this five-year high school program (id.).

The impartial hearing officer determined that the student was denied a FAPE² because respondent's CSE failed to provide the student with a sufficient level of social skills training as part of his counseling (IHO Decision at p. 57), failed to provide parent counseling and training for the 2005-06 school year (IHO Decision at p. 71), and failed to list parent counseling and training on the student's 2006-07 IEP (IHO Decision at p. 79). He also found that the student appeared to have needs in areas that would require services by a teaching assistant rather than a 1:1 aide (IHO Decision at p. 65). The impartial hearing officer denied petitioner's remaining claims.

The impartial hearing office remanded the matter to the CSE for further consideration (IHO Decision at pp. 78-79). He ordered respondent's CSE to: 1) increase group counseling from two times per month to one 30-minute session per week, 2) identify and specify on the student's IEP the extent of social skills training that was going to be provided as a part of the student's counseling, 3) identify and specify on the student's IEP the parent counseling and training that would be provided, and 4) identify and specify on the student's IEP the services that were going to be provided to the student by his 1:1 aide (id.).

Petitioner appeals the impartial hearing officer's denial of her claims. For the reasons set forth by the impartial hearing officer, I also will limit my analysis to the 2005-06 and 2006-07 school years. For purposes of organizing this appeal, I will address the issues in the order that the impartial hearing officer addressed them. I will not address petitioner's claims that were settled at the impartial hearing (Tr. pp. 1387-88; IHO Decision at p. 2; see IHO Ex. 1 at p. 2).

The central purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482)³ is to ensure that students with disabilities have available to them a FAPE (20 U.S.C. § 1400[d][1][A]; see *Schaffer v. Weast*, 546 U.S. 49, ___, 126 S. Ct. 528, 531 [2005]; *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-81, 200-01 [1982]; *Frank G. v. Bd. of Educ.*, 459 F.3d 356, 371 [2d Cir. 2006]). A FAPE includes special education and related services designed to meet the student's unique needs, provided in conformity with a written IEP (20 U.S.C. § 1401[9][D]; 34

² The term "free appropriate public education" means special education and related services that -

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C. § 1401(9).

³ Congress amended the IDEA, effective July 1, 2005 (see *Individuals with Disabilities Education Improvement Act of 2004*, Pub. L. No. 108-446, 118 Stat. 2647 [2004] [codified as amended at 20 U.S.C. § 1400, *et. seq.*]). Some of the relevant events at issue in this appeal occurred prior to the effective date of the 2004 amendment; however, some of the relevant events at issue in this appeal occurred after the effective date of the 2004 amendments. Therefore, at times the new provisions of the IDEA apply. Consistent with this, citations contained in this decision are to IDEA 2004, unless otherwise specified.

C.F.R. § 300.17;4 see 20 U.S.C. § 1414[d]; 34 C.F.R. § 300.22). The burden of persuasion in an administrative hearing challenging an IEP is on the party seeking relief (see Schaffer, 126 S. Ct. at 532, 537 [finding it improper under the IDEA to assume that every IEP is invalid until the school district demonstrates that it is not]).

The first step is to determine whether the district offered to provide a FAPE to the student (see *Mrs. C. v. Voluntown*, 226 F.3d 60, 66 [2d Cir. 2000]). 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; *Cerra v. Pawling Cent. Sch. Dist.*, 427 F.3d 186, 192 [2d Cir. 2005]). While school districts are required to comply with all IDEA procedures, not all procedural errors render an IEP legally inadequate under the IDEA (*Grim v. Rhinebeck Cent. Sch. Dist.*, 346 F.3d 377, 381 [2d Cir. 2003]; *Perricelli v. Carmel Cent. Sch. Dist.*, 2007 WL 465211, at *10 [S.D.N.Y. Feb. 9, 2007]). Pursuant to the IDEA, when procedural violations are alleged, an administrative officer may find that a child did not receive a FAPE only if the procedural inadequacies (a) impeded the child'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 child, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; see 34 C.F.R. § 300.513[a][2]; *Matrejek v. Brewster Cent. Sch. Dist.*, 2007 WL 210093, at *2 [S.D.N.Y. Jan. 9, 2007]). Also, an impartial hearing officer is not precluded from ordering a school district to comply with IDEA procedural requirements (20 U.S.C. § 1415[f][3][E][iii]).

Both the Supreme Court and the Second Circuit have noted that the IDEA does not, itself, articulate any specific level of educational benefits that must be provided through an IEP (*Rowley*, 458 U.S. at 189; *Walczak v. Fla. Union Free Sch. Dist.*, 142 F.3d 122, 130 [2d Cir. 1998]), although the Supreme Court has specifically rejected the contention that the "appropriate education" mandated by the IDEA requires states to maximize the potential of students with disabilities (*Rowley*, 458 U.S. at 197 n.21, 189, 199; see *Grim*, 346 F.3d at 379; *Walczak*, 142 F.3d at 132). What the statute guarantees is an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents" (*Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F.2d 563, 567 [2d Cir. 1989] [internal quotation omitted]; see *Grim*, 346 F.3d at 379; *Walczak*, 142 F.3d at 132). Thus, a school district satisfies the FAPE standard "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction" (*Rowley*, 458 U.S. at 203).

The IDEA directs that, in general, a decision by an impartial hearing officer shall be made on substantive grounds based on a determination of whether or not the child received a FAPE (20 U.S.C. § 1415[f][3][E][i]). The Second Circuit has determined that "a school district fulfills its substantive obligations under the IDEA if it provides an IEP that is 'likely to produce progress, not

⁴ The Code of Federal Regulations (34 C.F.R. Parts 300 and 301) has been amended to implement changes made to the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004. The amended regulations became effective October 13, 2006. In this case, none of the new provisions contained in the amended regulations are applicable because all the relevant events occurred prior to the effective date of the new regulations. However, for convenience, citations herein refer to the regulations as amended because the regulations have been reorganized and renumbered.

regression" and if the IEP affords the student with an opportunity greater than mere "trivial advancement" (Cerra, 427 F.3d at 195, quoting Walczak, 142 F.3d at 130; see also Perricelli, 2007 WL 465211, at *15), in other words, is likely to provide some "meaningful" benefit (Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]). The student's recommended program must also be provided in the LRE (20 U.S.C. § 1412[a][5][A]; 34 C.F.R. §§ 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.6[a][1]; see Walczak, 142 F.3d at 132). The LRE is defined as "one that, to the greatest extent possible, satisfactorily educates disabled children together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled" (Carlisle Area Sch. v. Scott P., 62 F.3d 520, 535 [3d Cir.1995]).

An appropriate educational program begins with an IEP which accurately reflects the results of evaluations to identify the student's needs, establishes annual goals related to those needs, and provides for the use of appropriate special education services (Application of the Bd. of Educ., Appeal No. 06-029; Application of a Child with a Disability, Appeal No. 04-046; Application of a Child with a Disability, Appeal No. 02-014; Application of a Child with a Disability, Appeal No. 01-095; Application of a Child Suspected of Having a Disability, Appeal No. 93-9).

Petitioner contends that respondent's CSE refused to provide appropriate ESY services for her son. The impartial hearing officer noted that petitioner's contention was that the ESY services that the student received were not appropriate (IHO Decision at p. 18). Students must be considered for ESY services in accordance with their need to prevent substantial regression (8 NYCRR 200.6[j]; Application of the Bd. of Educ., Appeal No. 04-102). Substantial regression is the inability of a student to maintain developmental levels due to a loss of skill or knowledge during the months of July and August of such severity as to require an inordinate period of review at the beginning of the school year to reestablish and maintain IEP goals and objectives mastered at the end of the previous school year (8 NYCRR 200.1[aaa]). The impartial hearing officer found that the student received ESY services during summer 2005 and summer 2006 (IHO Decision at p. 17). The record shows that the student received speech-language therapy and individualized reading instructing using the Wilson reading program during summer 2005 and summer 2006 (Dist. Exs. 3A at p. 1; 3B at p. 1; 3C at p. 1, 3D at p. 1; 3E at p. 1; 3F at p. 1, 5A at p. 1; 5B at p. 1). I note that the student's speech pathologist did not recommend ESY services for summer 2005 (Dist. Ex. 3A at p. 11); however, the CSE agreed to provide individual speech-language therapy (Dist. Ex. 3A at pp. 2, 11). At the June 20, 2006 CSE meeting, petitioner requested social skills training, socialization, autism training, physical therapy, and job coaching for summer 2006 (Dist. Ex. 5B at p. 12). The CSE chairperson explained that the purpose of ESY services is to prevent substantial regression and that it was the CSE team's professional judgment that petitioner's son would not demonstrate substantial regression in any of the areas that she requested (id.). By letter dated June 29, 2006, the CSE chairperson reiterated that ESY services were to prevent substantial regression as determined by the CSE; however, the CSE agreed to provide "tutoring for maintenance of reading skills" and speech-language therapy for "maintenance of pragmatic language skills" as ESY services (Parent Ex. 44 at p. 1; see Tr. p. 1261). Petitioner failed to demonstrate that her son required services in the requested areas to prevent substantial regression (see IHO Ex. 1 at p. 1). In addition, I agree with the impartial hearing officer that to the extent that petitioner requests an order directing that ESY services be provided to her son for summer 2007, which is the commencement of the 2007-08 school year, the request is premature (IHO Decision at p. 18).

Petitioner contends that respondent's CSE refused to provide her son physical therapy services. A private physical therapy evaluation was conducted on July 14, 2005 (Parent Ex. 46). The private physical therapist recommended that the student receive physical therapy two to three times per week, and that he receive services individually due to his emotional and behavioral concerns (id.). Respondent's CSE recommended that the student receive individual physical therapy three times per a six-day cycle for the 2005-06 school year (Dist. Exs. 3B at p. 1; 3C at p. 1; 3D at p. 1; 3E at p. 1; 3F at p. 1). By letter dated January 13, 2006, petitioner requested that her son not attend physical therapy until his final exams were completed so he could use that time to study for his exams (Dist. Ex. 7). By letter dated March 30, 2006, petitioner requested that her son be withdrawn from physical therapy (Dist. Ex. 8). I agree with the impartial hearing officer that appropriate physical therapy services were provided during the 2005-06 school year and termination of those services before the school year ended was at petitioner's request (IHO Decision at p. 24). For the 2006-07 school year, a physical therapy evaluation of the student was conducted on May 23, 2006 (Parent Ex. 45). The school physical therapist noted results of the Bruininks-Oseretsky Test of Motor Proficiency administered during an earlier evaluation (see Parent Ex. 46), but also noted that the student's gross motor skills were sufficient for him to be able to access his educational environment (Parent Ex. 46 at pp. 2-3). I agree with the impartial hearing officer that the school physical therapist's conclusion about the student's abilities and needs provided a sufficient basis for the CSE to have concluded that the physical therapy services were not needed for the 2006-07 school year (IHO Decision at pp. 25-26).

Petitioner contends that another occupational therapy evaluation should be conducted because her son was diagnosed with autism after the previous occupational therapy evaluation. A private pediatric occupational therapy evaluation was conducted on July 13, 2005 (Parent Ex. 73). Occupational therapy was not recommended by the private occupational therapist (Parent Ex. 73 at p. 5). In addition, an assistive technology assessment was conducted on May 26, 2006 (Parent Ex. 62). The evaluator concluded that the student's ability to write by hand allowed him to functionally address all tasks in his educational environment (Parent Ex. 62 at p. 8). I find that the impartial hearing officer was correct in concluding that a new occupational therapy evaluation was not required (IHO Decision at p. 29).

Petitioner contends that respondent failed to provide her son with adapted physical education. Adapted physical education consists of a specially designed program of developmental activities, games, sports and rhythms suited to the interests, capacities and limitations of students with disabilities who may not safely or successfully engage in unrestricted participation in the activities of the regular physical education program (8 NYCRR 200.1[b]). The record reflects that respondent offered regular education physical education on the student's 2005-06 and 2006-07 IEPs (Dist. Exs. 3A at p. 1; 3B at p. 1; 3C at p. 1; 3D at p. 1; 3E at p. 1; 3F at p. 2; 5A at p. 2; 5B at p. 2). I note that the student was "too stimulated" when he participated in a regular physical education class because of the class size (Tr. pp. 555-56). Petitioner requested that her son be placed in a smaller physical education class, and respondent provided a smaller class setting (Tr. p. 1147). In addition, I note that the student had difficulty changing his clothes in the presence of other students and respondent provided a separate location to change his clothes (Dist. Exs. 3A at p. 1; 3B at p. 1; 3C at p. 1; 3D at p. 1; 3E at p. 1; 3F at p. 2; 5A at p. 2; 5B at p. 2; Tr. pp. 1473-74). I agree with the impartial hearing officer that the physical education services provided for the student were appropriate (IHO Decision at p. 34).

Petitioner contends that respondent failed to provide her son with a transition plan. Under the IDEA, to the extent appropriate for each individual student an IEP must focus on providing instruction and experiences that enable the student to prepare for later post-school activities, including higher education, if appropriate, employment, and independent living (20 U.S.C. § 1401[34]; see 34 C.F.R. § 300.43; N.Y. Educ. Law § 4401[9]; 8 NYCRR 200.1[fff]). The student testified at the impartial hearing that he wants to finish high school and go to college (Tr. p. 112), and that he wants to be an oceanographer (Tr. p. 125). In addition, in a BOCES vocational assessment report dated February 17, 2005 the student expressed that he had an interest in building or construction trades (Parent Ex. 47 at p. 5). The results of the student's inventory indicated that he also had interests in nature, creative arts and food services, and that he would be most successful within planning, designing, material handling, and/or the tool and parts attendant aspects of his fields of interest (*id.*). The student's IEPs for the 2005-06 and 2006-07 school years indicated that the student is interested in attending a technical school and planning to live independently (Dist. Exs. 3A at pp. 5-6; 3B at pp. 5-6; 3C at pp. 5-6; 3D at pp. 5-6, 3E at pp. 5-6, 3F at pp. 5-6, 5A at pp. 6-7, 5B at pp. 6-7). The IEPs indicated that the student was going to be provided with the opportunity to participate in career assessment activities to assist him in deciding on a career path (*id.*). The IEPs also included a coordinated set of transition activities to facilitate the student's movement from school to post-school activities (*id.*). In addition, the IEPs for the 2006-07 school year contained "career/vocational/transition" goals to help the student decide on a career path (Dist. Exs. 5A at p. 10; 5B at p. 10). I concur with the impartial hearing officer's conclusions that the transition services on the students IEPs were adequate (see Dist. Exs. 3A at pp. 5-6; 3B at pp. 5-6; 3C at pp. 5-6; 3D at pp. 5-6; 3E at pp. 5-6; 3F at pp. 5-6; 5A at pp. 6-7; 5B at pp. 6-7).

Petitioner contends that respondent "does not acknowledge [her] input when it comes to how [the student] interacts in the community." The record shows that petitioner actively participated in discussions at the CSE meetings regarding the formulation of her son's IEPs (Dist. Exs. 3A at p. 9; 3B at p. 12; 3C at p. 13; 3D at p. 15; 3E at p. 14; 3F at p. 11; 5A at p. 11; 5B at p. 11; see *Cerra*, 427 F.3d at 192). I agree with the impartial hearing officer that the CSE acknowledged petitioner's input (IHO Decision at p. 44).

Petitioner contends that respondent failed to provide her son with appropriate accommodations and modifications. I agree with the impartial hearing officer that the testimony at the impartial hearing failed to clarify what accommodations were meant by this claim (IHO Decision at p. 44). The impartial hearing officer noted that some questioning at the impartial hearing seemed to suggest that the student should have been accommodated in the regular education physical education class with non-physical activities (IHO Decision at pp. 44-45). I find that petitioner failed to provide sufficient information at the impartial hearing for the impartial hearing officer to make a determination as it related the accommodations that petitioner was seeking for her son.

Petitioner contends that although her son is given access to a computer respondent "refuses to teach him touch typing." An assistive technology assessment of the student was conducted on May 26, 2006 (Parent Ex. 62). The evaluator noted that there is computer access available for the student to complete written assignments, and that he reportedly is "able to type fairly quickly and accurately," but that "he would rather write by hand." (Parent Ex. 62 at p. 3). This was consistent with the student's testimony at the impartial hearing. The student testified that he knew how to type, but preferred to handwrite his work because it is faster for him (Tr. pp. 163-64). I note that

the record provides that if the student wanted to take a keyboarding class it would be available for him (Tr. p. 1470). I agree with the impartial hearing officer that the testimony and evaluation reports do not support petitioner's claim (IHO Decision at p. 48).

Petitioner contends that her son was given an Earobics computer program, but respondent failed to provide instruction and monitoring for her and her son. Respondent's speech pathologist testified that petitioner's son did not need Earobics, and that the student did not like Earobics and found it to be boring (Tr. p. 1342). The CSE did not recommend the use of the Earobics program (see Dist. Exs. 3A, 3B, 3C, 3D, 3E, 3F, 5A, 5B). I agree with the impartial hearing officer that petitioner failed to rebut the testimony of respondent's speech pathologist that her son did not need Earobics (IHO decision at p. 50).

Petitioner contended at the impartial hearing that respondent failed to provide her son with social skills training. The impartial hearing officer found that respondent's CSE failed to provide the student with a sufficient level of social skills training as part of his counseling (IHO Decision at p. 57). The impartial hearing officer ordered respondent's CSE to increase group counseling from two times per month to one 30-minute session per week and identify and specify on the student's IEP the extent of social skills training that was going to be provided as a part of the student's counseling (IHO Decision at p. 78). Respondent did not appeal this determination and in its answer stated that it has, "in the interest of moving forward and bringing this matter to conclusion, implemented the services ordered by the [impartial hearing officer]" (Answer ¶ 19). The State Review Officer is not required to determine issues which are no longer in controversy or to review matters which would have no actual effect on the parties (Application of a Child with a Disability, Appeal No. 02-011; Application of a Child with a Disability, Appeal No. 98-73; Application of a Child Suspected of Having a Disability, Appeal No. 95-60). Thus, I find no reason to disturb the findings of the impartial hearing officer regarding the issue of social skills training as part of counseling because it is no longer in controversy.

Petitioner contends that her son has no employment skills and respondent failed to provide her son with employment skills training. The record suggests that such training is available to the student. At the impartial hearing the student was permitted to demonstrate his ability to complete an application for employment (Tr. pp. 87-88; IHO Decision at p. 58). While the impartial hearing officer found that the evidence provided by the student completing an application for employment demonstrated that the student could benefit from further skills training in completing employment applications, he further found that this demonstration did not establish a need for the student to receive employment skills training during the 2006-07 school year (IHO Decision at p. 58). I note that the record reveals that a careers and financial management class in high school was available to the student that would be helpful for him in preparing for employment and with completing applications for employment (Tr. pp. 934, 954).

Petitioner contended at the impartial hearing that her son required a paraprofessional rather than a 1:1 aide. The impartial hearing officer found that the student appeared to have needs in areas that would require services by a teaching assistant rather than a 1:1 aide, and he remanded the issue to the CSE for further consideration (IHO Decision at p. 65). The impartial hearing officer ordered respondent's CSE to identify and specify on the student's IEP the services that were going to be provided to the student by his 1:1 aide (IHO Decision at p. 79). Respondent did not appeal this determination and in its answer stated that it has, "in the interest of moving forward

and bringing this matter to conclusion, implemented the services ordered by the [impartial hearing officer]" (Answer ¶ 19). I find no reason to disturb the findings of the impartial hearing officer regarding identifying and specifying on the student's IEP the services that are going to be provided to the student by his 1:1 aide because this issue is no longer in controversy.

Petitioner contends that respondent's school staff members are not trained in her son's disability and that all school staff should be trained in autism. To support her claim, petitioner relies on the private pediatric neuropsychologist's recommendation for staff training in autism (Parent Ex. 37 at p. 14). I note that the student's service coordinator testified that she had been to training on "autism and autism spectrum disorders" (Tr. pp. 692, 1489). Respondent's school psychologist testified that, although she had not attended conferences on autism directly while working for respondent, she had attended conferences that were related to behavioral disorders, which contained discussions about autism (Tr. p. 1096). I note that the student's 1:1 aide had taken an "assistant course" and had been trained by respondent in a range of disabilities, which included testing and program modifications (Tr. p. 1500). I find petitioner's claim not to be persuasive.

Petitioner contended at the impartial hearing that her son has been denied a FAPE "for his entire time in school." As noted above, the impartial hearing officer noted that during the impartial hearing petitioner's advocate indicated that, although petitioner contended that her son was denied an appropriate education "for his entire time in school" in her due process complaint notice (see IHO Ex. 1 at p. 3), none of the proof at the impartial hearing was offered to show that any IEP for a school year prior to the 2005-06 school year was inappropriate (IHO Decision at p. 3).

Petitioner contends that her son should be provided with compensatory education and "corrective services" for the years that respondent allegedly denied the student an appropriate education (Pet. ¶ 1; see IHO Ex. 1 at pp. 3-4). Compensatory education is instruction provided to a student after he or she is no longer eligible because of age or graduation to receive instruction. It may be awarded if there has been a gross violation of the IDEA resulting in the denial of, or exclusion from, educational services for a substantial period of time (*Mrs. C. v. Wheaton*, 916 F.2d 69 [2d Cir. 1990]; *Burr v. Ambach*, 863 F.2d 1071 [2d Cir. 1988]). Compensatory education is an equitable remedy that is tailored to meet the circumstances of the case (*Wenger v. Canastota Cent. Sch. Dist.*, 979 F. Supp. 147, 151 [N.D.N.Y. 1997], *aff'd*, 208 F.3d 204 [2000], *cert. denied* 531 U.S. 1019 [2000]; *Application of the Bd. of Educ.*, Appeal No. 02-033; *Application of a Child with a Disability*, Appeal No. 02-019). Compensatory education is a judicially-crafted remedy; it is not an extension of the protections and benefits of the IDEA itself (see *Cosgrove*, 175 F. Supp. 2d at 388 ["the relief arises from equity and is not a legislative authorization to extend the reaches of the statute"]; see also *Burr*, 863 F.2d at 1078). I agree with the impartial hearing officer that the evidence does not support a finding of a gross violation of the IDEA (IHO Decision at p. 69). Petitioner has not shown that her son qualifies for compensatory education.

While compensatory education is a remedy that is available to students who are no longer eligible for instruction, State Review Officers have awarded "additional 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 (*Application of a Child with a Disability*, Appeal No. 05-041; *Application of a Child with a Disability*, Appeal No. 04-054; *Application of the Bd. of Educ.*, Appeal No. 02-047). The impartial hearing officer found that the

student was denied appropriate services regarding "counseling for social skills development" (IHO Decision at p. 78). He ordered respondent's CSE to increase the frequency of the student's counseling sessions. I find no basis to modify the impartial hearing officer's determination regarding this issue.

Petitioner contended at the impartial hearing that respondent failed to identify parent counseling and training on her son's IEP. The impartial hearing officer found that respondent's CSE failed to list parent counseling and training on the student's 2006-07 IEP (IHO Decision at p. 79). The impartial hearing officer ordered respondent's CSE to identify and specify on the student's IEP the parent counseling and training that would be provided to the student (IHO Decision at p. 79). Respondent has not appealed this determination and in its answer stated that it has, "in the interest of moving forward and bringing this matter to conclusion, implemented the services ordered by the [impartial hearing officer]" (Answer ¶ 19). I find no reason to disturb the findings of the impartial hearing officer regarding the issue of parent counseling and training because this issue is no longer in controversy.

Petitioner contends that respondent failed to provide her son with life skills training, including activities of daily living. The private pediatric occupational therapy evaluation conducted on July 13, 2005 noted that the student was able to complete the activities of daily living expected of a child his age and that he was able to dress, bathe and feed himself independently (Parent Ex. 73 at p. 2). With respect to the 2005-06 school year, I note that the IEPs developed after the evaluation was conducted included a statement that the student would be provided an opportunity to participate in activities required for personal hygiene (Dist. Exs. 3B at p. 6; 3C at p. 6; 3D at p. 6; 3E at p. 6; 3F at p. 6). With respect to the 2006-07 school year, the student's IEPs, under the heading of "Acquisition of Daily Living Skills," indicated that there were no such needs at that time (Dist. Exs. 5A at p. 7; 5B at p. 7). In addition, the student's service coordinator testified that the student did not present any personal hygiene concerns by the end of the 2005-06 school year (Tr. p. 1532). The record fails to show that respondent denied the student a FAPE by not providing petitioner's son training in activities of daily living.

I have reviewed petitioner's remaining contentions and find them to be without merit.

THE APPEAL IS DISMISSED.

**Dated: Albany, New York
March 14, 2007**

**PAUL F. KELLY
STATE REVIEW OFFICER**