The University of the State of New York

The State Education Department
State Review Officer
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No. 08-157

Application of a STUDENT WITH A DISABILITY, by his parents, for review of a determination of a hearing officer relating to the provision of educational services by the Board of Education of the Cold Spring Harbor Central School District

Appearances:
Law Offices of Neal Howard Rosenberg, attorneys for petitioners, Nathaniel J. Kuzma, Esq., of counsel

Frazer & Feldman, LLP, attorneys for respondent, Laura A. Ferrugiari, Esq., of counsel

DECISION

Petitioners (the parents) appeal from the decision of an impartial hearing officer which determined that respondent (the district) offered an appropriate educational program to their son (the student) for the 2007-08 school year and denied their request for tuition reimbursement for the student's 2007-08 school year at the Greenwood School (Greenwood). The district cross-appeals from those portions of the impartial hearing officer's decision which determined that Greenwood's day program was appropriate, that the student made progress at Greenwood during the 2007-08 school year, and that the parents fully cooperated with the Committee on Special Education (CSE). The appeal must be dismissed. The cross-appeal does not need to be addressed.

At the time of the impartial hearing, the student was attending a residential seventh grade program at Greenwood, an out-of-State school which has not been approved by the Commissioner of Education as a school with which districts may contract to instruct students with disabilities (Tr. p. 55; see 8 NYCRR 200.1[d]; 200.7). The student's prior educational history is discussed in Application of a Child with a Disability, Appeal No. 06-138, and will not be reiterated here in detail. The student's eligibility for special education programs and services as a student with a speech or language impairment is not in dispute in this appeal (see 34 C.F.R. § 300.8[c][11]; 8 NYCRR 200.1[zz][11]).

The hearing record reflects that on June 14, 2006, the district administered the Wechsler Abbreviated Scale of Intelligence (WASI) to the student, which yielded a verbal IQ score of 73 (4th percentile, borderline range), a performance IQ score of 119 (90th percentile, high average range), and a full scale IQ score of 93 (32nd percentile, average range) (Dist. Ex. 1). The student's results on the June 14, 2006 administration of the Woodcock-Johnson Tests of Achievement-Third Edition (WJ-III ACH) prompted the evaluator to describe the student, compared to others at his age level, as possessing average academic skills, low average ability to apply academic skills, average math and math calculation skills, and low broad reading skills (Dist. Ex. 4). The student began attending Greenwood in September 2006, and completed the 2006-07 school year there (Tr. pp. 235, 309-10).

In May 2007, Greenwood created a planning document summary of the student's educational status and development that reflected assorted evaluative information from as early as 2004 that was available to Greenwood, but was not part of the hearing record in the instant case (Parent Ex. A). Based on a fall 2006 administration of the Comprehensive Test of Phonological Processing (CTOPP), the student's phonological awareness and phonological memory were described in May 2007 as "within the average range," and rapid naming abilities were in the low average to below average range (id. at p. 5). Administration of the Gray Oral Reading Test – 4th Edition (GORT-4) in spring 2007 yielded a standard score (SS/grade equivalent) of SS 4/3.0 for reading fluency and SS 7/5.4 for accuracy (id. at pp. 6-7). Administration of the Test of Word R[eading] Efficiency (TOWRE) yielded a SS 78/3.2 for sight word efficiency and a SS 79/3.2 for phonemic decoding efficiency (id. at p. 6). Administration of the Slosson Oral Reading Test (SORT) in spring 2007 yielded a SS 92/6.5 for single word reading (id. at p. 7). Anecdotally, the planning document summary indicated that the student "continued to struggle profoundly" with extracting meaning from text (id.). Administration of the Iowa Test of Basic Skills (ITBS) in spring 2007 yielded a grade equivalent score of 4.3 for spelling, 2.7 for vocabulary, 3.1 for comprehension, 2.9 for total reading, 4.0 for social studies, 3.2 for science, 3.3 for capitalization, 4.6 for punctuation, 4.2 for usage/revision, and a total grade equivalent score of 4.0 (id. at pp. 8, 9, 10).

In math, results on an untimed spring 2007 administration of the ITBS yielded grade equivalent scores of 7.2 for concepts, 5.1 for problem solving, 7.5 for computation, and a total math grade equivalent score of 6.6 (Parent Ex. A at p. 11). Regarding the student's social-emotional behaviors, the planning document summary noted the student's tendency to become "very upset because he didn't use the correct words," his apprehension when writing a sentence without the aid of a word bank or prompt, and his manifesting frustration when asked to correct a mistake in his work (id.). The document also listed multiple goals and objectives for the student in reading fluency, decoding, reading comprehension, spelling, writing, math, speech-language, and social-emotional categories for the 2007-08 school year (id. at pp. 6-12).

In summary, the planning document noted that the student benefited from visual modes of communication to derive meaning, writing on a computer and using word prediction software, and participation in structured activities in which he could interact with other students with support (Parent Ex. A at p. 12). The planning document included recommendations for a counselor to assist him in "navigating the social world and for developing appropriate strategies to cope with frustration," a summer program focusing on social, pragmatic, and language development, and

speech-language therapy twice per week to address specific speech-language goals and to address the student's oral language and language comprehension deficits (id.).

The CSE convened on May 23, 2007 for the student's annual review for the 2007-08 school year (Dist. Ex. 3). Meeting participants included the CSE chairperson/director of special education and pupil services (the director), a CSE chairperson representing the district's junior/senior high school, a school psychologist, a special education teacher and the parents (id. at p. 5). Greenwood's academic dean as well as Greenwood's "LEA coordinator" participated by telephone (id.). According to the individualized education program (IEP), the parents waived the participation of an additional parent-member (id.). The CSE recommended a 12:1+1 special class, related services consisting of counseling once per week for 30-minutes per session in a 5:1 setting, speech-language consultation once per week for one hour per session in a 5:1 setting, and speech-language therapy twice per week for 30-minutes per session in a 1:1 setting; program modifications consisting of additional time to complete tasks, check for understanding, preferential seating, and refocusing and redirection; and testing accommodations consisting of extended time (2.0), flexible location with minimal distractions, individual administration, questions, directions, and passages read, and directions explained (id. at pp. 1-2). The CSE recommended mainstreaming the student for physical education (id. at p. 2). The IEP included three annual speech-language goals for the student, namely improving organization and accuracy of expressive language, increasing auditory comprehension and sequencing of oral language and increasing word retrieval strategies and vocabulary (id. at p. 6). The CSE recommended "a private or public day school program for students with similar disability conditions" (id. at p. 5).

After the May 23, 2007 CSE meeting, the CSE forwarded the student's IEP, including the results of all recent standardized tests (see Dist. Ex. 3 at p. 4), to "a couple" of potential placements outside of the district,[1] and subsequently received rejections from those placements on June 22, 2007 (Parent Ex. H) and June 27, 2007 (Parent Ex. I),[2] respectively (Tr. pp. 36-37, 113). On June 8, 2007, the parents signed an enrollment agreement with Greenwood for the 2007-08 school year (Tr. p. 329; Parent Ex. E at p. 5).[3] On June 27, 2007, one of the parents signed a "Parent Nonpublic School Placement Acknowledgment/Consent Form," informing the district that the student was to be unilaterally placed at Greenwood for the 2007-08 school year (Dist. Ex. 13). The form stated that the parents acknowledged that they "must discuss and arrange for special education services with the school district where [the student's] nonpublic school is located" and granted the district

[1] The hearing record indicates that at the May 23, 2007 CSE meeting, the subject of an in-district placement at the district's junior high school was discussed, but that the parents were uncomfortable with the size of the school's classes (Tr. pp. 32-33). After further discussion with the CSE, the parents expressed a willingness to consider other options, including special education programs located outside of the district and programs operated by the Board of Cooperative Educational Services (BOCES) (Tr. pp. 33-34).

[2] The hearing record contains a duplicative Parent Ex. H, which appears to be erroneously labeled as "Parent Ex. I." I remind the impartial hearing officer that it is his responsibility to exclude evidence that he determines to be irrelevant, immaterial, unreliable, or unduly repetitious (8 NYCRR 200.5[j][3][xii][c]).

[3] The hearing record shows that the parents paid a $10,000 deposit to Greenwood on or before August 7, 2007 in order to secure the student's placement in the school for the 2007-08 school year (see Tr. pp. 329-30, 401, 428).

permission to exchange any relevant educational information, including the student's IEP, with the school district where Greenwood was located (id.).

By letter dated July 15, 2007 to the district's director, the student's mother acknowledged receipt of the May 23, 2007 IEP (Parent Ex. D). She also asserted her recollection that at the May 23, 2007 meeting, the CSE determined that Greenwood was an appropriate placement for the student, but that the district was required to find a State-approved school to address the student's needs, and that "[t]his process was to occur within 60 days" of the CSE meeting (id.). The student's mother noted that the district had not contacted the parents about viewing any public or private placement options during the 60 days subsequent to the CSE meeting, and she requested an update (id.).

On August 7, 2007, the student, accompanied by his father and the director, underwent screening at a recommended out-of-district BOCES middle school (Tr. pp. 160, 415-16). The student, his father, and the director each met individually with an interview team consisting of the assistant principal of the recommended placement and a consulting psychiatrist (Tr. pp. 39, 160-61). The assistant principal took the student's father and the student on a tour of the program and discussed a potentially appropriate grouping for the student (Tr. pp. 41, 162). According to the BOCES middle school principal, by the end of the August 7, 2007 screening, BOCES personnel concluded that the recommended placement could benefit the student educationally, supportively, and therapeutically (Tr. p. 162), and the student's father confirmed that the student was "orally accepted" into the program at the conclusion of the screening (Tr. p. 433). The recommended BOCES placement notified the director, who had not accompanied the student and his father on the tour, of the student's acceptance "probably a couple of days later" (Tr. p. 41).

By letter dated August 14, 2007 to the director, the student's father alleged that the district's recommended BOCES special class that had accepted the student after the August 7, 2007 screening was not appropriate for the student because: (1) despite possessing test results in its file, no one from the BOCES program read the student's file or noted the student's "significant" improvement during the 2006-07 school year at Greenwood in determining the appropriateness of the BOCES program for the student; (2) in the BOCES placement, the student would have been placed in a class with students with Asperger's Syndrome (Asperger's), which the student did not have; (3) the students comprising the BOCES special class profile had significant behavioral and emotional problems; (4) the use of medication to modify behavior and emotional concerns was "overwhelmingly present" in the BOCES special class; and (5) the lack of any music and art courses within the BOCES special class program rendered this recommended placement unacceptable, as both subjects "are two expressive vehicles at the core of [the student's] being and the source of his talent and intelligence" (Parent Ex. G at p. 1). The student's father did not specifically request an impartial hearing in the August 14, 2007 letter; however, he concluded the letter by stating: "Unless an appropriate New York State 'approved' private school is offered to [the student] before the start of the 2007-08 school [year], we will have no other option but to place

[4]According to the hearing record, the role of the psychiatrist, who was present at the school five days per week, was not to prescribe medications, but to "consult" with the principal of the BOCES placement, parents, district personnel, and "any outside therapists, neurologists, psychiatrists, [and] developmental pediatricians" attending to the students (Tr. p. 161).

[the student] back at Greenwood School and seek reimbursement for the expense of his education there" (id. at pp. 1-2).

On August 24, 2007, the CSE reconvened for the student's program review (Dist. Ex. 5). The meeting was attended by the director, the CSE chairperson from the district's junior/senior high school, a special education teacher, a school psychologist, a special education teacher from the recommended BOCES placement, and the parents (id. at p. 5). The August 24, 2007 CSE recommended the out-of-district 8:1+1 BOCES special class which had previously accepted the student after the screening interview on August 7, 2007, and related services, program modifications, and testing accommodations identical to those delineated in the May 23, 2007 IEP (compare Dist. Ex. 3 at pp. 1-2, with Dist. Ex. 5 at pp. 1-2). The CSE commented that the recommended program "provides a therapeutic environment which includes counseling and speech. Students are grouped together according to needs in a[n] 8:1+1 classroom setting" (id. at p. 5). The CSE acknowledged that the parents believed the recommended BOCES program was inappropriate for the student because art class was not offered; however, the CSE noted that it offered to provide the student with at-home art instruction for two hours per week (id.). With the exception of the parents, the CSE did not believe a residential placement was appropriate for the student (id.). The August 24, 2007 IEP also included the same annual speech-language goals as those found in the May 23, 2007 IEP,[5] and, after reviewing Greenwood's planning document, added annual goals in reading, writing, mathematics, and social-emotional areas (Tr. pp. 134-35; compare Dist. Ex. 5 at pp. 5-8, with Parent Ex. A at pp. 6-12).

By letter dated September 5, 2007 to the parents, the district restated its recommendation made at the August 24, 2007 CSE meeting to place the student in the 8:1+1 BOCES special class, acknowledged the parents' decision to enroll the student at Greenwood for the 2007-08 school year, stated that Greenwood was not a State-approved program, and advised the parents that Greenwood was "an expense to you as the parents" (Dist. Ex. 10; Parent Ex. B).

An impartial hearing convened on March 13, 2008 and concluded on September 10, 2008, after four days of testimony.[6] In his decision dated November 18, 2008, the impartial hearing officer denied the parents' request for tuition reimbursement at Greenwood (IHO Decision at p, 29). He determined that the district's recommended 8:1+1 BOCES special class was appropriate for the student, and that the August 24, 2007 IEP had offered the student a free appropriate public education (FAPE) for the 2007-08 school year (id. at p. 24). The impartial hearing officer determined that the "any procedural inadequacies at the CSE meeting did not result in a loss of educational opportunities; did not seriously infringe on the parents' opportunity to participate in the IEP process; nor compromise the development of an appropriate IEP" so as to "deprive the student of educational benefits under that IEP" (id. at pp. 23-24). The impartial hearing officer further determined that the district's recommended placement was appropriate because: (1) the school had a full-time speech pathologist; (2) the student would receive weekly speech-language

[5] Although the speech-language goals in both IEPs were identical, the evaluation criteria for the IEP goals were different, as the May 23, 2007 IEP used a 12-month evaluation period and the August 24, 2007 IEP used an 8-week evaluation period (compare Dist. Ex. 3 at p. 6, with Dist. Ex. 5 at pp. 7-8).

[6] It appears from the hearing record that both parties and the impartial hearing officer treated the August 14, 2007 letter as a request for an impartial hearing.

consultation, as well as pull-out speech-language therapy twice per week in a 1:1 setting; (3) the student would receive counseling once per week; (4) the hearing record demonstrated that the students in the recommended class did not exhibit significant behavioral/emotional issues, nor were they "aggressive" or "non-compliant"; and (5) the student would have been appropriately grouped in the recommended 8:1+1 BOCES special class because all the students had language needs, some with Pervasive Developmental Disorder-Not Otherwise Specified (PDD-NOS diagnoses similar to the student, and/or a classification of other health impaired (OHI) (id. at pp. 24-26). The impartial hearing officer also found that since there were students in the recommended class that had a higher IQ than the student in this case, "a myriad of opportunities would have existed for [the student] to practice and generalize social and pragmatic behaviors and skills" (id. at p. 26).

Next, the impartial hearing officer opined that had he not determined that the district offered the student a FAPE, he would have determined that Greenwood's day program, rather than its residential program, was an appropriate placement for the student (IHO Decision at pp. 27-28). The impartial hearing officer commented that the hearing record demonstrated that Greenwood developed "an intricate special education program for [the student], including goals and objectives to address his specific special education needs" (id. at p. 26). The impartial hearing officer surmised that the hearing record established that the student made progress at Greenwood, including mastering or making progress on all goals developed for speech-language developed by Greenwood for the 2007-08 school year, improving his ability to understand what was being asked of him, staying more on topic, communicating his ideas more clearly, being less harsh on himself, and being more easily redirected in a positive manner (id. at p. 27).[7] The impartial hearing officer further determined that Greenwood provided the student with a special education program and services that allowed the student to make appropriate academic, social, and emotional progress (id.). However, because the parents failed to submit any evaluative information supporting the student's need for a residential placement, the impartial hearing officer stated that had he not determined that the district offered the student a FAPE, he would have ordered tuition reimbursement for the Greenwood day program, but not its residential program (id. at pp. 27-28).

Lastly, the impartial hearing officer determined that consideration of the equities would have justified tuition reimbursement for the parents had he not determined the district's recommended BOCES special class to be appropriate (IHO Decision at p. 28). He determined that the hearing record established that the parents cooperated fully in the CSE process, and that they credibly testified that they paid a $10,000 deposit to Greenwood in advance of the CSE "to secure the student's placement" at the school (id.).

The parents appeal from the impartial hearing officer's decision. First, the parents contend that the impartial hearing officer arbitrarily and capriciously determined that the district's recommended 8:1+1 BOCES special class program was appropriate for the student because: (1) the class profile and impartial hearing testimony established that the class already contained eight students at the time it was recommended for the student; therefore, placing the student in the class would violate the ratio mandated by the controlling IEP; (2) the student would not have been

[7] However, the impartial hearing officer added that challenges still existed with respect to the student's vocabulary knowledge, word retrieval, and ability to communicate a sequence of ideas (IHO Decision at p. 27).

appropriately grouped in the district's recommended BOCES placement because no other student in the class was classified as speech-language impaired, the student's third grade reading level placed him at the bottom of the class while the other students in the recommended class had reading levels that ranged from 5.4 to 8.8,, and the student's IQ score of 93 placed him at the bottom of the class while the other students in the recommended class had IQ scores ranging from 102-125; (3) the impartial hearing officer erroneously gave undue credence to the testimony of the district's special education teacher who opined that the BOCES placement was appropriate for the student; and (4) the district's recommended BOCES program did not offer music or art classes, both of which the parents argue were vital to the student's social-emotional development.

Second, the parents argue that they are entitled to tuition reimbursement because the district procedurally denied the student a FAPE because: (1) the May 23, 2007 CSE failed to recommend an appropriate placement to the student within 30 school days of its recommendation for such placement in violation of 8 NYCRR 200.4(e)(1) and 200.6(j)(4)(ii); and (2) the BOCES representative who participated in the August 24, 2007 CSE meeting failed to adequately address the parents' concerns about the recommended program and could not meaningfully discuss whether the student would appropriately fit into the program because she allegedly failed to participate in the entire meeting, failed to participate in the development of goals and objectives for the IEP, she did not have any of the student's documentation before her at the time of the CSE meeting, and she "would not discuss" the student during the meeting. The parents contend that these alleged deficiencies rendered the August 24, 2007 IEP procedurally invalid. In their petition, the parents seek to overturn those portions of the impartial hearing officer's decision that determined that the district's recommended 8:1+1 BOCES special class placement was appropriate for the student and that the district offered a FAPE to the student, and seek to overturn the impartial hearing officer's denial of the parents' request for tuition reimbursement at Greenwood for the 2007-08 school year.

The district answers, countering that: (1) the impartial hearing officer correctly determined that the recommended BOCES special class placement was appropriate for the student, would have afforded him specifically designed special education instruction and related services, and would have grouped him in the least restrictive environment (LRE); (2) even though the parents may have been willing to observe other placements, the hearing record established that they were not willing to seriously consider any other placement options, as evidenced by the $10,000 deposit they paid to Greenwood to reserve the student's seat for the 2007-08 school year prior to receiving the district's placement recommendation, and their notification letter to the district dated June 27, 2007 advising of their intention to enroll the student at Greenwood for the 2007-08 school year; (3) even though the recommended BOCES special class was full at the time it was offered to the student, had the parents been willing to accept it, the district would have been able to either move a student out of the class to make room, or secure a variance in order to allow the student to be seated in the class; however, this issue was mooted by the August 14, 2007 due process complaint notice, which rejected the recommended placement one week after the intake interview and ten days before the August 24, 2007 CSE formally recommended the placement; (4) the 30-day timeline referenced in 8 NYCRR 200.4(e)(1) does not apply to this case because there was no specific placement recommended in the May 23, 2007 IEP, only a recommendation that various public and private day programs be explored; (5) the parents failed to raise their allegation regarding the "meaningful participation" of the BOCES representative below, and hence, it should not be considered by a State Review Officer; however, even if they had raised this issue below, any procedural allegation

pertaining the August 24, 2007 IEP was mooted by the parents' rejection of the recommended program on August 14, 2007; (6) Greenwood was not an appropriate placement because it failed to provide the level of services identified in the May 23, 2007 and August 24, 2007 IEPs as appropriate to meet the student's unique special education needs; and (7) examination of the standardized test data contained in the hearing record indicated that the student made little to no progress at Greenwood.

The district also raises five affirmative defenses, namely: that the petition fails to state a claim for which relief can be granted; that the impartial hearing officer correctly determined that the August 24, 2007 CSE meeting was conducted in an appropriate fashion; that the district's recommended BOCES special program offered the student a FAPE for the 2007-08 school year; that the student did not require a residential placement; and that the parents' claims are not supported by the hearing record.

The district also cross-appeals those portions of the impartial hearing officer's November 18, 2008 decision which determined that Greenwood's day program would have been appropriate for the student, that the student made progress at Greenwood during the 2007-08 school year, and that the parents fully cooperated with the district in the CSE process and acted in good faith. The district seeks an order from a State Review Officer reversing those portions of the decision. The parents answer the district's cross-appeal, maintaining that the impartial hearing officer correctly determined those issues.

At the outset, I will address several procedural matters arising on appeal. First, I note that the parents' memorandum of law fails to comply with 8 NYCRR 279.8(a)(6) in that it does not contain a table of contents. Additionally, the district's memorandum of law fails to comply with 8 NYCRR 279.9(8)(a)(5) in that it exceeds 20 pages in length. State regulations provide that documents that fail to comply with these requirements may be rejected in the sole discretion of a State Review Officer (8 NYCRR 279.8[a]; Application of a Student with a Disability, Appeal No. 08-053; Application of a Student with a Disability, Appeal No. 08-013; Application of a Child with a Disability, Appeal No. 06-065; Application of the Bd. of Educ., Appeal No. 04-080). Neither party objected to these deficiencies. Consequently, in the exercise of my discretion under 8 NYCRR 279.8(a), I will accept both memoranda, but I remind counsel for both parties to comply with State regulations in the future.

Next, I will address the district's contention that because the parents failed to raise their allegation that the BOCES representative failed to meaningfully participate in the August 24, 2007 CSE meeting in their due process complaint notice, such allegation is outside the scope of the subject appeal. A party requesting an impartial hearing may not raise issues at the impartial hearing that were not raised in its original due process complaint notice unless the other party agrees (20 U.S.C. § 1415[f][3][B]; 34 C.F.R. §§ 300.507[d][3][i], 300.511[d]; 8 NYCRR 200.5[j][1][ii]) or the original due process complaint notice is amended prior to the impartial hearing per permission given by an impartial hearing officer at least five days prior to the impartial hearing (20 U.S.C. § 1415[c][2][E][i][II]; 34 C.F.R. § 300.507[d][3][ii]; see A.B. v. San Francisco Unified Sch. Dist., 2008 WL 4773417, at *9 [N.D. Cal. Oct. 30, 2008]; Saki v. Hawaii, 2008 WL 1912442, at *6-*7 [D. Hawaii April 30, 2008]; Application of a Student with a Disability, Appeal No. 08-130; Application of a Student with a Disability, Appeal No. 08-102; Application of the

Dep't of Educ., Appeal No. 08-037; Application of a Child with a Disability, Appeal No. 06-139; Application of a Child with a Disability, Appeal No. 06-065).

In the case at bar, the parents did not allege in their August 14, 2007 letter that the May 23, 2007 CSE failed to recommend an appropriate placement to the student within 30 school days of its recommendation for such placement, or that the BOCES representative who participated at the August 24, 2007 CSE meeting failed to meaningfully participate in the CSE meeting, thereby depriving the student of a FAPE pursuant to 8 NYCRR 200.4(d)(4)(1)(a). The hearing record further demonstrates that the parents did not raise these issues during the impartial hearing. Accordingly, under these circumstances, I decline to consider these allegations enumerated in the parents' petition that were not previously raised in their August 14, 2007 letter (see Application of a Student with a Disability, Appeal No. 08-130; Application of a Student with a Disability, Appeal No. 08-102; Application of the Bd. of Educ., Appeal No. 08-029; Application of a Student with a Disability, Appeal No. 08-020; Application of a Student with a Disability, Appeal No. 08-008; Application of a Student Suspected of Having a Disability, Appeal No. 08-002; Application of the Bd. of Educ., Appeal No. 07-114; Application of a Child with a Disability, Appeal No. 07-051; Application of a Child with a Disability, Appeal No. 07-047; Application of a Child with a Disability, Appeal No. 06-139; Application of a Child with a Disability, Appeal No. 06-065; Application of a Child with a Disability, Appeal No. 04-019; Application of a Child with a Disability, Appeal No. 03-095; Application of a Child with a Disability, Appeal No. 02-024; Application of a Child with a Disability, Appeal No. 01-024; Application of a Child with a Disability, Appeal No. 99-060).

Two purposes of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see generally Bd. of Educ. v. Rowley, 458 U.S. 176, 206-07 [1982]).

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; 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 (A.C. v. Bd. of Educ., 553 F.3d 165, 172 [2d Cir. 2009]; 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 student, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 C.F.R. § 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; E.H. v. Bd. of Educ., 2008 WL 3930028, at *7 [N.D.N.Y. Aug. 21, 2008]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007] aff'd, 2008 WL 3852180 [2d Cir. Aug. 19, 2008]).

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 student received a FAPE (20 U.S.C. § 1415[f][3][E][i]). A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction" (Rowley, 458 U.S. at 203). However, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP" (Walczak 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). 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 200.1[cc], 200.6[a][1]; see P. v. Newington Bd. of Educ., 546 F.3d 111, 114 [2d Cir. 2008]; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132; Patskin v. Bd. of Educ., 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]).

An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs (34 C.F.R. § 300.320[a][1]; 8 NYCRR 200.4[d][2][i]), establishes annual goals related to those needs (34 C.F.R. § 300.320[a][2]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (34 C.F.R. § 300.320[a][4]; 8 NYCRR 200.4[d][2][v]; see Application of a Student with a Disability, Appeal No. 08-150; Application of a Student with a Disability, Appeal No. 08-138; 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). Subsequent to its development, an IEP must be properly implemented (8 NYCRR 200.4[e][7]; Application of a Child with a Disability, Appeal No. 08-087).

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

borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 C.F.R. § 300.148).

The parents argue that the impartial hearing officer erred in failing to address their assertion that the recommended 8:1+1 BOCES special class did not have an available space for the student, specifically alleging that the hearing record established that the class already had eight students enrolled in it at the time it was recommended (Tr. pp. 69-70, 191-92; Dist. Ex. 6), and that placing the student in the class would have violated the ratio mandated by the August 24, 2007 IEP, thereby denying the student a FAPE. The parents' August 14, 2007 letter did not allege that the proposed class did not have an available space for the student (Parent Ex. G. at p. 1). However, during the impartial hearing, the issue was explored during the cross-examination of the principal of the recommended BOCES placement without objection by the district (Tr. pp. 69-70, 191-92). Under the circumstances, I will consider whether the district's recommendation of the 8:1+1 BOCES special class, which already contained eight students, rose to the level of denying the student a FAPE.

The hearing record reflects that at the time of the August 24, 2007 CSE meeting, the recommended BOCES 8:1+1 special class already had eight students enrolled in it (Tr. pp. 69-70, 191-92; Dist. Ex. 6). However, the principal of the recommended BOCES placement testified that the school was contemplating moving one student out of the class, which would have made room for the student in this case, or, in the alternative, could have requested a variance to permit the student to enroll, thereby increasing the class total to nine students (Tr. pp. 191-92). The principal added that in previous cases in which the class ratio changed, the school typically added a second paraprofessional into the classroom, thereby changing the ratio to 9:1+2 (Tr. pp. 206, 208-09). She further offered that when comparing the restrictiveness of the class profile of the proposed 8:1+1 class with a 9:1+2 class, in her opinion, the two classes would be comparable, and that the 9:1+2 ratio would afford the teachers greater opportunities to break groupings down into smaller groups because there would be three adults in the classroom to work with students as opposed to only two (Tr. pp. 209-10).

I further note that the district formally recommended the 8:1+1 BOCES special class placement to the student at the August 24, 2007 CSE meeting (Dist. Ex. 5 at pp. 1, 5). The hearing record indicates that the student's first day of school in the recommended program would have been September 8, 2007 (Dist. Ex. 11 at p. 1). This would have given the district two full weeks to secure a variance and afford the student a seat prior to the student's first scheduled day of school. The parents contend that the hearing record lacks evidence establishing that the district took any steps toward securing a variance for their son. However, as the district counters, the parents had already rejected the recommended BOCES placement by their August 14, 2007 letter (see Parent Ex. G at p. 1). I find no evidence in the hearing record suggesting that had the parents accepted the placement at the August 24, 2007 CSE meeting, the district would have been unwilling or unable to secure such a variance within the allotted time frame.

Based upon a full consideration of the facts adduced at the impartial hearing, I conclude that in this case, the district's offer of an 8:1+1 special class in a BOCES middle school that already contained eight students two weeks prior to the start of the school year, did not impede the student's right to a FAPE or cause a deprivation of educational benefits as afforded under the IDEA. To

meet its legal obligations, a district must have an IEP in effect at the beginning of each school year for each student in its jurisdiction with a disability (34 C.F.R. § 300.323[a]; 8 NYCRR 200.4[e][1][ii]; Cerra, 427 F.3d at 194; Tarlowe v. New York City Dep't of Educ., 2008 WL 2736027, at *6 [S.D.N.Y. July 3, 2008] [stating "[a]n education department's delay does not violate the IDEA so long as the department 'still ha[s] time to find an appropriate placement … for the beginning of the school year in September'"]; Application of a Student with a Disability, Appeal No. 08-088). I find nothing in the hearing record indicating that the district could not have implemented the August 24, 2007 IEP in a timely manner prior to the beginning of the 2007-08 school year.

The parents also allege that the student would have been inappropriately grouped in the district's recommended 8:1+1 BOCES special class because: (1) no other student in the class was classified as speech-language impaired; (2) the student read at a third grade level, whereas reading levels among the other students in the BOCES class ranged from 5.4 to 8.8; and (3) the student's IQ score of 93, which would have been the lowest functioning IQ score in the class, would have made it difficult for him to manage socially and emotionally.

State regulations require that in special classes, students must be suitably grouped for instructional purposes with other students having similar individual needs (8 NYCRR 200.1[ww][3][i], 200.6[a][3]; Application of the Dep't of Educ., Appeal No. 08-095; Application of the Dep't of Educ., Appeal No. 08-018; Application of a Child with a Disability, Appeal No. 07-068; Application of a Child with a Disability, Appeal No. 05-102). The social and physical levels of development of the individual students shall be considered to ensure beneficial growth to each student, although neither should be a sole basis for determining placement (8 NYCRR 200.6[a][3][ii], [iii]). Further, the management needs of students may vary and the modifications, adaptations and other resources are to be provided to students so that they do not detract from the opportunities of the other students in the class (8 NYCRR 200.6[a][3][iv]). The similarity of abilities and needs may be demonstrated through the use of a proposed class profile or by the testimony of a witness who is familiar with the children in the proposed class (Application of the Dep't of Educ., Appeal No. 08-095; Application of the Dep't of Educ., Appeal No. 08-018; Application of a Child with a Disability, Appeal No. 07-068). The regulations do not preclude a grouping of students in a classroom when the range of achievement levels in reading and math would exceed three years (see Application of the Dep't of Educ., Appeal No. 08-095; Application of the Dep't of Educ., Appeal No. 08-018; Application of the Bd. of Educ., Appeal No. 06-010; Application of a Child with a Disability, Appeal No. 01-073).

In addressing the instructional ranges/academic grouping of the recommended class, the August 24, 2007 IEP described how the student's disability affected his involvement and progress in the general education curriculum (Dist. Ex. 5 at p. 3). During the impartial hearing, the principal of the recommended BOCES placement testified that the students in the recommended class functioned in a similar way to the student as described in the August 24, 2007 IEP, especially with respect to their difficulties with larger group instruction, their tendencies to benefit from a smaller group setting, their difficulties sustaining on-task behaviors, and their struggles with receptive and expressive language (Tr. pp. 204-05).

The student's former special education teacher from the district attended both the May 23, 2007 and August 24, 2007 CSE meetings (Dist. Exs. 3 at p. 5; 5 at p. 5). She described an 8:1+1 class as "usually a blended class for children with different identifications but ultimately with similar needs" (Tr. p. 116). The teacher explained that she considered an 8:1+1 class more appropriate for the student than a 12:1+1 class because the smaller class would provide the student with more opportunities for teaching geared toward his specific needs (Tr. pp. 140-41). Based on the recommended class profile (Dist. Ex. 6), her personal knowledge of the student, and the discussions at the May and August 2007 CSE meetings, the teacher posited that when looking at the recommended program "in a comprehensive way," although the student would be at the lower end, he would still be functioning within the range of the class in both reading and math (Tr. p. 117). She further added that the class was appropriate for the student because in looking at the "fuller picture" for the student, the class profile was "almost like looking at a child that [was] being mainstreamed" because the proposed program offered supports to "scaffold learning" and "to support his learning within that classroom," thereby enabling the student to "fit in" (Tr. p. 118). The teacher believed that the small class size and special education instruction designed to modify, reinforce, and re-teach concepts when needed, would be helpful for the student (id.). She also observed that speech-language therapy, counseling, and social skills training recommended for the student in both IEPs were all built into the proposed program, and would address the student's speech-language needs, which she identified as the "heart" of his disability because they affected how he processed information and, consequently, his ability to progress (Tr. p. 119).

With respect to the classifications of the other students in the proposed class, the hearing record indicated that four students in the class were eligible for special education services as students with an other health impairment (OHI), three students were eligible for special education services as students with an emotional disturbance, and one student was eligible for special education services as a student with multiple disabilities (Dist. Ex. 6). The student's former special education teacher testified that at the August 24, 2007 CSE meeting, a representative from the proposed BOCES placement, who was aware of the student's classification as a student with a speech or language impairment, opined that the recommended BOCES class was appropriate for the student (Tr. pp. 144-45). Moreover, nothing in the hearing record shows that the student could not be educated with students whose IEPs contained classifications other than speech or language impairment. Therefore, I find the parent's argument that the district's recommended class was inappropriate for their son because he would have been the only student in the class who was classified as speech or language impaired, to be unpersuasive.

The principal of the recommended BOCES placement described the recommended middle school as having 97 students, all of whom had IEPs (Tr. pp. 194, 196).[8] She advised that the recommended classroom consisted of eight students, one certified special education teacher, and a paraprofessional (Tr. pp. 164-67, 191). She characterized the classroom teacher as "very skilled" in working with middle school youngsters, particularly with students who present with spectrum disorder difficulties or that need mnemonic instruction (Tr. p. 164). She further testified that both the classroom teacher and the paraprofessional had training in "ASD, which is a specialized

[8] The principal of the recommended BOCES placement testified that as of the date of the impartial hearing, the school did not have any general education students enrolled; however, the school did offer a program for non-classified students (Tr. p. 196).

training. It is a spectrum disorder" (Tr. p. 167). She explained that math, English, social studies, and science were taught in the classroom while students attended science lab elsewhere in the school building and a computer lab for either a single or double period, accompanied by the classroom teacher (Tr. p. 168). The principal clarified "the [classroom] teacher will go to lunch when the students are at lunch. The paraprofessional will go to lunch at a different time period, at which point we bring in another paraprofessional" (Tr. p. 197).

The BOCES principal testified that the recommended placement's curriculum was aligned with State standards, and was modified based upon the individual needs of the students as described in their IEPs (Tr. p. 168).[9] The recommended class utilized the Achieving Maximum Potential (AMP) reading program, which the BOCES principal described as "an enrichment … high-interest reading program" (Tr. p. 169). For the remainder of the day, the students were clustered together according to their strengths, weaknesses, and the different compensatory strategies noted on their individual IEPs (Tr. p. 170).

According to the hearing record, the students in the recommended class had IQ scores ranging from 102 to 125 (Tr. p. 164; Dist. Ex. 6). Reading levels spanned between mid-fifth grade and eighth grade (Tr. p. 164). Math levels fell between mid-third grade and seventh grade (id.; Dist. Ex. 6). In order to teach this particular class, the BOCES principal testified that the classroom teacher employed a "very comprehensive, multisensory approach" that featured a "tremendous amount" of graphic organizers, sequencing drills, and repetition (Tr. p. 164). Technology, in the form of an in-class computer and frequent class trips to the computer lab, figured prominently in the curriculum (id.). The principal described the classroom as "a very positive classroom environment" focusing "not only on academics but on … social stories, which really guide students through learning appropriate social responses that they can model and use spontaneously on their own" (Tr. pp. 164-65).

The BOCES principal testified that lessons were geared toward both higher level students and those who required graphic presentations or notes handed to them, rather than copying notes off a board (Tr. p. 171). At the direction of the classroom teacher, the paraprofessional circulated throughout the class groupings providing additional refocusing and assistance as needed by the students (id.). Although the parents alleged that the proposed class was not appropriate for the student because it "was a class for students with Asperger's," (see Parent Ex. G at p. 1), the BOCES principal refuted this objection, stating that the class was not solely for students with Asperger's, but benefited students with PDD as well "because of the manner in which the program is conducted, the roteness and the routine in the classroom, the drill and the instruction and the sequencing of each one of the tasks" (Tr. pp. 171-72). Based in part upon the information shared in the student's application packet and the information gleaned at the BOCES screening on August

[9] When asked how instruction was modified for each student per their specific IEP, the BOCES principal explained that the class was split in half and a general instruction model was used and then modified (Tr. pp. 168-69). During an academic intervention services (AIS) period, some students received the assistance of the classroom teacher either individually or in small groups of two or more, depending upon their levels of functioning in particular content areas (Tr. pp. 169-70). The BOCES principal gave an example of a cooperative learning lesson during which one student took notes, another student built a model, and another student typed notes on a computer (Tr. p. 170). Additionally, she observed that when students were pulled out of the classroom for their related services, the class size was further reduced (Tr. p. 169).

7, 2007, the BOCES principal hypothesized that the classroom environment would benefit the student because it was well organized, was "into routines," demonstrated "wonderful emerging social skills," and would have presented the student with appropriate academic and social models (Tr. p. 173).

With regard to outside activities, the recommended BOCES placement offered a building-wide behavior management program, which allowed students, upon earning enough points, to participate in a "specials" club period at the end of the school day (Tr. p. 174). The placement featured 20 to 25 clubs that rotated every 12 to 15 weeks, including "home and careers," technology, craft club and team sports (Tr. pp. 174-75). The students traveled as a class to gym, home and careers class, and technology class (Tr. pp. 197-98).

The parents also contend that the recommended BOCES placement was inappropriate for their son because the class enrolled students "with significant behavioral issues and emotional problems," and "the use of medication to modify behavior and emotional concerns is 'overwhelmingly present'" (Parent Ex. G at p. 1). However, according to the uncontroverted testimony of the BOCES principal, the students in the recommended placement did not "present with behavioral issues that were of non-compliance or aggressive nature" (Tr. p. 194). Although she conceded that students might "be frustrated over an academic task, they may push the task aside, they may put their head down and refuse a task," she noted that "aggressive" students were served in other settings (Tr. pp. 173-74). With respect to the parents' allegation regarding medication, the BOCES principal maintained that "not every student in [the] program takes medication," advising that the program addressed problematic behavior through a building-wide behavior management system that included specific individual behavior improvement plans designed to address each student's behavioral goals (Tr. p. 181). This testimony was unrefuted by the parents.

In the realm of related services, the BOCES principal reported that the recommended placement included a "State-certified" speech pathologist that was in the building five days per week, and that individual and group services were provided in the speech-language pathologist's office to students grouped according to their needs and goals, rather than by classroom (Tr. p. 176). The student would also have received counseling services per the August 24, 2007 IEP (Tr. pp. 176-77; see Dist. Ex. 5 at p. 1). The BOCES principal testified that all of the students at the BOCES middle school program received counseling services (Tr. p. 177). Additionally, all of the students in the class received push-in group counseling whereby both a "certified" school psychologist and a "certified" social worker entered the classroom and provided social skills training (Tr. pp. 177-78). The classroom teacher and the paraprofessional remained in the classroom during the group counseling sessions so that they could incorporate and reinforce the material learned during the sessions throughout the school week (Tr. p. 177). Social skills training utilized social stories, cartooning, script writing, and role-playing to teach students how to respond correctly to difficult events or social exchanges occurring during school (Tr. p. 178). The social skills group addressed communication skills, conversational skills, interpersonal relationships, initiating conversations, and understanding non-verbal responses (Tr. pp. 203-04).

With regard to the IEP goals, the hearing record demonstrates that the August 24, 2007 IEP reflected goals specific to the student's reading, spelling, writing, math, and social-emotional

development that were consistent with those developed by Greenwood in its planning document (see Tr. pp. 123-24, 134-35; Dist. Ex. 5 at pp. 5-8; Parent Ex. A at pp. 7-12). The BOCES principal testified that the student's application packet was consistent with the types of applications the school typically received before it screened a prospective student (Tr. p. 181), and added that the goals adduced in the August 24, 2007 IEP were "fairly consistent" with the types of skills and goals the recommended BOCES class focused on at the beginning of the 2007-08 school year and fit appropriately within the educational curriculum of the recommended BOCES special class (Tr. pp. 179-80).[10] She testified that the focus of the recommended BOCES placement was "to have a student move to a less restrictive alternative and to be able to be in a mainstream environment" (Tr. p. 180).

The parents argue that "the lack of any music or art courses within this program clearly makes placement unacceptable" (Parent Ex. G. at p. 1). The BOCES principal conceded that the recommended 8:1+1 special class did not offer music or art programs in the middle school, but testified that "the classroom teachers really incorporate that into many of the projects" across subject areas (Tr. p. 198). The student's former district special education teacher recollected that the lack of an art program at the recommended BOCES placement was a concern of the parents that was discussed at the August 24, 2007 CSE meeting (Tr. pp. 116, 120), an assertion which the parents also raised during the impartial hearing (see Tr. pp. 404, 442). However, the hearing record evidences that the CSE offered to provide the student with art instruction by an art teacher at home for two hours per week (Tr. pp. 44, 102, 116; Dist. Ex. 5 at p. 5), and the student's father testified he was already providing the student with private music lessons at home at the time that the CSE recommended the BOCES placement (Tr. pp. 432-33). I note further that the hearing record lacks any evaluative data to support the parents' contention that the student requires art and music classes as necessary components of a FAPE.

After a careful review of the hearing record, I agree with the determination of the impartial hearing officer that the hearing record demonstrated that the student did not need a residential setting to benefit from his educational program. A residential placement is one of the most restrictive educational placements available for a student and it is well settled that a residential placement is not appropriate unless it is required for a student to benefit from his or her educational program (Walczak, 142 F.3d at 122; Mrs. B., 103 F.3d at 1121-22; Application of a Student with a Disability, Appeal No. 08-028; Application of the Bd. of Educ., Appeal No. 08-016; Application of a Child with a Disability, Appeal No. 06-138; Application of the Bd. of Educ., Appeal No. 05-081; Application of a Child with a Disability, Appeal No. 03-066; Application of a Child with a Disability, Appeal No. 03-062; Application of a Child with a Disability, Appeal No. 03-051).

In the instant case, the student's former district special education teacher testified that he progressed academically during the 2004-05 school year, noting that his negative self-talk and his

[10] The BOCES principal observed that, consistent with the student's goals on the August 24, 2007 IEP, the recommended 8:1+1 special class worked on outlines for paragraphs, as well as "WH" questions, so as to enable the students to develop "pertinent facts and details so they can better organize information, whether it is in math or in language arts" (Tr. pp. 179-80). She further commented that the class participated in "tremendous amounts" of repetition, drill and sequencing, and explained that the student had goals on his August 24, 2007 IEP addressing "organizing and sequence in order to be able to come up with a written form" (Tr. p. 180).

frustration level decreased (Tr. p. 106). She testified that based upon her knowledge of the student, she did not believe that he required a residential setting (Tr. p. 120). She based her testimony on her recollection of having previously attended numerous CSE meetings involving the student (including those conducted on May 23, 2007 and August 24, 2007), as well as "reports" and "hearing his annual review comments from the schools that he attended when he left [the district]," and maintained that "there was nothing that was submitted that led me to believe that his education would be unmanageable unless he was in a residential setting," and "there was nothing that suggested that he needed a residential setting, and nothing has been discussed since that a residential setting was warranted" (Tr. pp. 120-21). The student's former special education teacher from the district testified that a 24-hour residential placement was more restrictive than the proposed 8:1+1 BOCES placement, and, in her opinion, was not the appropriate placement for the student (Tr. pp. 124, 139, 146).[11]

Based on the foregoing, I find that the hearing record amply supports a conclusion that the district offered the student a FAPE in the LRE for the 2007-08 school year. Having determined that the district offered the student a FAPE in the LRE for the 2007-08 school year, I need not reach the issue of whether Greenwood was appropriate for the 2007-08 school year, and the necessary inquiry is at an end (M.C. v. Voluntown, 226 F.3d 60, 66 [2d Cir. 2000]; Walczak, 142 F.3d at 134; Application of a Child with a Disability, Appeal No. 05-038; Application of a Child with a Disability, Appeal No. 03-058).

I have considered the parties' remaining contentions, including the district's cross-appeal, and find that I need not reach them in light of my determinations.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
February 25, 2009

PAUL F. KELLY
STATE REVIEW OFFICER

[11] The parents argue that the impartial hearing officer erroneously gave undue credence to the testimony of the student's former district special education teacher, contending that she never visited the recommended BOCES program, and that she contradicted her own testimony, originally testifying that Greenwood addressed the student's special education needs, then opining that Greenwood was not an appropriate placement for the student (Tr. pp. 110, 124, 139, 146). A State Review Officer gives due deference to the findings of credibility of the impartial hearing officer, unless the hearing record read in its entirety would compel a contrary conclusion (see Carlisle Area School v. Scott P., 62 F. 3d 520, 524 [3d Cir. 1995]; Application of the Bd. of Educ., Appeal No. 08-085; Application of the Dep't of Educ., Appeal No. 08-037; Application of the Bd. of Educ., Appeal No. 04-091; Application of the Bd. of Educ., Appeal No. 03-062; Application of the Bd. of Educ., Appeal No. 03-038; Application of a Child with a Disability, Appeal No. 03-025; Application of a Child with a Disability, Appeal No. 01-019; Application of a Child with a Disability, Appeal No. 97-73). Here, a review of the complete hearing record does not compel a contrary conclusion.