The University of the State of New York

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

No. 12-014

Application of a STUDENT SUSPECTED OF HAVING A DISABILITY, by her parent, for review of a determination of a hearing officer relating to the provision of educational services by the Board of Education of the Westbury Union Free School District

Appearances:
Jaspan Schlesinger LLP, attorneys for respondent, Carol A. Melnick, Esq., of counsel

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from a decision of an impartial hearing officer (IHO) which denied his request for compensatory education services from respondent (the district) following the student's graduation from high school. The appeal must be dismissed.

II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education plan (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, at least one psychologist, and school district representatives (Educ. Law. § 4402; see 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; 34 CFR 300.151-300.152; 300.506, 300.511; Educ. Law § 4404[1]; 8 NYCRR 200.5[h]-[l]).

New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding "any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such

student" (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][6]-[7]; 34 CFR 300.503[a][1]-[2], 300.507[a][1]). First, after an opportunity to engage in a resolution process, the parties appear at an impartial hearing conducted at the local level before an IHO (Educ. Law. § 4404[1][a]; 8 NYCRR 200.5[j]). An IHO typically conducts a trial-type hearing regarding the matters in dispute in which the parties have the right to be accompanied and advised by counsel and certain other individuals with special knowledge or training; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed five business days before the hearing; and obtain a verbatim record of the proceeding (20 U.S.C. § 1415[f][2][A], [h][1]-[3]; 34 CFR 300.512[a][1]-[4]; 8 NYCRR 200.5[j][3][v], [vii], [xii]). The IHO must render and transmit a final written decision in the matter to the parties not later than 45 days after the expiration period or adjusted period for the resolution process (34 CFR 300.510[b][2], [c], 300.515[a]; 8 NYCRR 200.5[j][5]). A party may seek a specific extension of time of the 45-day timeline, which the IHO may grant in accordance with State and federal regulations. The decision of the IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]).

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.514[c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

Because of the procedural posture of this case, it is unnecessary to provide a detailed recitation of the student's educational history, which is known to the parties. Briefly, the student has received diagnoses of an attention deficit hyperactivity disorder (ADHD) and an oppositional defiance disorder (ODD), and a provisional diagnosis of conduct disorder adolescent onset type (Dist Ex. 31 at p. 4). The parent referred the student to the CSE in June 2008 (Tr. pp. 351-52; Dist. Ex. 32). In August 2008, a subcommittee of the CSE convened and determined the student to be ineligible to receive special education programs and related services as a student with a disability (Dist. Ex. 33). The CSE again determined the student to be ineligible for special education programs and related services in June 2010 (Dist. Ex. 47). The student graduated from a district high school in June 2010 with a Regents diploma with an advanced designation (Tr. p. 710; Dist. Exs. 27 at p. 12; 47 at p. 1; see 8 NYCRR 100.5[b][7][v]).

A. Due Process Complaint Notice and Prior Procedural History

The parent filed a due process complaint notice dated August 19, 2010, in which he alleged that the district failed to offer the student a free appropriate public education (FAPE) (IHO Ex. II). The parent thereafter sought permission to amend his due process complaint notice, and the application was granted by the IHO (see Application of a Student Suspected of Having a Disability, Appeal No. 11-044). The parent filed an amended due process complaint notice dated October 29, 2010, in which he alleged that the district improperly determined the student to be ineligible for special education programs and related services at the August 2008 CSE meeting (IHO Ex. III at pp. 1-2). The parent also alleged that the district failed to timely provide services to the student or obtain the participation of "an individual determined to have knowledge or special expertise regarding a Gifted ADHD student" (id.). The parent further alleged that the district failed to conduct sufficiently comprehensive evaluations of the student and excluded the student from access to course offerings, thereby denying her a FAPE (id. at pp. 2-3). For relief, the parent requested, among other things, a finding by the IHO that the district violated the IDEA; reimbursement for "related educational aids and services not provided by the post secondary institution," as well as future provision of such aids and services; and reimbursement for the costs of the student's education until she reached the age of 21 (id. at p. 4).

After holding prehearing conferences, but before convening an impartial hearing, an IHO dismissed the parent's due process complaint notice as moot (see Application of a Student Suspected of Having a Disability, Appeal No. 11-044). The parent appealed, and an SRO found that the parent's compensatory education claims were not moot and that the parent should have been given the opportunity to "clarify the nature of relief requested and . . . present [his] arguments regarding whether there has been a gross violation of the IDEA that would entitle the student to post-graduation services after the student has otherwise become ineligible for services pursuant to the IDEA" (id.). Accordingly, the SRO remanded the matter to the IHO for an impartial hearing to determine whether the district had committed acts constituting a gross violation of the IDEA such that the student was entitled to a compensatory education award (id.).

B. Impartial Hearing Officer Decision on Remand

The impartial hearing was reconvened on July 20, 2011 before a different IHO (hereafter the IHO), and continued over nine hearing dates, concluding on November 29, 2011 (IHO Decision at pp. 1-6; IHO Ex. I at p. 1). In a decision dated December 8, 2011, the IHO found that the district had violated multiple provisions of the IDEA, but that the parent was not entitled to an award of compensatory education as a result (IHO Decision at pp. 39-49).

More specifically, the IHO found that the district violated its child find obligations by not referring the student to the CSE for an evaluation to determine if she was a student with a disability during the 2006-07 (ninth grade) school year after she failed multiple classes (IHO Decision at pp. 39-40). The IHO also found that the district failed to evaluate the student within 60 days of receiving consent from the parent and did not conduct all necessary evaluations to determine if the student was eligible for special education programs and related services (id. at pp. 41-42). The IHO further determined that the district convened a procedurally valid CSE meeting in August 2008 and did not exclude the student from course offerings available to other students (id. at pp. 42-43). However, because of the district's failure to conduct a physical examination, social history, and functional behavioral assessment (FBA) of the student, the IHO found that she could not

determine whether or not the student was eligible for special education and annulled the August 2008 ineligibility determination (id. at pp. 46-47).

Despite finding that the district violated the IDEA's procedural requirements, the IHO found that the violations did not rise to the level of gross violations leading to the student's exclusion from or denial of educational services for an extended period of time therefore entitling the student to compensatory education (IHO Decision at pp. 44-48). The IHO found that the district implemented interventions to address the student's behavioral and attendance problems and made accommodations to address the student's ADHD and ODD, including allowing her to leave class when she was upset and providing counseling (id. at pp. 44-46). The IHO noted that the student was capable of performing at a high level in school when she so chose and that she graduated from high school with a Regents diploma with an advanced designation, which the IHO found was evidence of a meaningful academic benefit (id. at pp. 47-48). In any event, the IHO found that despite stating certain categories of compensatory education he was seeking at the outset of the impartial hearing, the parent presented no evidence to support his requests and instead sought monetary damages not available in an administrative proceeding pursuant to the IDEA (id. at pp. 48-49).

IV. Appeal for State-Level Review

The parent appeals from the IHO's determinations that: (1) the district convened a properly composed CSE in August 2008; (2) the district did not exclude the student from course offerings; (3) the district's failure to timely and sufficiently evaluate the student did not constitute gross violations of the IDEA; and (4) the parent was not entitled to damages. The parent further asserts that he did not waive the presence of the additional parent member of the August 2008 CSE meeting and that none of the CSE participants had expertise in gifted students with an ADHD. The parent also alleges that the district prevented the student from enrolling in advanced placement classes. As a result of the district's failure to provide the student "with access to an accelerated education," the parent asserts that the student was denied a "meaningful benefit from that education to the maximum extent possible." Finally, the parent asserts that his request for compensatory education should not be considered a request for damages "but instead the belated expenditure that should have been allocated all along."

The district answers, denying the parent's allegations with respect to the appealed issues, and asserts that the IHO properly denied the parent's requests for relief. The district asserts, among other things, that the parent did not comply with State regulations because he did not serve the notice of intention to seek review less than 10 days before service of the petition.

In a reply, the parent asserts that the notice of intention to seek review was personally served on the first business day after the Christmas recess, and that the petition would not have been timely if it was served 10 days after service of the notice of intention to seek review.[1]

[1] In response to the reply, the district submitted a letter requesting that the reply be rejected to the extent that it did not address the procedural defenses interposed in the answer. The parent responded to the district's letter, asserting that to the extent the district raised arguments based in evidence not directly cited by the IHO in her decision, such arguments constituted additional evidence to which he could reply. To the extent that the parent's reply does not address the district's procedural defenses, I have not considered it (8 NYCRR 279.6). I have given no consideration to either letter, as neither is permitted by State regulation (id.).

V. Applicable Standards

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see generally Forest Grove v. T.A., 129 S. Ct. 2484, 2491 [2009]; 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 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 [2007]; A.H. v. Dep't of Educ., 2010 WL 3242234, at *2 [2d Cir. Aug. 16, 2010].

Compensatory education is an equitable remedy that is tailored to meet the unique circumstances of each case (Wenger v. Canastota, 979 F. Supp. 147 [N.D.N.Y. 1997]). Compensatory education may be awarded to a student with a disability who no longer meets the eligibility criteria for receiving instruction under the IDEA (see 20 U.S.C. §§ 1401[3], 1412[a][1][B]; Educ. Law §§ 3202[1], 4401[1], 4402[5]). In New York State, a student who is otherwise eligible as a student with a disability, may continue to obtain services under the IDEA until he or she receives either a local or Regents high school diploma (34 CFR 300.102[a][3][i]; 8 NYCRR 100.5[b][7][iii]; Application of the Bd. of Educ., Appeal No. 05-084; Application of the Bd. of Educ., Appeal No. 05-037), or until the conclusion of the ten-month school year in which he or she turns age 21 (Educ. Law §§ 3202[1], 4401[1], 4402[5][b]; 8 NYCRR 100.9[e], 200.1[zz]; see 34 CFR 300.102[a][1], [a][3][ii]; Application of a Child with a Disability, Appeal No. 04-100).[2] Within the Second Circuit, compensatory education has been awarded to students who are ineligible by reason of age or graduation if there has been a gross violation of the IDEA resulting in the denial of, or exclusion from, educational services for a substantial period of time (see French v. New York State Dep't of Educ., 2011 WL 5222856, at *2 [2d Cir. Nov. 3, 2011]; Somoza v. New York City Dep't of Educ., 538 F.3d 106, 109 n.2, 113 n.6 [2d Cir. 2008]; Mrs. C. v. Wheaton, 916 F.2d 69 [2d Cir. 1990]; Burr v. Ambach, 863 F.2d 1071 [2d Cir. 1988]; Cosgrove v. Bd. of Educ., 175 F. Supp. 2d 375, 387 [N.D.N.Y. 2001]; Application of a Child with a Disability, Appeal

[2] If a student with a disability reaches age 21 during the period commencing July 1st and ending on August 31st and if he or she is otherwise eligible, the student shall be entitled to continue in a July and August program until August 31st or until the termination of the summer program, whichever shall first occur (Educ. Law § 4402[5][a]).

No. 03-078 [awarding two years of instruction after expiration of IDEA eligibility as compensatory education]).

VI. Discussion

A. Procedural Matters

Preliminarily, the district asserts that the parent failed to comply with the State regulation requiring that the notice of intention to seek review be served not less than 10 days before the petition is served. A parent who seeks review of an IHO's decision by an SRO shall serve upon the school district a notice of intention to seek review (8 NYCRR 279.2[a]). The notice of intention to seek review must be personally served upon the school district not less then 10 days before service of a copy of the petition for review upon such school district (8 NYCRR 279.2[b]). The notice of intention to seek review was served on the district on January 3, 2012, and the petition was served on January 12, 2012. The parent asserts that the district offices were not open between December 24, 2011 and January 2, 2012, and that he served the notice of intention to seek review on the district on the first business day after the holiday recess. In any event, the purpose of the notice of intention to seek review is to facilitate the timely filing of the hearing record by the district with the Office of State Review (Application of a Student with a Disability, Appeal No. 10-038; Application of a Child with a Disability, Appeal No. 04-018). Both the hearing record and the answer to the petition in this matter were received by the Office of State Review in a timely manner and I accordingly decline to dismiss this appeal on this ground (Application of a Student with a Disability, Appeal No. 10-096; Application of a Child with a Disability, Appeal No. 07-123; Application of a Child with a Disability, Appeal No. 04-014; Application of a Child with a Disability, Appeal No. 02-009; Application of a Child with a Disability, Appeal No. 98-21).

With regard to the merits of the appeal, neither party has appealed the IHO's determinations that the district violated its child find obligations, failed to timely evaluate the student after referral, and had insufficient evaluative data to determine the student's eligibility—and improperly determined the student to be ineligible—for special education programs and related services (IHO Decision at pp. 39-42). Accordingly, these findings are final and binding on the parties (Educ. Law § 4404[1]; 34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]). As such, my review is limited to the parent's assertions that the IHO erred in finding that the August 2008 CSE was properly composed and that the student was not excluded from course offerings, and in denying his request for compensatory education.

B. CSE Composition

With regard to the composition of the August 2008 CSE, State and federal regulations require a CSE to include, among other members, "an individual who can interpret the instructional implications of evaluation results" and "other persons having knowledge or special expertise regarding the student . . . as the school district or the parent(s) shall designate" (8 NYCRR 200.3[a][1][vi], [ix]; see 34 CFR 300.321[a][5], [6]). State regulation further requires the presence of "an additional parent member of a student with a disability" (8 NYCRR 200.3[a][1][viii]).

Addressing first the presence of an additional parent member, it is well settled that 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 CFR 300.507[d][3][i], 300.511[d]; 8 NYCRR 200.5[j][1][ii]) or the original

due process complaint is amended prior to the impartial hearing per permission given by the IHO at least five days prior to the impartial hearing (20 U.S.C. § 1415[c][2][E][i][II]; 34 CFR 300.507[d][3][ii]; 8 NYCRR 200.5[i][7][b]). In this case, the parent's due process complaint notice cannot be reasonably read to raise the issue of a lack of an additional parent member at the August 2008 CSE meeting; moreover, although the parent was given the opportunity to elaborate on his claims during the impartial hearing, he did not specify the absence of an additional parent member at the CSE meeting as a procedural defect until the final day of the impartial hearing (Tr. pp. 1312-13; see IHO Ex. I). Accordingly, this claim was not properly raised and should not have been addressed by the IHO (see M.R. v. South Orangetown Cent. Sch. Dist., 2011 WL 6307563, at *12-*13 [S.D.N.Y. Dec. 16, 2011]; C.F. v. New York City Dep't of Educ., 2011 WL 5130101, at *12 [Oct. 28, 2011]; C.D. v. Bedford Cent. Sch. Dist., 2011 WL 4914722, at *13 [S.D.N.Y. Sept. 22, 2011]; R.B. v. Dep't of Educ., 2011 WL 4375694, at *6-*7 [S.D.N.Y. Sept. 16, 2011]). Even if it had been properly raised, I agree with the IHO that the hearing record supports the conclusion that the district could have convened a CSE subcommittee, which does not require the participation of an additional parent member, as there was no indication that any member of the CSE contemplated the student's placement in a special class, a school for students with disabilities, or a school outside of the district (8 NYCRR 200.3[c][2]-[4]). Under these circumstances, I find that the lack of an additional parent member did not impede the student's right to a FAPE, significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or cause a deprivation of educational benefits to the student (20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 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]).

Turning to the parent's allegation that "an individual determined to have knowledge or special expertise regarding a Gifted ADHD student who understood and could talk about the evaluation results and how the results affect instruction" was not present at the August 2008 CSE meeting, I note that on appeal, the parent denies any intention to bring a claim with regard to the presence of an individual capable of interpreting evaluations, and focuses his claim on the district's alleged failure to include a person with expertise regarding gifted students with an ADHD. The IDEA specifies that an individual with special expertise about a student is someone who may participate "at the discretion of the parent or the agency" (20 U.S.C. § 1414[d][1][B][vi]; 34 CFR 300.321[a][6]; 8 NYCRR 200.3[a][1][ix]; see C.H. v. Northwest Indep. Sch. Dist., 2011 WL 4537784, at *9 [E.D. Tex. Sept. 30, 2011]). The parent presented no evidence and made no allegation that the district prevented him from inviting an individual with specific expertise regarding gifted students with an ADHD, and I find that the district did not violate the IDEA's procedural requirements by not exercising its discretion to invite such an individual (see Application of a Student with a Disability, Appeal No. 11-002).

C. Exclusion from Course Offerings

Next, the parent alleges that the student was not permitted by the district to enroll in advanced placement classes. The hearing record contains a single reference to this alleged exclusion: the parent's testimony that the student was not allowed to take such classes "because she was labeled a behavioral issue student" (Tr. p. 1385). Absent any evidence that the student attempted to enroll in advanced placement classes, or that such classes were necessary to meet her

special education needs, I decline to find that the district violated the IDEA by excluding the student from course offerings available to the general student population.[3]

D. Compensatory Education

As noted above, courts have held that unless the district committed a gross violation of the IDEA resulting in "the student's complete deprivation of a FAPE," the student would not be entitled to compensatory education for those years (French, 2011 WL 5222856, at *2-*3; see Somoza, 538 F.3d at 109 n.2; Mrs. C., 916 F.2d 69; Burr, 863 F.2d 1071). In addition, given the fact that graduation and receipt of a high school diploma are generally considered to be evidence of educational benefit (Pascoe v. Washington Cent. Sch. Dist., 1998 WL 684583 [S.D.N.Y. 1998]; Application of the Bd. of Educ., Appeal No. 05-037; see also Rowley, 458 U.S. at 207 n.28; Walczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 130 [2d Cir. 1998] [noting that "the attainment of passing grades and regular advancement from grade to grade are generally accepted indicators of satisfactory progress" under the IDEA]), the receipt of which terminates a student's entitlement to a FAPE (34 CFR 300.102[a][3][i]; 8 NYCRR 100.5[b][7][iii]; 200.4[i]; but see, 8 NYCRR 200.4[c][5] [noting that a student may still remain eligible for special education services even though he has advanced from grade to grade]), when taken together with the Second Circuit's standard requiring a gross violation of the IDEA during the student's period of eligibility in order for the student to qualify for an award of compensatory education (see Garro v. State of Connecticut, 23 F.3d 734, 737 [2d Cir. 1994]; Mrs. C., 916 F.2d at 75), it is a rare case where a student graduates with a Regents high school diploma and yet still qualifies for an award of compensatory education (see, e.g., J.B. v. Killingly Bd. of Educ., 990 F. Supp. 57 [D. Conn. 1997] [where student apparently graduated and received diploma prior to the district establishing the appropriate graduation requirements, court decided student had established a prima facie case of likelihood of success on the merits on a possible award of continued compensatory education]; ; Application of a Student with a Disability, Appeal No. 11-159; Application of the Dep't of Educ., Appeal No. 11-114; Application of a Child with a Disability, Appeal No. 05-089; Application of the Bd. of Educ., Appeal No. 05-037).

As noted above, the IHO's determination that the district improperly determined the student to be ineligible for special education programs and services with insufficient evaluative data has not been appealed, and so for purposes of this analysis I assume that the student was eligible during the period at issue here (see, e.g., Application of the Bd. of Educ., Appeal No. 11-153). However, even assuming that the student was eligible and that the violations committed by the district constituted gross violations of the IDEA, the parent is not entitled to the relief he requests.

As part of the remand of this case, an SRO provided the parent an opportunity to clarify the relief that he was requesting (Application of a Student Suspected of Having a Disability, Appeal No. 11-044). When asked by the IHO to do so, the parent stated that he was requesting

[3] Although the parent is apparently arguing that this exclusion was a result of her ADHD, I note that an allegation that the student was excluded from certain opportunities on the basis of her disability is more properly the subject of a claim brought pursuant to section 504 of the Rehabilitation Act of 1973 (section 504) (29 U.S.C. § 794 [1998]) than one brought pursuant to the IDEA. I further note that New York State Education Law makes no provision for state-level administrative review of hearing officer decisions in section 504 hearings and an SRO does not review section 504 claims (see A.M. v. NYC Dep't of Educ., 2012 WL 120052, at *7 n.17 [E.D.N.Y. Jan. 17, 2012]; Application of the Bd. of Educ., Appeal No. 11-122; Application of a Student with a Disability, Appeal No. 11-098; see also Educ. Law § 4404[2]).

reimbursement for a variety of services he had obtained for the student in the past, including summer school tuition and consultant costs for psychological services and educational interventions; and for future summer school tuition and tutoring costs (Tr. pp. 92-97). However, there is no evidence in the hearing record that the parent had obtained such services for the student, nor did the parent request the award of any specific services. The parent later stated during the impartial hearing that he sought monetary compensation for the years the district denied the student a FAPE, based on the district's expenditures per special education student as stated in the district's Fiscal Accountability Supplement to the New York State School Report Card (Tr. pp. 1318-23).[4] In his post hearing brief, the parent stated that he was requesting compensatory services in the form of "the costs of a FAPE delayed and/or denied towards educational needs past graduation" (IHO Ex. VI at pp. 5-6). On appeal, the parent requests "compensatory education determined . . . by the period of time equal to the deprivation of FAPE," to consist of "the belated expenditure that should have been allocated all along" (Pet. at pp. 4-5). It is well settled that compensatory monetary damages are not available in administrative hearings under the IDEA (Taylor v. Vt. Dep't of Educ., 313 F.3d 768, 786 n.14 [2d Cir. 2002]; Polera v. Bd. of Educ., 288 F.3d 478, 486 [2d Cir. 2002]; Application of a Student with a Disability, Appeal No. 11-091; Application of a Child with a Disability, Appeal No. 05-039). Accordingly, I find that the parent requests no relief on appeal that can be granted by an IHO or an SRO, despite being given several opportunities to do so. Furthermore, there is no evidence in the hearing record that would support a finding that the services for which the parent sought reimbursement at the impartial hearing would constitute an appropriate remedy for the district's alleged denial of a FAPE to the student.

VII. Conclusion

Based on the above, the parent's claims are dismissed. I have considered the parties' remaining contentions and find them to be without merit.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
March 5, 2012

STEPHANIE DEYOE
STATE REVIEW OFFICER

[4] "The New York State Report Cards provide enrollment, demographic, attendance, suspension, dropout, teacher, assessment, accountability, graduation rate, post-graduate plan, career and technical education, and fiscal data for public and charter schools, districts, and the State" (https://reportcards.nysed.gov).