The University of the State of New York

The State Education Department
State Review Officer
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No. 10-129

Application of the BOARD OF EDUCATION OF THE BRENTWOOD UNION FREE SCHOOL DISTRICT for review of a determination of a hearing officer relating to the provision of educational services to a student suspected of having a disability

Appearances:
Ingerman Smith, LLP, attorneys for petitioner, Edward H. McCarthy, Esq., of counsel

Law Offices of Wayne J. Schaefer, LLC, attorneys for respondents, Wayne J. Schaefer, Esq., of counsel

DECISION

Petitioner (the district) appeals from the decision of an impartial hearing officer which found that it failed to offer an appropriate educational program to respondents' (the parents') son and ordered it to reimburse the parents for their son's tuition at a non-public private high school (NPS) for the 2009-10 school year. The parents cross-appeal from the impartial hearing officer's determination which denied their request for reimbursement for their son's tuition at the NPS for the 2010-11 school year. The appeal must be sustained. The cross-appeal must be dismissed.

According to the hearing record, the student received diagnoses of an adjustment disorder with mixed disturbance and emotional conduct, anxiety, depression, a post-traumatic stress disorder (PTSD), a depressive disorder, not otherwise specified (NOS), and behavioral problems secondary to reported peer bullying (Tr. pp. 85, 361-63, 368-70, 615-16, 666-67, 674-79, 684, 752-54; Dist. Exs. 1 at p. 3; 6 at p. 1; 7; Parent Exs. H at pp. 13, 15-19, 21-24, 29, 32; I; see Tr. pp. 103-05). The NPS has not been approved by the Commissioner of Education as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7). The student's eligibility for special education and related services as a student with an emotional disturbance is in dispute in this appeal (see 34 C.F.R. § 300.8[c][4][i]; 8 NYCRR 200.1[zz][4]).

Background

The hearing record is sparse relative to the student's educational background. It reflects that the student was educated in a general education setting in district schools from kindergarten (1998-99) through tenth grade (2008-09) (Dist. Ex. 7 at p. 2). The hearing record contains references that the student reported bullying incidents by peers as early as fifth grade and continuing into sixth grade, and that the student "began to act out some of his aggression" in sixth grade (Dist. Ex. 7 at p. 1; Parent Ex. H at pp. 6, 21).[1] According to the hearing record, during sixth grade the student was treated by a psychiatrist and received medication for "anxiety symptoms and behavioral problems related to his reports of being bullied by others" for an indeterminate time period, "[h]e then improved and [the medication] was discontinued;" he also received counseling for an unspecified time period (Dist. Ex. 7 at p. 2; see Dist. Ex. 4).[2] The hearing record reflects that in December 2005, during seventh grade, the student witnessed an automobile accident in which his mother and brother were injured (Dist. Ex. 7 at p. 2; see Tr. pp. 212, 638-39; Dist. Ex. 5; Parent Ex. H at pp. 22-23).

On July 7, 2008, the district issued the student's report card for the 2007-08 school year (ninth grade) (Parent Ex. A).[3] The report card reflects that the student earned the following grades: 76 in English; 79 in Global Study; 65 in Algebra; 65 in Earth Science; 60 in Spanish;[4] 66 in Studio Art; and 65 in Gym, for a cumulative average of 72 (id.). The hearing record also references one incident of bullying of the student allegedly occurring during his ninth grade year, but does not specify details (see Tr. p. 60).

On September 18, 2008, the student's mother consulted the district high school's vice-principal and school psychologist to address her son's "social difficulty" with and feeling of "disconnection" from other students at the district high school (Tr. pp. 60-63; Dist. Ex. 3 at p. 1). The hearing record also evidences several alleged incidents of bullying of the student at the start of the 2008-09 (tenth grade) school year which were reported to district personnel by the student's mother (see Tr. pp. 343-45, 396-405; Dist. Exs. 1 at pp. 1-2; 3; Parent Ex. H).[5]

According to the student's performance card that addressed his academic performance during the first five weeks of his tenth grade school year, the student was doing "very good work"

[1] The hearing record is unclear whether the district was made aware of the alleged incidents of bullying of the student during his fifth and sixth grade years. The hearing record does not contain an explanation of how the student "began to act out some of his aggression" (see Dist. Ex. 7 at p. 1).

[2] It is unclear from the hearing record whether the counseling was provided by the district as part of his educational program or was privately obtained.

[3] The exhibit list contained in the hearing record indicates that Parent Ex. "A" consisted of three pages; however, the report card contained in the hearing record is a one page document (see Parent Ex. A).

[4] The explanation of marking period entries on the report card contained in the hearing record indicates that "65" constituted a passing grade (Parent Ex. A).

[5] According to the school psychologist, the district maintained a "zero tolerance policy for bullying" and "it [was] the school's goal to assure that everyone feels safe and protected in school;" the hearing record reflects that neither the student nor his mother was able to provide district personnel with the names of students who reportedly bullied the student (Dist. Ex. 3 at p. 1; see Tr. pp. 396-99).

in Biology, Business Ownership/Marketing, and Global History, and was doing "satisfactory" work in Computer Graphics, Gym, and English; there were no comments relative to his performance in Geometry (Dist. Ex. 9; see Tr. p. 231). The student achieved the following grades during the first quarter of the 2008-09 school year: Biology, 75; Business Ownership/Marketing, 94; Computer Graphics, 75; Gym, 80; English, 65; Global History, 80; and Geometry, 65, for a cumulative average of 76 (Dist. Ex. 10).

On November 5, 2008, the student was involved in a "confrontation" with a group of other students in the hallway of the district high school (Dist. Exs. 1 at p. 2; 2 at pp. 1-2; 3; 4). Subsequent to this incident, district personnel reportedly observed demeanor changes in the student, including marked irritability, non-responsiveness, and anger (see Tr. pp. 69-73, 148, 208, 404-05; Dist. Exs. 3; 4; 5). According to the student's mother, the student began seeing a private therapist at this time and continued treatment with the private therapist through the commencement of the impartial hearing in the instant appeal (see Tr. pp. 391-92, 427-28, 572-73, 575-76; Parent Ex. H).

On November 10, 2008, in response to "antisocial behavior" the student exhibited in his biology class, the school's dean brought the student to his guidance counselor for a meeting, during which the guidance counselor discussed the possibility of the student taking honors-level classes in consideration of his "very good first quarter grades" (Tr. pp. 206-12; Dist. Exs. 1 at p. 2; 5; Parent Ex. B; see Tr. pp. 278-302, 444-49; Dist. Ex. 10). The student reported to the guidance counselor that "he doesn't have any friends and isolates himself" and "feels he has different views and when someone disagrees he tries to change them" (Tr. pp. 207-10; Dist. Ex. 5; Parent Ex. B). Approximately two or three days later, with the student's mother's permission, the guidance counselor introduced the student to the school's social worker (Tr. pp. 149, 212-15, 409-10; Dist. Exs. 3 at p. 2; 4; 5). During this meeting, the social worker reported that the student referred to the November 5, 2008 incident in the school hallway, remarked that other unnamed students were "speaking about him," and stated, in the presence of the school psychologist, that he wished for the group of other students to come look for him so that "he could give them what they had coming to them" (Tr. pp. 146-51; Dist. Exs. 3 at p. 2; 4).

On November 13, 2008, the student's mother met with the assistant principal for the district high school, the school psychologist, and the social worker, at which time district personnel expressed "concern about [the student's] overall functioning with respect to his perception of situations" and their "concern with respect to his reaction to the events;" they "strongly recommended a psychiatric evaluation to assess his level of functioning," explaining to the student's mother that "her son would be placed on home teaching until the evaluation was completed and a psychiatrist felt it was safe for him to return to school" (Tr. pp. 73-80, 112-13, 149-54, 353-61, 365-66, 410-14, 459; Dist. Exs. 1 at p. 2; 3 at p. 2; 4).

On November 18, 2008, the student was evaluated by a private psychiatrist at parental expense (Dist. Ex. 6; see Tr. pp. 361-63, 414-18; Dist. Ex. 1 at pp. 2-3). The private psychiatrist opined that the student was "in need of psychiatric medication and talk-therapy" and recommended that "[u]ntil improved, he cannot return to school [and] would benefit from house tutoring for his own safety as well as his co-students and to improve his mental health" (Dist. Ex. 6 at p. 1; see Tr. pp. 80-82, 362-63, 415-18; Dist. Ex. 1 at pp. 2-3). She also recommended that the district schedule reevaluations of the student every three weeks and concluded that he "need[ed] weekly medication

monitoring [and] once to twice a week psychotherapy" and noted that "[i]npatient psychiatric treatment is at all times recommended if [the student] feels the need to be hospitalized, or the school or the mental health professionals" (Dist. Ex. 6 at p. 2).[6]

On November 24, 2009, the student began treatment with a private therapist (Tr. pp. 572-73, 575-76, 634-51; Parent Ex. H at pp. 1-3; see Parent Ex. J). The private therapist observed that the student presented with depression and anxiety, and recommended individual therapy sessions to "[i]mprove/develop effective communication skills necessary for effective social interaction," as well as to "[d]evelop effective coping skills to tolerate frustration" and "[d]evelop strategies to strengthen reasoning skills" (Parent Ex. H at pp. 1, 11). She offered diagnoses of an adjustment disorder with anxiety and moderate depression, and traced the beginning of the student's socialization problems to the alleged bullying incidents in fifth grade (id. at pp. 13, 15-19, 21, 32; see Tr. pp. 615-16, 639-44, 647-48, 651-52, 752-54).[7]

At the request of the parents, the district conducted a second psychiatric evaluation of the student on November 26, 2008 (Dist. Ex. 7; see Tr. pp. 83-87, 368-72, 418, 420-24; Dist. Ex. 1 at pp. 2-3). The evaluating psychiatrist observed that the student appeared to present with anxiety, depression, and behavior problems related to "chronic stressors" and offered an Axis I diagnosis of an adjustment disorder with mixed disturbance and emotional conduct, and an Axis IV diagnosis of "[r]eported victimization of peer bullying" (Dist. Ex. 7 at p. 3; see Dist. Ex. 1 at p. 3). Treatment recommendations included continued outpatient psychiatric counseling and antidepressant/antianxiety medication (Dist. Ex. 7 at p. 3). The evaluating psychiatrist further commented that "[i]f the student were not to be compliant with these treatment recommendations, it is likely that he might continue to have anxiety and anger control problems," adding that because "his reported stressors are chronic and not likely to subside … counseling would be beneficial" (id.).[8]

In December 2008, the district offered the student homebound instruction, where, according to the hearing record, he remained for the balance of the 2008-09 school year (see Tr. pp. 87-88, 256, 371, 376-80; Dist. Ex. 1 at pp. 2-3).[9] On January 14, 2009, the assistant principal telephoned the student's mother and informed her that the district "wanted to integrate [the student]

[6] There is no indication in the hearing record that the private psychiatrist administered any psychiatric testing during this evaluation.

[7] The hearing record documents more than 40 visits by the student to the private therapist from November 24, 2008 through September 11, 2010 (see Tr. pp. 599-616, 659-703). The hearing record also indicates that on December 9, 2008 she referred the student for an evaluation for a PTSD stemming from his witnessing of the car accident that injured his mother and brother, and that the results of said evaluation confirmed that he met the criteria for a PTSD and for a depressive disorder, NOS (Tr. pp. 679-85, 693, 762; Parent Ex. H at pp. 22-24, 29). However, the hearing record does not contain a copy of the evaluative report resulting from this evaluation. The private therapist also denied that she administered any psychological testing to the student during her evaluation (Tr. p. 653).

[8] There is no indication in the hearing record that the evaluating psychiatrist administered any psychiatric testing during this evaluation.

[9] The hearing record is unclear as to whether the district instituted homebound instruction for the student in late November 2008 or late December 2008 (compare Tr. p. 371, with Dist. Ex. 1 at p. 2).

back into the school" (Tr. pp. 370-71; Dist. Ex. 1 at p. 3). Toward that end, on January 23, 2009, the district arranged a meeting with the student's parents, the district superintendent, and the assistant principal (Tr. pp. 373-76; Dist. Ex. 1 at p. 3). After the district declined the parents' request to transfer the student to another district school, the parents declined the district's invitation to return the student to the district high school, citing consideration for his safety (Tr. pp. 373-76, 429-30, 432; see Dist. Ex. 1 at p. 3).

The hearing record reflects that the student achieved the following grades during the second quarter of the 2008-09 school year: Biology, 85; Business Ownership/Marketing, 92; Gym, 50; English, 90; Global History, 95; and Geometry, 70, for a cumulative average of 80 (Dist. Ex. 10).[10] In June 2009, the student achieved the following results on his Regents examinations: Biology, 81; Global History, 80; and Geometry, 55 (Dist. Exs. 8; 11). On June 25, 2009, the district notified the parents that the student had failed Gym and his Geometry Regents examination, and enclosed a registration form for enrolling the student in the district's summer school program (Parent Exs. C; D; see Tr. pp. 380-83). The student's mother contacted the student's guidance counselor subsequent to receiving these documents and inquired about the possibility of homebound instruction sessions for the summer; after the guidance counselor advised her that this option was not available, the student's mother decided against returning the student to the district high school for the summer school program (Tr. pp. 383-85). In June 2009, the parents enrolled the student at the NPS (see Tr. p. 385; Parent Exs. E; G).

Due Process Complaint Notice

On January 25, 2010, the parents filed a due process complaint notice, alleging that: the student was removed from the district high school without due process;[11] the homebound instruction program provided by the district was "incomplete and insufficient" to meet the student's needs; the student "suffered from anxiety and depressive symptoms and behavioral problems related to chronic stressors as a consequence of bullying and chronic mocking by his peers;" and since attending the NPS, the student's "overall situation ha[d] improved" because the school presented a "supportive environment which address[ed] the [student's] emotional and psychological issues" (Dist. Ex. 1 at pp. 1-3). The parents sought reimbursement for tuition and related expenses for the student's 2009-10 (11th grade) and 2010-11 (12th grade) school years at the NPS (id. at pp. 3-4).

On February 9, 2010, the district's counsel forwarded correspondence to the parents' counsel documenting a telephone conversation occurring on the same date during which the parents' counsel agreed to extend the district's counsel's "time to respond to the due process complaint" (Dist. Ex. 12). On February 23, 2010, the district responded to the due process complaint notice, asserting the following defenses: the district offered the student a free appropriate public education (FAPE) for the 2008-09 school year;[12] an impartial hearing officer

[10] The hearing record reflects that the student's homebound instruction program did not include his Computer Graphics or Gym classes, and that these classes were not replaced with substitute classes (see Tr. pp. 377-78, 462-63, 776-78; Dist. Ex. 1 at pp. 2-3).

[11] According to the hearing record, the student was not subject to any disciplinary proceedings as a result of the November 5, 2008 incident (see Tr. pp. 102-03).

[12] The term "free appropriate public education" means special education and related services that--

lacked the subject matter jurisdiction to award the relief sought by the parents; the parents failed to exhaust administrative remedies; the student did not have a specific physical or mental condition which adversely impacted upon his educational performance to the extent that he required special education programs and/or related services; the parents failed to timely notify the district of their intention to remove the student from the district and unilaterally place him at the NPS; equitable considerations favored the district; and the district was not liable for money damages under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) (Dist. Ex. 2 at pp. 3-4).

Impartial Hearing Officer Decision

An impartial hearing convened on June 11, 2010 and concluded on September 27, 2010, after six days of hearings (Tr. pp. 1, 199, 337, 494, 555, 745). On November 23, 2010, the impartial hearing officer issued a decision determining that: she had subject matter jurisdiction over this case; the student should have been referred to the Committee on Special Education (CSE); the evidence contained in the hearing record established that the student had maintained inappropriate feelings under normal circumstances and a generally pervasive mood of unhappiness or depression for a sufficient length of time to qualify as a student with an emotional disturbance; the parents' unilateral placement of the student at the NPS was reasonable; equitable considerations favored the parents; and the parents were entitled to reimbursement for the student's tuition and expenses at the NPS for the 2009-10 school year (IHO Decision at pp. 15, 17-21). As for the 2010-11 school year, the impartial hearing officer denied the parents' request for tuition reimbursement as premature (id. at p. 22).

Appeal for State-Level Review

The district appeals, contending that: the impartial hearing officer lacked subject matter jurisdiction over the instant appeal; the district did not ignore its child find obligations, because there was no reasonable basis for the district to suspect that the student had a disability, insofar as there was no indication that the student's emotional difficulties either existed for a long period of time or significantly affected his educational performance; there was no evidence contained in the hearing record establishing that the student's behaviors persisted for a sufficient period of time and rose to a sufficient level to affect his educational performance and render him eligible to receive special education programs and services as a student with an emotional disturbance; the determination that the NPS was an appropriate placement for the student during the 2009-10 school year was contrary to law and not supported by the evidence contained in the hearing record; and the determination that equitable considerations favored an award of tuition reimbursement for the 2009-10 school year was erroneous.

(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]; see 34 C.F.R. § 300.17).

The parents answer, countering that: the district's jurisdictional objection to the sufficiency of the due process complaint notice was untimely; the due process complaint notice was sufficiently drafted to confer subject matter jurisdiction; the impartial hearing officer correctly determined that the student was eligible for special education and related services as a student with an emotional disturbance; the impartial hearing officer correctly determined that the parents' placement of the student at the NPS was reasonable and that under the circumstances, tuition reimbursement for the 2009-10 school year was appropriate; and the impartial hearing officer correctly determined that tuition reimbursement for the 2009-10 school year should not be reduced or denied pursuant to 20 U.S.C. § 1412(a)(10)(C)(I)-(III) and 34 C.F.R. § 300.148(d).

The parents also cross-appeal the impartial hearing officer's November 23, 2010 decision to the extent that it considered the merits of the district's argument challenging subject matter jurisdiction and denied their request for tuition reimbursement for the student's 2010-11 school year at the NPS. In its answer to the cross-appeal, the district asserts that: as the prevailing party, the parents lack standing to cross-appeal the impartial hearing officer's determination on the issue of subject matter jurisdiction, as they are not aggrieved parties; the parents failed to allege or demonstrate during the impartial hearing that the district failed to offer the student a FAPE during the 2010-11 school year or that the private placement was appropriate so as to warrant an award of tuition reimbursement; and the parents are not entitled to reimbursement for anticipated expenses for private tuition and other costs.

Discussion

Jurisdiction

Preliminarily, I will address the issue of whether the impartial hearing officer properly exercised subject matter jurisdiction to conduct an impartial hearing in this case. The IDEA provides for impartial hearings and State-level reviews in matters relating to the identification, evaluation or educational placement of students, or the provision of a FAPE (20 U.S.C. § 1415[b][6][A]; 34 C.F.R. § 300.507[a][1]; 8 NYCRR 200.5[i][1], [j][1]). In pertinent part, a due process complaint notice shall include the name and address of the student and the name of the school which the student is attending, a description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem, and a proposed resolution of the problem (20 U.S.C. § 1415[b][7][A][ii]; 34 C.F.R. § 300.508[b]; 8 NYCRR 200.5[i][1]). Failure to conform to the minimal pleading requirements of the statute may render a due process complaint notice legally insufficient (see M.S.-G v. Lenape Regional High Sch. Dist. Bd. of Educ., 2009 WL 74396, at *2-*3 [3d Cir. 2009] [affirming the district court's finding that dismissal of a due process complaint notice under the IDEA for failure to allege facts related to the problem was proper]). An impartial hearing may not proceed unless the due process

complaint notice satisfies the sufficiency requirements (20 U.S.C. § 1415[b][7][B]; 34 C.F.R. § 300.508[c]; 8 NYCRR 200.5[i][2]).[13]

The IDEA further provides that for purpose of meeting the sufficiency requirements, a due process complaint notice is deemed to be sufficient unless the district informs the impartial hearing officer within 15 days that the district believes the due process complaint fails to meet the minimal pleading requirements (20 U.S.C. §§ 1415[c][2][A], [c][2][B][i][II]; 34 C.F.R. § 300.508[d]; 8 NYCRR 200.5[i][3], [6]). Where there has been the allegation of an insufficient due process complaint notice, State and federal regulations provide "[w]ithin five days of the receipt of the notice of insufficiency, the impartial hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements . . . and shall immediately notify the parties in writing of such determination" (see 8 NYCRR 200.5[i][6][ii]; see also 34 C.F.R. § 300.508[d][2]). If the case involves a matter that requires an expedited hearing related to student discipline and suspension (see 8 NYCRR 201.11), a party may not challenge the sufficiency of a due process complaint using the procedure describe above (8 NYCRR 200.5[i][3]).

In the instant appeal, the district obtained consent from the parent for an extension of time to respond to the due process complaint notice, but did not submit a written challenge to the sufficiency of the due process complaint notice to the impartial hearing officer and the parents within the prescribed timelines as provided for under State and federal regulations (Tr. pp. 807-810, 813-818; Dist. Ex. 12; see 8 NYCRR 200.5[i][3], [6]; see also 34 C.F.R. § 300.508[d]). Under these circumstances in which the district did not render a timely sufficiency challenge, the January 25, 2010 due process complaint notice was deemed sufficient and the impartial hearing officer became obligated to convene the impartial hearing (see 20 U.S.C. §§ 1415[c][2][A], [c][2][B][i][II]; 34 C.F.R. § 300.508[d]; 8 NYCRR 200.5[i][3], [6]). While the specificity of the parents' due process complaint notice may not have comported with pleading requirements in a court of law, for purposes of an administrative hearing under the IDEA, the due process complaint notice provided the district with notice that the parents wanted an impartial hearing pursuant to State regulations regarding the evaluation and educational placement of the student, who they suspected of having a disability (Dist. Ex. 1 at p. 1). The parents described the factual circumstances of the student's removal from the public school and their dissatisfaction with that process (id. at pp. 1-3). The parents also alleged specific facts regarding their belief that the

[13] The Senate Report pertaining to the 2004 amendments to the IDEA noted that "the purpose of the sufficiency requirement is to ensure that the other party, which is generally the school district, will have an awareness and understanding of the issues forming the basis of the complaint" (S. Rep. 108-185 at p. 35, Individuals with Disabilities Education Act Senate Report No. 108-185, "Notice of Complaint," [November 3, 2003]). The Senate Committee reiterated that they assumed with the earlier 1997 amendments' notice requirement that it "would give school districts adequate notice to be able to defend their actions at due process hearings, or even to resolve the dispute without having to go to due process," adding that "[t]he committee does not intend for a notice of a due process complaint to reach the level of specificity and detail of a pleading or complaint filed in a court of law" (id.; see Knight v. Washington Sch. Dist., 2010 WL 1909581, at *4 n.4 [E.D.Mo. May 10, 2010]). However, it is important for an impartial hearing officer to assist the parties in resolving which issues will be decided at an impartial hearing, especially in cases where the responding party rather than the complaining party has the burden of proof. Discussing this issue prior to the Supreme Court's decision in Schaffer v. Weast (546 US 49 [2005]) at a time the burden of proof under the IDEA was typically placed on school districts, the Senate Committee nevertheless indicated that Congress did not intend to "forc[e] the school to prepare for any and every issue that could be possibly raised against it" by merely alleging that a student was denied a FAPE (S. Rep. 108-185 at p. 35).

services provided by the district to the student while not attending school were inadequate (id. at p. 3). Additionally, the parents noted that they intended to seek tuition reimbursement for their unilateral placement of the student at the NPS (id. at p. 4). Even if the district had timely challenged the due process complaint notice as insufficient, there is a strong likelihood that the due process complaint notice was nevertheless sufficient to continue to confer jurisdiction upon the impartial hearing officer to proceed with the impartial hearing process and issue a decision (see Lilbask v. State of Connecticut Dep't of Educ., 397 F.3d 77, 93-95 [2d Cir. 2005]).[14]

Child Find

I will now consider the district's argument on appeal that the impartial hearing officer erred when she determined that the district violated its child find obligations by not referring the student to the district's CSE and thereby, denied the student a FAPE. The purpose of the "child find" provisions of the IDEA are to identify, locate, and evaluate students who are suspected of being a student with a disability and thereby may be in need of special education and related services, but for whom no determination of eligibility as a student with a disability has been made (see Handberry v. Thompson, 446. F.3d 335, 347-48 [2d Cir. 2006]; A.P. v. Woodstock Bd. of Educ., 572 F.Supp.2d 221, 225 [D. Conn. 2008] aff'd 2010 WL 1049297 [2d Cir. March 23, 2010]; see also 20 U.S.C. § 1412[a][3][A]; 34 C.F.R. § 300.111; 8 NYCRR 200.2[a][7]). The IDEA places an affirmative duty on State and local educational agencies to identify, locate, and evaluate all children with disabilities residing in the State "to ensure that they receive needed special education services" (20 U.S.C. § 1412[a][3]; 34 C.F.R. § 300.111[a][1][i]; Forest Grove, 129 S. Ct. at 2495; see 20 U.S.C. § 1412[a][10][A][ii]; see also 8 NYCRR 200.2[a][7]; New Paltz Cent. Sch. Dist. v. St. Pierre, 307 F. Supp. 2d 394, 400, n.13 [N.D.N.Y. 2004]). The "child find" requirements apply to "children who are suspected of being a child with a disability . . . and in need of special education, even though they are advancing from grade to grade" (34 C.F.R. § 300.111[c][1]; see 8 NYCRR 200.2[a][7]). To satisfy the requirements, a board of education must have procedures in place that will enable it to find such children (Application of a Student Suspected of Having a Disability, Appeal No. 10-009; Application of a Student Suspected of Having a Disability, Appeal No. 09-132; Application of a Child with a Disability, Appeal No. 07-062; Application of a Child

[14] Although I have rejected the district's jurisdictional/sufficiency argument in this instance, I note that on the last day of the impartial hearing it remained apparent that the parties and impartial hearing officer remained confused regarding the legal basis of the parents' assertions (Tr. pp. 787-94). Even in circumstances in which a party has failed to challenge a due process complaint notice as insufficient and it has been deemed sufficient, the IDEA does not require an impartial hearing to proceed thereafter without structure. Although the party requesting an impartial hearing has the first opportunity to define the scope of issues to be decided in the impartial hearing by filing the due process complaint notice, neither State nor federal regulations preclude the opposing party from asking an impartial hearing officer to conference a case for the purpose of simplifying, clarifying or appropriately narrowing the range of issues that must be determined in an impartial hearing (see, e.g., 8 NYCRR 200.5[j][iii][ix]). Additionally, aside from a motion to dismiss for failure to state a claim, which is akin to a sufficiency challenge under the IDEA, a party is not precluded from seeking to use other summary procedures where it becomes clear that a need for further hearing is unnecessary. Although the use of summary disposition procedures akin to those used in judicial proceedings are permissible under the IDEA, such procedures should be used by the impartial hearing officer with caution and are appropriate in instances in which the parties have had a meaningful opportunity to present evidence and the nonmoving party is unable to identify any genuine issue of material fact (J.D. v. Pawlet Sch. Dist., 224 F.3d 60, 69 [2d Cir. 2000]; Application of the Bd. of Educ., Appeal No. 10-014; Application of the Bd. of Educ., Appeal No. 05-007; Application of a Child Suspected of Having a Disability, Appeal No. 04-059; Application of a Child with a Disability, Appeal No. 04-018).

Suspected of Having a Disability, Appeal No. 05-090; Application of a Child with a Disability, Appeal No. 04-054; Application of a Child Suspected of Having a Disability, Appeal No. 01-082; Application of a Child with a Disability, Appeal No. 93-41).

Because the child find obligation is an affirmative one, the IDEA does not require parents to request that the district evaluate their child (Application of a Child Suspected of Having a Disability, Appeal No. 05-127; Application of a Child Suspected of Having a Disability, Appeal No. 05-040; Application of a Child with a Disability, Appeal No. 03-043; Application of a Child Suspected of Having a Disability, Appeal No. 01-082). A district's child find duty is triggered when there is "reason to suspect a disability and reason to suspect that special education services may be needed to address that disability" (New Paltz, 307 F. Supp. 2d at 400, n.13, quoting Dep't of Educ. v. Cari Rae S., 158 F. Supp. 2d 1190, 1194 [D. Haw. 2001]; see Application of a Student Suspected of Having a Disability, Appeal No. 10-128; Application of a Child Suspected of Having a Disability, Appeal No. 06-092; Application of a Child Suspected of Having a Disability, Appeal No. 06-087; Application of a Child Suspected of Having a Disability, Appeal No. 05-127; Application of a Child Suspected of Having a Disability, Appeal No. 05-040; Application of a Child Suspected of Having a Disability, Appeal No. 04-087; Application of the Bd. of Educ., Appeal No. 04-037; Application of a Child with a Disability, Appeal No. 03-043; Application of a Child with a Disability, Appeal No. 02-092; Application of a Child Suspected of Having a Disability, Appeal No. 01-082). To determine that a child find violation has occurred, school officials must have overlooked clear signs of disability and been negligent by failing to order testing, or have no rational justification for deciding not to evaluate (A.P., 572 F.Supp.2d at 225, quoting Bd. of Educ. v. L.M., 478 F.3d 307, 313 [6th Cir. 2007]). States are encouraged to develop "effective teaching strategies and positive behavioral interventions to prevent over-identification and to assist students without an automatic default to special education" (Los Angeles Unified Sch. Dist. v. D.L., 548 F.Supp.2d 815, 819 [C.D.Cal. 2008] referencing 20 U.S.C. § 1400[c][5]). Additionally, the school district must initiate a referral and promptly request parental consent to evaluate a student to determine the student needs special education services and programs if a student has not made adequate progress after an appropriate period of time when provided instruction in a school district's response to intervention programs (8 NYCRR 200.4[a]).

The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see M.P.G. v. New York City Dep't of Educ., 2010 WL 3398256, at *7 [S.D.N.Y. Aug. 27, 2010]).

In this case, I find that the district did not meet its burden of proof to show that it complied with its child find obligation. In the course of describing the process followed by the district in referring students for CSE evaluation, the district social worker explained that those students identified as having "a combination of behavior problems and learning problems" would be addressed initially through a "pupil personnel meeting," whereby district personnel would "discuss what the nature of the concern was and develop a plan how to intervene prior to referring" (Tr. pp. 145-46, 163; see IHO Ex. II). He added that he was informed by the student's science teacher that prior to the student's change in behavior observed in November 2008, the student presented no academic or behavioral concerns in her class (Tr. pp. 148-49, 164; see IHO Ex. II). He further opined that he did not deem referral of the student to the CSE necessary at that time because he felt that the student presented no chronic academic problem, and that during his 20 years of

experience, he had previously identified other students with behavioral issues similar to the students whom he did not refer to the CSE (Tr. pp. 154-55, 161-62; see IHO Ex. II). He also noted that when he spoke to the private psychiatrist who examined the student on November 18, 2008, she did not recommend referral of the student to the CSE (Tr. pp. 155-57).

The school psychologist acknowledged that she had previously referred those students to the CSE for evaluation whose ability to function academically was "compromise[d] to a marked degree over a long period of time, and if they were unresponsive to intervention that the building level provided," if "they were still having difficulty attaining age-appropriate level performance," or if she suspected they presented with learning disabilities, emotional disturbances,[15] or other health impaired issues (Tr. pp. 57-59, 102). She explained that prior to the November 5, 2008 incident, the student had been "functioning within the average range, according to the reports of his guidance counselor" and that "[a]cademics were never a concern for [the student] (Tr. pp. 63, 114, 136-37; see Tr. pp. 210-11, 346, 350-51, 404, 444-49; Dist. Ex. 5). Although she eventually became aware of the student's demeanor change in November 2008, she saw no reason to refer him to the CSE at that time because she considered the student's functioning issue as "episodic" rather than chronic, insofar as she did not believe it had been present for a long period of time or materially affected his grades, and neither the two evaluating psychiatrists nor the student's mother ever requested referral of the student to the CSE during her conversations with them (Tr. pp. 63-64, 69-73, 82, 85, 95-99, 133-34).

However, while the hearing record demonstrates that in this instance no disciplinary action was taken against the student stemming from the November 5, 2008 incident, it also establishes that district personnel were "very concerned with respect to his reaction to the events," "strongly recommended a psychiatric evaluation to assess his level of functioning," and " as a team did not feel it was appropriate for him to remain in school" until such time as he underwent a psychiatric evaluation; consequently, the district placed the student on homebound instruction in December 2008 which ultimately continued for the balance of the 2008-09 school year (Tr. pp. 73-80, 102-

[15] According to State and federal regulations, a student with an emotional disturbance must meet one or more of the following five characteristics:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
(C) Inappropriate types of behavior or feelings under normal circumstances.
(D) A general pervasive mood of unhappiness or depression.
(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(34 C.F.R. § 300.8[c][4]; see 8 NYCRR 200.1[zz][4]). Additionally, the student must exhibit one or more of the five characteristics over a long period of time and to a marked degree that adversely affects the student's educational performance (id.; see N.C. v Bedford Cent. Sch. Dist., 2008 WL 4874535 [2d Cir. 2008]; see also Maus v. Wappingers Cent. Sch. Dist., 2010 WL 451046 [S.D.N.Y. Feb. 9, 2010]; A.J. v. Bd. of Educ., East Islip Union Free Sch. Dist., 2010 WL 126034 [E.D.N.Y. Jan. 8, 2010]). While the term "emotional disturbance" includes schizophrenia, the term does not apply to students who are socially maladjusted, unless it is determined that they otherwise meet the criteria above (34 C.F.R. § 300.8[c][4]; see 8 NYCRR 200.1[zz][4]; New Paltz, 307 F. Supp. 2d at 398).

03, 113, 149-54, 353-61, 365-66, 410-14, 459; Dist. Exs. 1 at p. 2; 3 at p. 2; 4).[16] The hearing record establishes that although the district did not impose a formal disciplinary suspension upon the student in the aftermath of the November 5, 2008 incident, it did consider the student's behavior to constitute sufficient cause to remove him from the school premises, order a psychiatric evaluation, and change his educational placement from a general education classroom to homebound instruction. This series of actions strongly suggests that the district had reason to suspect that the student may have had a disability and may need special education, thereby triggering its obligation to refer the student for evaluation by the CSE (see Appeal of a Student Suspected of Having a Disability, 38 Ed Dep't Rep 52, Decision No. 13,980 [holding that a superintendent who required student to have psychiatric examination after misconduct should reasonably have suspected student of having a disability, and thus should have referred student to CSE]; Appeal of Pinckney, 37 Ed Dep't Rep 284, Decision No. 13,860 [noting that a superintendent is not permitted to order psychological examination as part of a penalty for suspension; if such an examination is determined to be warranted, proper avenue is referral of student to CSE]; Appeal of a Student with a Disability, 35 Ed Dep't Rep 17, Decision No. 13,448 [explaining that when district staff should reasonably suspect that a student has a disability, the hearing process under N.Y. Educ. Law § 3214 calls for referral of the student to the CSE for evaluation if a nexus is found between conduct underlying disciplinary charges and suspected disability or handicapping condition]; Appeal of a Student with a Disability, 33 Ed Dep't Rep 1, Decision No. 12,955 [holding that school administrators have a duty to refer a student directly to the CSE when there is a reasonable basis to suspect that the student may have a disability; the unilateral placement of a resident student by the parents does not relieve district of its obligation to refer a student who may have a disability to the CSE for an evaluation]).

Furthermore, the content of the evaluative reports received by the district prior to its implementation of homebound instruction identified the student's social/behavioral concerns sufficiently to warrant referral to the CSE. The private psychiatrist evaluation report of November 18, 2008 cautioned the district that the student was "in need of psychiatric medication and talk-therapy" and recommended that "[u]ntil improved, he cannot return to school [and] would benefit from house tutoring for his own safety as well as his co-students and to improve his mental health" (Dist. Ex. 6 at p. 1; see Tr. pp. 80-82, 362-63, 415-18; Dist. Ex. 1 at pp. 2-3). The November 26, 2008 evaluative report of the district's own evaluating psychiatrist diagnosed the student with an adjustment disorder with mixed disturbance and emotional conduct, and cautioned that if the student did not follow recommendations of outpatient psychiatric counseling and antidepressant/antianxiety medication, his anxiety and anger control problems would likely persist (Dist. Ex. 7 at p. 3; see Dist. Ex. 1 at p. 3).

Based upon a review of the evidence contained in the hearing record, I concur with the impartial hearing officer's determination that the district failed to meet its child find obligation to

[16]There is no indication in the hearing record that the recommendations of the private psychiatrist who evaluated the student on November 18, 2008, which included reevaluations of the student every three weeks, weekly medication monitoring, psychotherapy twice per week, and inpatient psychiatric treatment, actually took place prior to the district's meeting with the parents on January 23, 2009, during which district staff invited the student to return to school (Tr. pp. 370-71, 373-76; Dist. Exs. 1 at p. 3; 6 at p. 2).

this student as a result of events occurring during the 2008-09 school year.[17] Next, I will consider whether the parents satisfied their burden of proving that the NPS was an appropriate placement for the student for the 2009-10 and 2010-11 school years.

Applicable Standards – Unilateral Placement

A private school placement must be "proper under the Act" (Carter, 510 U.S. at 12, 15; Burlington, 471 U.S. at 370), i.e., the private school offered an educational program which met the student's special education needs (see Gagliardo, 489 F.3d at 112, 115; Walczak, 142 F.3d at 129; Matrejek, 471 F. Supp. 2d at 419). A parent's failure to select a program approved by the State in favor of an unapproved option is not itself a bar to reimbursement (Carter, 510 U.S. at 14). The private school need not employ certified special education teachers or have its own individualized education program (IEP) for the student (Carter, 510 U.S. 7; Application of the Bd. of Educ., Appeal No. 08-085; Application of the Dep't of Educ., Appeal No. 08-025; Application of the Bd. of Educ., Appeal No. 08-016; Application of the Bd. of Educ., Appeal No. 07-097; Application of a Child with a Disability, Appeal No. 07-038; Application of a Child with a Disability, Appeal No. 02-014; Application of a Child with a Disability, Appeal No. 01-105). Parents seeking reimbursement "bear the burden of demonstrating that their private placement was appropriate, even if the IEP was inappropriate" (Gagliardo, 489 F.3d at 112; see M.S. v. Bd. of Educ., 231 F.3d 96, 104 [2d Cir. 2000]). "Subject to certain limited exceptions, 'the same considerations and criteria that apply in determining whether the [s]chool [d]istrict's placement is appropriate should be considered in determining the appropriateness of the parents' placement…'" (Gagliardo, 489 F.3d at 112; Frank G. v. Bd. of Educ., 459 F.3d at 364 [2d Cir. 2006] [quoting Rowley, 458 U.S. at 207 and identifying exceptions]). Parents need not show that the placement provides every special service necessary to maximize the student's potential (Frank G., 459 F.3d at 364-65). When determining whether the parents' unilateral placement is appropriate, "[u]ltimately, the issue turns on" whether that placement is "reasonably calculated to enable the child to receive educational benefits" (Frank G., 459 F.3d at 364; see Gagliardo, 489 F.3d at 115 [citing Berger v. Medina City Sch. Dist., 348 F.3d 513, 522 [6th Cir. 2003] [stating "evidence of academic progress at a private school does not itself establish that the private placement offers adequate and appropriate education under the IDEA"]]). A "private placement is only appropriate if it provides 'education instruction specifically designed to meet the unique needs of a handicapped child'" (Gagliardo, 489 F.3d at 115 [emphasis in original], citing Frank G., 459 F.3d at 365 quoting Rowley, 458 U.S. at 188-89).

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

[17] I note that the parents do not allege in the due process complaint notice or in the cross-appeal that the alleged incidents of bullying referenced in the hearing record deprived the student of a FAPE (see Dist. Ex. 1). However, even if the parents did advance this argument, I conclude that a review of the evidence contained in the hearing record does not support such an allegation (see T.B. & M.B. v. Waynesboro Area Sch. Dist., 2011 WL 718516, at *1, *4 [M.D. Pa. Feb. 22, 2011]; Emily Z. v. Mt. Lebanon Sch. Dist., 2007 WL 3174027, at *1-*4 [W.D. Pa. Oct. 29, 2007]; Appeal of M.G. and J.G., 40 Ed Dep't Rep 336, Decision No. 14,491 [holding that the evidence did not show that the district failed to provide a safe educational environment that would permit the student's reentry into the school]).

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

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

Parents' Unilateral Placement – 2009-10 School Year

Assuming, without deciding, that the CSE would have determined that the student was eligible for special education and related services and would have continued the student's eligibility at an annual review conducted thereafter,[18] I find that with respect to the parents' tuition reimbursement claim the hearing record contains a paucity of evidence describing the student's educational program at the NPS. The parents produced no witnesses from the NPS during the impartial hearing, and the only documentary evidence from the school is the student's 2009-10 report card (see Parent Ex. F). The student's mother described the NPS as a college preparatory, parochial school, and maintained that she "had no choice" but to enroll the student in the NPS for the 2009-10 school year, noting that her options were limited to continuing the student on home instruction or placing him in a school where he would have some social interaction, be safe, and "maybe … focus on his studies" (Tr. p. 385). Treatment notes maintained by the student's private therapist indicated that the NPS provided the student with a peer mentor (Parent Ex. H at p. 25), and during the impartial hearing, she opined that the NPS was an appropriate placement for the student in January 2009 because "he would be in a different environment to start over" and "the hope would have been to make relationships, establish relationships there, and be taken out of the stressors in the [district] environment …" (Tr. pp. 616-620; see Tr. pp. 768-70). Although there is no reason to doubt the sincerity of the parents' concerns, it does not alter the fact that during the impartial hearing the student's mother conceded that the student was not receiving special education services at the NPS (Tr. p. 458).

Based upon the foregoing, I conclude that the parents did not meet their burden to demonstrate how the program provided at the NPS was specially designed to meet the student's unique needs for the 2009-10 school year, and thus, the parents are not entitled to tuition reimbursement (Gagliardo, 489 F.3d at 115). A unilateral private placement is only appropriate if

[18] I note that even near the conclusion of the hearing record the parents, through their counsel, took the position that they had not decided whether they wanted the student to be evaluated and to receive special education services from the district (Tr. p. 787).

it provides "education instruction specifically designed to meet the unique needs of a handicapped child" (Gagliardo, 489 F.3d at 115 [quoting Frank G., 459 F.3d at 365]; see also Rowley, 458 U.S. at 188-89). Having decided that the parents failed to meet the second criterion for an award of tuition reimbursement, the necessary inquiry is at an end and I need not reach the issue of whether equitable considerations support the parents' claim (see M.C. v. Voluntown Bd. of Educ., 226 F.3d 60, 66 [2d Cir. 2000]). Accordingly, I will annul that aspect of the impartial hearing officer's November 23, 2010 decision finding to the contrary.

Cross-Appeal

Premature Claim/Ripeness

I will now address the parents' cross-appeal. The parents contend that the impartial hearing officer erroneously dismissed their claim for tuition reimbursement for the student's 2010-11 school year at the NPS as premature, maintaining that there was no evidence in the hearing record demonstrating that a CSE would determine the student eligible for special education and related services. 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 a Student with a Disability, Appeal No. 08-077; Application of the Bd. of Educ., Appeal No. 08-016; Application of the Dep't. of Educ., Appeal No. 07-018; Application of a Child with a Disability, Appeal No. 07-008; Application of the Bd. of Educ., Appeal No. 06-076; Application of a Child with a Disability, Appeal No. 06-059; Application of the Bd. of Educ., Appeal No. 06-029; Application of a Child with a Disability, Appeal No. 04-046; Application of a Child with a Disability, Appeal No. 02-014; Application of a Child with a Disability, Appeal No. 01-095; Application of a Child Suspected of Having a Disability, Appeal No. 93-9). With certain exceptions, a student's IEP is required to be reviewed periodically, but not less frequently than annually, and revised as appropriate (20 U.S.C. § 1414[d][4][A]; 34 C.F.R. § 300.324[b][1][i]; see also Educ. Law § 4402[2]; 8 NYCRR 200.4[f]). The CSE is required to develop an IEP that accurately reflects the student's special education needs (34 C.F.R. § 300.306[c][2]; 8 NYCRR 200.4[d][2]). Incumbent with that duty is the mandate that the IEP "shall report the present levels of academic achievement and the functional performance and indicate the individual needs of the student." (8 NYCRR 200.4[d][2]; see 34 C.F.R. § 300.320 [a][1]). Moreover, a CSE is required to "consider" information about the student provided to, or by, the parents (8 NYCRR 200.4[f][2][ii]; Application of a Child with a Disability, Appeal No. 07-139).

Proper consideration of evaluative information is also important in order to determine whether the student needs to be reevaluated. A reevaluation of the student is required if the school district "determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant reevaluation" or upon request of the student's parents or teacher (20 U.S.C. § 1414[a][2][A][i]-[ii]; see 34 C.F.R. § 300.303[a]; 8 NYCRR 200.4[b][4]; see also Perricelli v. Carmel Cent. Sch. Dist., 2007 WL 465211, at *10-*11 [S.D.N.Y. Feb. 9, 2007]). Unless otherwise agreed to by the parent and the school district, a reevaluation must be conducted at least once every three years and not more than once per year (20 U.S.C. § 1414[a][2][B]; see 34 C.F.R. § 300.303[b]; 8 NYCRR 200.4[b][4]). "[T]he reevaluation shall be sufficient to determine the student's individual needs, educational progress and achievement, the student's ability to participate in instructional programs in regular education

and the student's continuing eligibility for special education" (8 NYCRR 200.4[b][4]; see also Perricelli, 2007 WL 465211, at *11). Further, as part of its reevaluation, a school district is required to review existing evaluative data with respect to a student with a disability and determine whether additional data is necessary (20 U.S.C. § 1414[c][1][A] and [B]; 34 C.F.R. § 300.305; 8 NYCRR 200.4[b][5]).

At the time this proceeding was commenced in January 2010, there had been no CSE evaluation to determine whether the student is eligible for special education and related services for the 2010-11 school year, and hence, there is no way for either the impartial hearing officer or myself to know whether the CSE, if presented with such a referral would recommend that the student be eligible for special education as a student with a disability for the 2010-11 school year and, if so, what type of special education program and services the CSE may have recommended for the 2010-11 school year. Accordingly, I concur with the impartial hearing officer's determination that the parents' claim for tuition reimbursement for the 2010-11 school year was premature and see no reason to disturb her denial of said claim (see Application of a Student with a Disability, Appeal No. 09-066; Application of a Student with a Disability, Appeal No. 08-028; Application of the Dep't of Educ., Appeal No. 07-037; Application of a Child with a Disability, Appeal No. 06-102; Application of a Child with a Disability, Appeal No. 00-040; Application of a Child with a Disability, Appeal No. 00-039).

In light of my earlier determination that the impartial hearing officer correctly exercised jurisdiction and conducted an impartial hearing in this case, it is unnecessary for me to consider the parents' additional argument relative to that issue advanced in the cross-appeal.

Conclusion

In sum, after reviewing the evidence contained in the hearing record, I disagree with the impartial hearing officer's determinations that the parents satisfied their burden of proving that the NPS was an appropriate placement for the student for the 2009-10 school year, and that they were entitled to reimbursement for tuition and expenses for the student's 2009-10 school year at the NPS and, therefore, I will annul those portions of the impartial hearing officer's November 23, 2010 decision to that effect.

I have considered the parties' remaining contentions and I find that I need not address them in light of my determinations.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

THE CROSS-APPEAL IS DISMISSED.

IT IS ORDERED that the impartial hearing officer's decision dated November 23, 2010 is annulled to the extent that it determined that the parents satisfied their burden of proving that the NPS was an appropriate placement for the student for the 2009-10 school year and that the parents were entitled to reimbursement for their son's tuition and expenses at the NPS for the 2009-10 school year.

Dated: **Albany, New York**
March 28, 2011

JUSTYN P. BATES
STATE REVIEW OFFICER