



The University of the State of New York

The State Education Department State Review Officer

No. 07-089

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 New Hartford Central School District

Appearances:

Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C., attorney for respondent, Susan T. Johns, Esq., of counsel

DECISION

Petitioner appeals from the decision of an impartial hearing officer which denied petitioner's request for extended school year (ESY) speech-language therapy services for her son for summer 2007. The appeal must be dismissed.

On the date of the impartial hearing, the child was attending a full-time daycare/preschool program at Upstate Cerebral Palsy (UCP) (Tr. pp. 63-65). The child's speech-language therapy services, which he received for 90 minutes per week in a 1:1 setting at UCP, concluded on or about June 22, 2007 (*id.*; *see* Tr. pp. 35-36, 145-49; Dist. Exs. 21 at p. 9; 29 at p. 6; 30). The child's eligibility for special education programs and services and classification as a preschool student with a disability are not in dispute in this appeal (8 NYCRR 200.1[mm]).

The child initially received early intervention special education and speech-language therapy services when he was two years old (Dist. Exs. 3 at pp. 1, 6; 4 at pp. 1-3). In October 2005, UCP professionals conducted a psychological evaluation and a speech-language evaluation due to the child's upcoming eligibility for services through the Committee on Preschool Special Education (CPSE) (Dist. Exs. 7 at p. 1; 8 at p. 1). At that time, the UCP school psychologist reported that the child's cognitive development and communication fell within the average ranges and thus, recommended that the child no longer required special education services (Dist. Ex. 7 at pp. 4-5). The evaluator deferred recommendations regarding the child's speech-language therapy needs to the UCP speech-language pathologist (*id.* at p. 5).

The UCP speech-language pathologist administered several evaluations to the child, including the Preschool Language Scale-Fourth Edition (PLS-4), the Goldman-Fristoe Test of Articulation-2 (GFTA-2), and the Expressive One-Word Picture Vocabulary Test-Revised (EOWPVT-R) (Dist. Ex. 8 at pp. 2-5). In addition, the evaluator made behavioral observations, conducted an oral peripheral exam, reviewed records, obtained a language sample, and conducted a parent interview (id. at p. 2). On the PLS-4, which the evaluator used to assess the child's expressive and receptive language skills, the child obtained the following standard scores (SS): receptive language, SS 92; expressive language, SS 66; and total language, SS 77 (id. at pp. 3-5). The child's standard scores revealed receptive language skills in the average range, expressive language skills in the severely delayed range, and an overall total language score that fell in the moderately delayed range (id.).

Administration of the GFTA-2, which measured the child's single-word sound productive skills, resulted in a standard score of 70 and fell in the severely delayed range, rating the child significantly below the average ranges for his same-age peers (Dist. Ex. 8 at pp. 2, 5). In addition, the child obtained a standard score of 55 on the EOWPVT-R, which indicated a severe delay in the child's single-word vocabulary and labeling skills (id. at p. 5). Based upon the results of the evaluation, the UCP speech-language pathologist recommended continued speech-language therapy for the child for two sessions per week (id. at p. 6).

In January 2006, the child began receiving 1:1 speech-language therapy two times per week for 30 minutes per session through a UCP speech-language therapist (Dist. Exs. 9 at pp. 1, 3; 11 at pp. 1-2). Shortly thereafter, petitioner obtained a private speech-language evaluation through a hospital's hearing and speech center on January 6, 2006 (Dist. Ex. 10 at p. 1). In addition to the PLS-4, the evaluator also administered the Apraxia Profile-Preschool (AP-P), which assessed the presence and/or severity rating of Childhood Apraxia of Speech (CAS) (id. at pp. 1-2). The results of the AP-P indicated that the child demonstrated CAS, and that the areas most indicative of apraxia were the child's "severe-profound deficits in word repetition, vowel distortions, [and] reduced intelligibility in connected speech with improved intelligibility of rote phrases" (id. at p. 2). The evaluator opined that the child exhibited CAS "characterized by deficits in the ability to sequence sounds for speech in the absence of significant oral-motor deficits" (id. at p. 3). She recommended that he receive speech-language therapy four to five times per week for an initial span of 12 weeks and that the child's progress should be reviewed at the conclusion of the initial treatment (id.).

In a progress report dated February 10, 2006, the child's UCP speech-language therapist noted slow, steady progress toward the child's goals over the course of 12 sessions (Dist. Ex. 11 at p. 1). She reported that therapy focused on oral motor exercises to address his "symptoms of apraxia and improve sound production" (id.). The report also identified that she worked with the child to improve his sounds in isolation, increase his diadochokinetic rate, and produce consonant-vowel-consonant words (id.). At that time, she recommended increasing the child's speech-language therapy services to five sessions per week for "8-12 weeks to address articulation delays and expressive language delays related to apraxia" and referred to the child's privately obtained speech-language evaluation for an "official diagnosis of apraxia" (id. at p. 2). She also recommended that the CPSE conduct a program review in "8-12 weeks" to review the child's progress (id.).

On February 14, 2006, respondent's CPSE conducted an administrative transfer meeting (Dist. Exs. 12 at p. 1; 13 at p. 1). The CPSE recommended a 10-month program and increased the child's speech-language therapy to 150 minutes per week based upon the private speech-language evaluation report, which "identifie[d] more intense needs than the initial eval[uation]" (Dist. Exs. 12 at p. 1; 13 at p. 4). The CPSE minutes indicated that a program review was scheduled for May 23, 2006 (Dist. Ex. 12 at p. 1).

Prior to the program review of May 23, 2006, the child's UCP speech-language therapist provided a "progress update and summer justification" report, dated May 18, 2006 (Dist. Ex. 14 at p. 1). She reported that the child attended speech-language therapy five times per week for 150 minutes and that he continued to make slow progress toward his goals (id.). In addition to identifying areas of improvement, she noted that the child demonstrated "significant regression in behavior and articulation skills following school breaks" and required "an extended period of time to re-familiarize himself with following directions and regaining previously learned communication and sound production skills" (id.). The therapist noted that after school breaks, it was more difficult to understand the child's "spontaneous language," and he exhibited significantly decreased intelligibility, required increased prompting to attend to activities, and demonstrated increased behavioral issues (id.). At that time, she recommended speech-language therapy during summer 2006 (id.).

At the program review on May 23, 2006, the CPSE recommended a 12-month program, which included 90 minutes per week of speech-language therapy services during summer 2006 (Dist. Exs. 15 at p. 1; 16 at pp. 1-2, 4). For the 2006-07 school year, the CPSE recommended continued speech-language therapy for 90 minutes per week from September 7 through December 23, 2006 (Dist. Exs. 15 at p. 1; 16 at p. 3).

In November 2006, the child's UCP speech-language therapist prepared an annual speech-language therapy report (Dist. Ex. 17 at p. 1). The therapist administered the PLS-4, the Expressive One-Word Picture Vocabulary Test (EOWPVT), the Receptive One-Word Picture Vocabulary Test (ROWPVT), the GFTA-2, an oral peripheral examination, and obtained a spontaneous speech sample (id.). On the PLS-4, the child's scores indicated that his expressive and receptive language skills both fell within the "average" range (id. at pp. 1, 3). The child's score on the EOWPVT demonstrated "low average skills" in the area of his expressive vocabulary at the one-word level (id.). The ROWPVT, which measured the child's receptive vocabulary at the single-word level, resulted in a score that demonstrated "average skills" in this area (id.). The child's scores on the GFTA-2 demonstrated a mild articulation delay, and the evaluator noted that he had made "excellent progress on target sounds" during the past year (id. at pp. 1-2). At that time, the child did not carry over the learned or practice sounds in his spontaneous speech (id. at p. 2). Analysis of the child's spontaneous speech sample revealed the intelligibility of his single-word level to be within the "fair" range (id.). The UCP speech-language therapist recommended continued speech-language therapy for 90 minutes per week to "address concerns regarding apraxia and delayed articulation skills" (id. at p. 3).

On December 11, 2006, respondent's CPSE conducted the child's annual review and prepared an individualized education program (IEP) (Dist. Exs. 19 at p. 1; 20; 21 at pp. 1-2). The CPSE minutes indicated that the child made progress during the past year in his language skills,

but that he continued to exhibit mildly delayed articulation skills and unintelligible conversational language and spontaneous speech (Dist. Ex. 19 at p. 1). The CPSE recommended a 10-month program and speech-language therapy for 90 minutes per week from December 20, 2006 through June 22, 2007, reviewed new goals and noted a progress review scheduled for late spring (Dist. Exs. 19 at p. 1; 21 at p. 9). By letter dated April 20, 2007, respondent's CPSE scheduled the child's program review for May 3, 2007 (Dist. Ex. 22).

On April 26, 2007, the child's UCP speech-language therapist prepared a progress update (Dist. Ex. 23 at p. 1). She noted that the child received speech-language therapy three times per week for 90 minutes and that he made "excellent progress toward his goals" (id.). The therapist identified significant improvements in the child's ability to sequence sounds in single-word speech and conversational speech (id.). She also identified increased intelligibility of the child's spontaneous speech for both familiar and unfamiliar listeners (id.). The therapist further noted the child's steady progress on "all motor planning and articulation goals" and that he started to "carry over [these skills] to his conversational speech" (id.). She did not recommend ESY speech-language therapy services during summer 2007 to prevent substantial regression because the child "was able to maintain current progress over the weekends and extended breaks" (id.). The therapist did, however, recommend that the CPSE consider implementing "additional goals when speech-language therapy resume[d] in September 2007" (id.).

On May 3, 2007, respondent's CPSE convened for the child's program review (Dist. Ex. 25 at p. 1). Petitioner's father, who attended the meeting on her behalf, raised the issue of ESY speech-language therapy services for summer 2007 (id.; see Dist. Ex. 24). The CPSE decided to table the meeting at that time because the child's UCP speech-language therapist was not in attendance to answer questions regarding ESY speech-language therapy services (Dist. Ex. 25 at p. 1). By letter dated May 11, 2007, respondent's CPSE rescheduled the child's program review for May 23, 2007 (Dist. Ex. 26).

On May 17, 2007, petitioner obtained a private speech-language evaluation through the same hearing and speech center that conducted the child's evaluation on January 6, 2006 (Dist. Ex. 27 at p. 1; compare Dist. Ex. 10 at p. 1, with Dist. Ex. 27 at p. 1). The evaluator administered the GFTA-2, the Apraxia Profile (AP), the Clinical Evaluation of Language Fundamentals-Preschool (CELF-P), and an oral speech mechanism screening examination to assess the child's structure and function of his oral-facial mechanism, in addition to making behavioral observations (Dist. Ex. 27 at pp. 1-3). The evaluator reported that the child's oral-facial mechanism was within normal limits (id. at p. 1). Administration of the GFTA-2 resulted in a standard score of 94, and the evaluator noted that the child demonstrated single-word articulation skills within normal limits for his chronological age, but had difficulty with vowels which affected his intelligibility (id. at pp. 1-2).

According to the evaluator's report, administration of the AP indicated that although the child continued to demonstrate CAS, he "demonstrated progress over the past year" (Dist. Ex. 27 at p. 2). The evaluator noted that the areas "most indicative of apraxia [were] deficits in word imitation, difficulty with multisyllabic words, vowel distortions and receptive language abilities superior to expressive language abilities" (id.). The results of the CELF-P indicated that the child's receptive and expressive language skills were within normal limits for his chronological age (id. at p. 3). Based upon the testing, the evaluator recommended that the child receive speech-language

therapy two times per week for an "initial span of 12 weeks" and that his progress "should be reviewed and recommendations for further treatment should be made" following the initial span of treatment (id.).

Petitioner attended the CPSE meeting on May 23, 2007 (Dist. Ex. 28 at p. 3). The child's UCP speech-language therapist also attended the meeting (id.). The CPSE minutes indicated that the child made excellent progress over the past few months and that he was "now carrying sounds over into conversational speech" (id. at p. 2). The minutes also indicated that petitioner reviewed the private speech-language therapy report with the CPSE, that the CPSE discussed the child's eligibility for ESY speech-language therapy services for summer 2007, and that the CPSE was "unable to justify substantial regression over school breaks" (id.). The CPSE recommended a 10-month program and three sessions of speech-language therapy per week for 30 minutes per session as a related service from September 5 through December 20, 2007 (id. at pp. 1-2; Dist. Exs. 29 at pp. 6-7; 30). The CPSE did not recommend ESY speech-language therapy services for summer 2007 (Dist. Ex. 30).

Petitioner submitted a due process complaint notice on May 23, 2007 at the conclusion of the CPSE meeting (Dist. Ex. 1 at p. 2; Pet. ¶ 4). In the notice, she requested speech-language therapy services during summer 2007 and specified as a proposed solution that her son receive "at least 12 weeks from the middle of June [through] the middle of September, 2007, and at the same pace, 2 times per week for 30-45 minutes each session" (id. at p. 3).

The impartial hearing occurred on June 26, 2007 (Tr. p. 1). Petitioner, the child's mother, testified and submitted documentary evidence into the record (Tr. pp. 39-70; Parent Exs. 1; 3; 5; 8). Respondent presented the CPSE coordinator, the CPSE Chairperson, and the child's UCP speech-language therapist as witnesses, as well as documentary evidence (Tr. pp. 70-110, 110-43, 144-203; Dist. Exs. 1-30).

The impartial hearing officer rendered his decision on July 9, 2007 and denied petitioner's request for ESY speech-language therapy services during summer 2007 (IHO Decision at pp. 6-7). The impartial hearing officer determined that the evidence demonstrated that the child did not regress during weekends or school breaks during the 2006-07 school year and that based upon relevant statutory provisions, he was not entitled to receive ESY speech-language therapy services for summer 2007 (id.). In addition, he noted that petitioner's independent speech-language evaluation report, dated May 17, 2007, which petitioner introduced into evidence to support her request for ESY services, did not address the issue of regression or contain information regarding when the services recommended in the evaluation report should be delivered (id.). The impartial hearing officer also noted that petitioner failed to call any witnesses to testify about the evaluation report or to testify in favor of her request for ESY services. He concluded that petitioner failed to sustain her burden to establish that her son required ESY speech-language services during summer 2007 to prevent substantial regression (id. at p. 7).

On appeal, petitioner asserts that the impartial hearing officer did not accurately represent the proceedings in this matter and that his decision was not valid according to federal special education statutes or caselaw. In addition, petitioner argues that the impartial hearing officer erred in his application of substantial regression as the sole standard to determine whether her son was

eligible for ESY speech-language therapy services. As relief, petitioner seeks an appropriate 12-month ESY program, including summer services; dismissal of the impartial hearing officer's decision, dated July 9, 2007; a letter of reprimand and investigation into the conduct of respondent's CPSE meetings; reimbursement for the costs of any privately obtained summer speech-language therapy services; dismissal of the May 27, 2007 IEP and replacement of the May 27, 2007 IEP with the child's May 2006 IEP; and an order directing that the child's annual review be scheduled for May 2008.

Respondent contends that the impartial hearing officer's decision should be upheld in its entirety and that petitioner's appeal must be dismissed.

The central purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) is to ensure that students with disabilities have available to them a free appropriate public education (FAPE) ¹ (20 U.S.C. § 1400[d][1][A]; see Schaffer v. Weast, 546 U.S. 49, 51 [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 C.F.R. § 300.17[d];² see 20 U.S.C. § 1414[d]; 34 C.F.R. § 300.320).

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]). Under the IDEA, if a procedural violation is 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 child, or (c) caused a deprivation

¹ 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 school, 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]).

² The Code of Federal Regulations (34 C.F.R. Parts 300 and 301) has been amended to implement changes made to the IDEA, as amended by the Individuals with Disabilities Education Improvement Act of 2004. The amended regulations became effective October 13, 2006. For convenience, citations in this decision refer to the regulations as amended because the regulations have been reorganized and renumbered.

of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 C.F.R. § 300.513[a][2]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007]).

The IDEA directs that, in general, an impartial hearing officer's decision must be made on substantive grounds based on a determination of whether the child 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 v. Florida Union Free Sch. Dist., 142 F.3d 119, 130 [2d Cir. 1998]; see Rowley, 458 U.S. at 189). 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 Perricelli, 2007 WL 465211, at *15). 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 Rowley, 458 U.S. at 192).

An appropriate educational program begins with an IEP that 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 Dep't of Educ., Appeal No. 07-018; Application of a Child with a Disability, Appeal No. 06-059; Application of the Dep't 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).

The burden of persuasion in an administrative hearing challenging an IEP is on the party seeking relief (see Schaffer, 546 U.S. at 59-62 [finding it improper under the IDEA to assume that every IEP is invalid until the school district demonstrates that it is not]).

After reviewing the record and for the reasons set forth below, I concur with the impartial hearing officer's decision that the record does not show that the child was eligible for ESY speech-language therapy services during summer 2007. According to the Regulations of the Commissioner of Education, "[s]tudents shall be considered for [ESY] special services and/or programs in accordance with their needs to prevent substantial regression" (8 NYCRR 200.6[j][1]; Application of a Child with a Disability, Appeal No. 07-039; Application of the Bd. of Educ., Appeal No. 04-102; see 34 C.F.R. § 300.106 [defining ESY]; 8 NYCRR 200.4[d][2][x] [noting that a student's IEP shall indicate whether the student is eligible for a special service or program on a 12-month basis]). The Regulations define substantial regression as "the student's inability 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]).³

At the impartial hearing, the child's UCP speech-language therapist, who provided all of the child's speech-language therapy from January 2006 through June 2007, testified that when she initially began providing services to the child, she observed regression of the child's skills over some of the extended school breaks that justified ESY speech-language services during summer 2006 (Tr. pp. 145-48, 185-86). In July 2006, she provided three sessions per week of speech-language therapy to the child, which continued through June 2007 (Tr. pp. 148-49). She further testified regarding the evaluation she conducted in November 2006, that the child made "significant progress" since his earlier evaluation in October 2005 (Tr. pp. 149-54). The therapist testified that she attended the child's CPSE annual review in December 2006, at which time she recommended continued therapy for 90 minutes per week to address the child's "mild articulation delay," articulation errors in his connected speech, some behavioral issues arising out of frustration, and the carry over of skills into the child's spontaneous speech (Tr. pp. 154-55). The therapist testified that she observed very good and steady progress between December 2006 and May 2007 (Tr. pp. 155-56). In particular, she testified that the child began to carry over sounds mastered in a structured therapy setting to his spontaneous speech in the classroom or in conversation (*id.*). She noted that the carry over of skills into spontaneous speech indicated that the child "acquired those skills, and typically they'll be able to maintain them in other settings without having to do the drill work, spontaneously on their own" (Tr. p. 156).

The therapist further testified that prior to the May 2007 CPSE program review, she communicated to the child's mother that she did not observe "any regression" and that she did not have documentation to support a need for ESY speech-language therapy services for summer 2007 (Tr. p. 157). The therapist noted that the child made progress over some of the school breaks and that he returned from Christmas break using sounds he had not used prior to Christmas break (*id.*). She testified that she advised the child's mother that he would not qualify for summer services and that the child's mother did not question her about the child's eligibility for ESY speech-language therapy services (*id.*).

In her final progress report dated April 2007, the therapist did not recommend ESY services for summer 2007 and she did not recommend ESY services at the May 2007 CPSE meeting (Tr. pp. 158-59). She testified that she based her conclusion that ESY services were not warranted because she did not observe "any regression over breaks at all and his spontaneous speech was

³ In February 2006, the Office of Vocational and Educational Services for Individuals with Disabilities (VESID), published a guidance memorandum, dated February 2006, which states the following regarding ESY services:

A student is eligible for a twelve-month service or program when the period of review or reteaching required to recoup the skill or knowledge level attained by the end of the prior school year is beyond the time ordinarily reserved for that purpose at the beginning of the school year. The typical period of review or reteaching ranges between 20 and 40 school days. As a guideline for determining eligibility for an extended school year program a review period of eight weeks or more would indicate that substantial regression has occurred.

(<http://www.vesid.nysed.gov/specialed/publications/policy/esy/qa2006.htm>).

intelligible to familiar and unfamiliar listeners; he was able to communicate his wants and needs" (Tr. p. 159). In addition, she did not observe any behavioral issues related to frustration (*id.*). With respect to the 2007-08 school year, the therapist testified that the child continued to require speech-language therapy on a 10-month basis (Tr. pp. 158-59, 196).

The therapist also testified that she and the CPSE reviewed the private speech-language evaluation report presented by the child's mother at the May 2007 meeting (Tr. pp. 160-64). Comparing the January 2006 and the May 2007 private evaluations, the therapist testified that the results indicated significant progress in all areas of the child's needs (Tr. p. 165).

Based upon the foregoing, I find that the record establishes that the child's continued progress, his mastery of skills, and the absence of any regression over weekends and extended school breaks support the CPSE's decision to not recommend ESY speech-language therapy services during summer 2007. I also agree with the impartial hearing officer's determination that petitioner's evidence was insufficient to either contradict or rebut the evidence presented through the speech-language therapist's testimony, progress reports, and evaluations. Under the circumstances of this case, I find that the evidence in the record does not establish that the child would have experienced substantial regression during the summer, and, therefore, I concur with the impartial hearing officer and with respondent that ESY speech-language therapy services were not required during summer 2007.

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

THE APPEAL IS DISMISSED.

Dated: Albany, New York
September 13, 2007

PAUL F. KELLY
STATE REVIEW OFFICER