



# The University of the State of New York

## The State Education Department

State Review Officer

[www.sro.nysed.gov](http://www.sro.nysed.gov)

No. 12-144

### **Application of the NEW YORK CITY DEPARTMENT OF EDUCATION for review of a determination of a hearing officer relating to the provision of educational services to a student with a disability**

#### **Appearances:**

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for petitioner, Brian J. Reimels, Esq., of counsel

Law Offices of Regina Skyer and Associates, attorneys for respondents, Sonia Mendez-Castro, 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 district) appeals from the decision of an impartial hearing officer (IHO) which found that it failed to offer an appropriate educational program to respondents' (the parents') son and ordered it to pay for the student's tuition costs at the Aaron School for the 2011-12 school year. The parents cross-appeal from the portion of the IHO's decision which found that certain procedural violations did not result in the denial of a free appropriate public education (FAPE). The appeal must be sustained. The cross-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 program (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (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]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 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 (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5]). 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 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

### III. Facts and Procedural History

At the time of the impartial hearing, the student was attending first grade at the Aaron School, where his parents had unilaterally enrolled him since kindergarten (Tr. pp. 350-51; Dist. Ex. 3 at p. 1; Parent Exs. B at p. 3; C at p. 1; D at pp. 1-2; G at p. 1).<sup>1</sup>

The student's educational history includes center-based special education services and related services of speech-language therapy, occupational therapy (OT), physical therapy (PT), and counseling provided through the Early Intervention Program (EIP) and the Committee on Preschool Special Education (CPSE) (Tr. pp. 344-45). In preparation for the student's "turning five" transition to the CSE for the 2010-11 school year, the parents privately obtained a psychological evaluation in their effort to glean more information about the type of special education classroom that would best meet their son's needs (Tr. pp. 345-46). Specific details regarding the events that transpired during the student's "turning five" CSE meeting are not included in the hearing record. However, the hearing record reflects that the parents unilaterally placed the student at the Aaron School for kindergarten for the 2010-11 school year (Tr. pp. 350-52).

In January 2011, the parents entered into a contract with the Aaron School to hold a place for the student at the school for the 2011-12 school year and paid a non-refundable deposit in the amount of \$8,000.00 (Tr. pp. 331-33; Parent Ex. D at pp. 1-2).

A CSE convened on March 9, 2011 for the student's annual review and to develop the student's IEP for the 2011-12 school year (District Ex. 1). Participants in the March 2011 CSE meeting included the student's parents, a district representative, a district school psychologist, a district social worker, and the student's Aaron School teacher via teleconference (Parent Ex. M at p. 2). The CSE recommended that the student continue to be eligible for special education and related services as a student with a speech or language impairment.<sup>2</sup> In addition, the CSE recommended placement in a 12:1 special class in a community school with related services of speech-language therapy, OT, PT, and counseling (Tr. p. 41; Dist. Ex. 2 at p. 2; Parent Ex. M at pp. 1, 16, 18). The hearing record reflects that during the March 2011 CSE meeting, the parents told the CSE they had secured a spot for the student at the Aaron School, but were eager to see the placement offered by the district (Tr. p. 369-70; Dist. Ex. 2 at p. 2).

In a letter titled "Final Notice of Recommendation: Annual Review and Reevaluation" (FNR) dated July 11, 2011, the district advised the parents of the specific public school site to which the student was assigned for the 2011-12 school year (Parent Ex. N).

Via facsimile dated July 20, 2011, the parents notified the district that they tried to arrange for a visit to the assigned public school site, but were informed that the assigned school was closed and would not be available to visit until September 2011 (Parent Ex. O at pp. 1-4). The letter

---

<sup>1</sup> The Aaron School has not been approved by the Commissioner of Education as a school with which school districts may contract for the instruction of students with disabilities (see 8 NYCRR 200.1[d], 200.7).

<sup>2</sup> The student's eligibility for special education services as a student with a speech or language impairment is not in dispute in this appeal (Tr. pp. 342-43; see 34 CFR 300.8[c][11]; 8 NYCRR 200.1[zz][11]).

indicates that the parents could not accept the placement without visiting the assigned school and that they intended to arrange a visit in September (id. at pp. 1-2). The parents also advised the district of their concerns regarding the assigned school specific to the physical size of the school, the size of the student body, the student's difficulty with transitions and dysregulation, the class profile, and the school's distance from the student's home (id. at p. 1). The letter also indicated the parents had safety concerns regarding the assigned school based on their own research (id.).

On August 14, 2011, counsel for the parents' sent another letter to the district notifying the district that the parents intended to enroll the student at the Aaron School for the 2011-12 school year and seek tuition reimbursement and transportation services from the district (Parent Ex. B at p. 1). The parents raised a number of issues with the March 2011 IEP and the proposed placement, asserting that they were denied a meaningful opportunity to participate in the March 2011 CSE meeting because the related services goals were not reviewed during the meeting, that the goals were vague, insufficient and lacked a baseline, and that the student would not receive adequate teacher support in a 12:1 special classroom (id. at pp. 2-3). The parents reiterated their dissatisfaction with the assigned public school site, but also reaffirmed their interest in visiting the assigned school in September (id. at p. 3).

In a letter to the district dated September 9, 2011, the student's mother indicated she called the assigned public school on September 7, 2011 to schedule a tour as soon as possible, at which time she was told by someone in the school's main office to arrive at the school within a specific time frame the next morning and someone would give her a tour of the school (Parent Ex. P at p. 1). The letter indicates that upon her arrival at the school the next day per the noted arrangement, the school's parent coordinator advised her that no one was available to provide a tour of the school, with the exception of a classroom visit for a few minutes (id.). The letter indicated the parent's multiple concerns with the classroom and with the size and enrollment of the school, all of which she felt made the assigned school inappropriate for the student (id. at pp. 1-2). The parents accordingly rejected the assigned school (id. at p. 2).

#### **A. Due Process Complaint Notice**

The parents commenced an impartial hearing by a due process complaint notice dated October 31, 2011, challenging the appropriateness of the March 2011 IEP and requesting tuition reimbursement from the district for the parents' unilateral placement of the student at the Aaron School for the 2011-2012 school year (Parent Ex. A).

As an initial matter, the parents alleged that the CSE failed to correct the student's age and date of birth on the March 2011 IEP after being requested to do so (Parent Ex. A at p. 2). The parents then asserted that the CSE did not consider a multitude of assessments in determining the student's present levels of performance, but instead relied solely on teacher estimates, and that the CSE failed to follow the proper procedures regarding teleconferencing (id.). In particular, the parents alleged that the CSE did not provide copies of the student's most recent evaluation to the student's special education teacher, who participated via telephone, or to the parents (id.). The parents raised additional arguments that the district did not provide the parents a meaningful opportunity to participate in the development of the March 2011 IEP, asserting that the CSE did not discuss the student's PT and speech-language therapy goals at the CSE meeting and that the CSE ignored the parents' request for the removal of PT from the IEP (id. at p. 3). Regarding the

annual goals contained in the March 2011 IEP, the parents alleged that overall the 2011 IEP did not include measurable goals, that the goals within the IEP were insufficient because they did not have grade-level baselines, that the IEP lacked goals related to PT, and that the student had already mastered a number of the included OT, speech-language, and counseling goals (id. at pp. 2-3). The parents further asserted that the district's recommendation for placement in a 12:1 special class in a community school with support services was insufficient to address the student's needs and affirmatively alleged that the student required a more supportive 12:1+1 placement (id. at p. 2).

The parents remaining allegations revolved around the "proposed classroom" and the assigned public school site (Parent Ex. A at pp. 3-4). The parents asserted that the student would have been unable to function in a large school setting due to the student's attention and dysregulation issues—noting the school's total population of approximately 800 students (id.). The parents also found fault with the class sizes for music, gym and art, asserting that because the student would have attended those classes with general education students in classes containing up to 30 students, the student would not have been able to function (id. at p. 3). The parents also alleged that the district did not provide the parents with a profile of the proposed classroom after the parents requested one (id.). The parents further alleged that the class composition was not appropriate for the student, raising concerns that the other students in the proposed classroom were lower functioning than the student and that the student would not have had an appropriate speech model because several of the other students in the classroom were nonverbal (id.). The parents raised additional concerns that the assigned school was located too far from the parents' home, that the assigned school did not have an FM system to address the student's auditory processing issues, and that the assigned school lacked a sensory gym and sensory materials necessary to address the student's sensory needs (id. at p. 4).

The due process complaint notice also contained a reservation of "the [parents'] right to raise any other procedural or substantive issues that may come to their attention during the pendency of the litigation of this matter," including challenging the qualifications of district personnel, challenging the district's ability to maintain the appropriate student/teacher ratio throughout the school day, and challenging the district's ability to provide the recommended related services (Parent Ex. A at 4).

## **B. Impartial Hearing Officer Decision**

An impartial hearing convened on January 17, 2012 and concluded on March 14, 2012 after four nonconsecutive days of hearings (Tr. pp. 1-405). The IHO rendered a decision on June 19, 2012 finding that the district did not offer the student a FAPE for the 2011-2012 school year, that the Aaron School was appropriate, and that equitable considerations favored the parents (IHO Decision). The IHO awarded the parents reimbursement for the costs of the student's tuition at the Aaron School for the 2011-12 school year (id. at p. 22).<sup>3</sup>

---

<sup>3</sup> On June 22, 2012 the IHO issued an amended decision to correct a typographical error in the award of tuition reimbursement from the 2010-2011 school year to the 2011-2012 school year (compare IHO Decision at p. 22, with Amended IHO Decision at p. 22). The decisions otherwise appear to be identical and, since the correction was for a typographical error, further references are to the corrected, June 22, 2012 decision.

Before finding a denial of FAPE, the IHO ruled in favor of the district on a number of matters (IHO Decision at pp. 13-15). The IHO found that although the CSE failed to correct the student's age and date of birth on the IEP, this did not impede the parents' opportunity to participate in the March 2011 CSE meeting and did not deprive the student of educational benefits (id. at p. 13). The IHO also found that the OT and speech-language therapy goals were discussed at the CSE meeting and that the parents were not denied a meaningful opportunity to participate in the meeting regarding those goals (id. at pp. 13-14). The IHO further found that the CSE team had enough evaluative data available to it and determined that the CSE did not rely solely on teacher estimates as alleged by the parents (id. at pp. 14-15).

In finding a denial of FAPE, as an initial matter, the IHO determined that the district failed to follow the proper procedural guidelines regarding teleconferencing (id. at pp. 15-17). Citing to a June 1992 State Education Department field memo, the IHO determined that the CSE had a duty to provide all CSE members participating via telephone with the materials that were to be discussed by the CSE (id. at pp. 15-16). The IHO analyzed the development of the IEP and noted that in recommending a 12:1 special class placement, the CSE relied on a comparison of teacher estimates with a baseline evaluation (id. at p. 16). The IHO then concluded that the CSE violated teleconferencing procedures set forth in the field memo by failing to make the baseline evaluation available to the student's private school teacher at or prior to the meeting (id.). The IHO further determined that this violation denied the parents the opportunity to have a meaningful discussion regarding the comparison of the baseline evaluation with teacher estimates, which resulted in a denial of FAPE (id. at pp. 16-17). The IHO also determined that the recommended placement was substantively inappropriate resulting in a denial of FAPE (id. at pp. 17-18). In support of his finding that the district did not offer the student a FAPE, the IHO paid particular note to the recommendations contained in a privately obtained psychological evaluation report (id. at 18). The IHO determined that the March 2011 IEP did not include the recommendations from 'the privately obtained evaluation report; specifically, a small structured class in a small supportive school environment and periodic neuropsychological reevaluations (id.).

The IHO went on to find that the parents' unilateral placement of the student at the Aaron School was appropriate (IHO Decision at p. 18-20). The IHO found that the parents were not subject to the same mainstreaming requirements as the district and that the Aaron School addressed the student's needs, noting in particular that the student made progress socially at the Aaron School (id.). In addition, the IHO observed that the Aaron School provided an FM system and sensory tools to address the student's auditory processing difficulties and sensory issues (id.).

Lastly, the IHO determined that equitable considerations weighed in favor of granting the parents' request for tuition reimbursement '(IHO Decision at pp. 20-21). The IHO found that the parents properly notified the district of their intention to place the student at the Aaron School and of their objections to the district's proposed placement and classroom (id. at p. 21). The IHO noted that the district made no attempt to address the concerns raised by the parents in those letters (id.).

#### **IV. Appeal for State-Level Review**

The district appeals from the IHO's decision that it failed to offer the student a FAPE for the 2011-12 school year, that the parents' unilateral placement at the Aaron School was appropriate, and that equitable considerations favor the parents. The district argues that the IHO

erred in two respects. First, the district asserts that the IHO erred in finding a denial of the parents' right to meaningful participation based on a lack of documentation provided to the student's special education teacher. Second, the district asserts that the IHO erred in finding that the district's proposed placement in a 12:1 classroom with support services was not an appropriate placement.

The district argues that it was not required to provide the student's special education teacher with the student's baseline evaluation. The district asserts that Federal and State regulations allow for CSE meeting participation via telephone and that they do not specify what documentation must be provided to members that participate via telephone. The district further argues that even if the IHO had been correct in finding a violation of State procedures, the violation did not impede the parents' participation in the March 2011 CSE meeting and did not deprive the student of a FAPE or educational benefits. In support of this position, the district claims that the special education teacher participated fully in the meeting. The district notes that the Aaron School teacher was on the telephone for the entire meeting and that he heard all of the program recommendations and did not raise any objections. In addition, the district asserts that the student's special education teacher did not raise any objections over insufficient data or a lack of documentation during the March 2011 CSE meeting.

The district also argues that the recommendation of a 12:1 special class in a community school was appropriate for the student to attain educational benefits in the least restrictive environment. The district's position is that the CSE was justified in recommending placement in a 12:1 classroom rather than placement in a 12:1+1 classroom. The district argues that the CSE properly examined the needs of the student and properly recommended services based on the student's progress and the student's functional level being at or above grade level. The district further asserts that the IHO erred in considering the suitability of the proposed classroom in the assigned school, contending that it did not have to establish that it would appropriately implement the March 2011 IEP after the parents had already removed the student from public school. Further, the district asserts that the testimony of the proposed teacher at the assigned school was sufficient proof that the March 2011 IEP would have been implemented at the assigned school.

The district also argues that the IHO erred in finding that the Aaron School was an appropriate placement and that equitable considerations favored the parents. The district asserts that the Aaron School is overly restrictive as it is a specialized school without any opportunity for mainstreaming with general education students. The district notes that the March 2011 IEP calls for the student to participate in lunch and general assemblies with general education students. The district also asserts that the Aaron School sets a cap on the student's services so that the student is receiving five sessions of related services per week, while the IEP called for the provision of nine sessions per week. In addition, the district asserts that equitable considerations favor the district because the parents did not earnestly pursue a public school option. In support of its position, the district points to the parents' entering into a contract and paying a non-refundable deposit to the Aaron School prior to the March 2011 CSE meeting.

The parents answer, denying the district's allegations and asserting that the IHO correctly determined that the district did not offer the student a FAPE for the 2011-12 school year. Along with their answer, the parents cross-appeal, addressing the portions of the IHO decision that ruled in favor of the district and issues raised in their due process complaint notice that were not addressed by the IHO. The parents argue that the IHO erred in finding that the district's failure to

update the student's age and date of birth and the district's failure to include the parent's input in developing the student's goals did not deny the parents a meaningful opportunity to participate in the development of the March 2011 IEP. The parents also argue that although the IHO found that there was sufficient evaluative data available to the CSE, the IHO should have found a denial of FAPE based on the parents' contention that the available evaluative data was not discussed or considered at the CSE meeting. Further, the parents argue that the IHO erred in not ruling on the parents' allegation that the assigned school was not appropriate for the student both in terms of the functional grouping and teaching methodologies used.

The district replies to the parents' cross-appeal, denying the parents' allegations. In addition, the district asserts that the CSE included the student's correct date of birth on the March 2011 IEP, although the student's age was noted incorrectly. The district also counters the parents' arguments relating to the development of the IEP, asserting that the CSE had sufficient evaluative data available at the March 2011 CSE meeting and that 'the private psychological evaluation report and the progress report from the Aaron School were both utilized in the development of the IEP.

## **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., 557 US 230, 238-239 [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; R.E. v. New York City Dep't. of Educ., 694 F.3d 167, 189-90 [2d Cir. 2012]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 [2d Cir. 2012]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). "[A]dequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP" (Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998], quoting Rowley, 458 U.S. at 206; see T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 253 [2d Cir. 2009]). While the Second Circuit has emphasized that school districts must comply with the checklist of procedures for developing a student's IEP and indicated that "[m]ultiple procedural violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not" (R.E., 694 F.3d at 190-91), the Court has also explained that not all procedural errors render an IEP legally inadequate under the IDEA (M.H., 685 F.3d at 245; 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 procedural violations are 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]; R.E.,



694 F.3d at 190; M.H., 685 F.3d at 245; A.H. v. Dep't of Educ., 394 Fed. App'x 718, 720 [2d Cir. 2010]; E.H. v. Bd. of Educ., 2008 WL 3930028, at \*7 [N.D.N.Y. Aug. 21, 2008], aff'd, 361 Fed. App'x 156 [2d Cir. 2009]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007], aff'd, 293 Fed. App'x 20 [2d Cir. 2008]).

The IDEA directs that, in general, an IHO'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, 142 F.3d at 130; 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 T.P., 554 F.3d at 254; P. v. Newington Bd. of Educ., 546 F.3d 111, 118-19 [2d Cir. 2008]; 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 least restrictive environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 CFR 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see Newington, 546 F.3d at 114; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132; G.B. v. Tuxedo Union Free Sch. Dist., 751 F. Supp. 2d 552, 573-80 [S.D.N.Y. 2010], aff'd, 486 Fed. App'x 954 [2d Cir. 2012]; E.G. v. City Sch. Dist. of New Rochelle, 606 F. Supp. 2d 384, 388 [S.D.N.Y. 2009]; 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 includes a statement of the student's present levels of academic achievement and functional performance (see 34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]; Tarlowe v. New York City Bd. of Educ., 2008 WL 2736027, at \*6 [S.D.N.Y. July 3, 2008] [noting that a CSE must consider, among other things, the "results of the initial evaluation or most recent evaluation" of the student, as well as the "'academic, developmental, and functional needs'" of the student]), establishes annual goals designed to meet the student's needs resulting from the student's disability and enable him or her to make progress in the general education curriculum (see 34 CFR 300.320[a][2][i], [2][i][A]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (see 34 CFR 300.320[a][4]; 8 NYCRR 200.4[d][2][v]).

A board of education may be required to reimburse parents for their expenditures for private educational services obtained for a 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]; R.E., 694 F.3d at 184-85; T.P., 554 F.3d at 252). 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 (471 U.S. at 370-71; see 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 CFR 300.148).

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 R.E., 694 F.3d at 184-85; M.P.G. v. New York City Dep't of Educ., 2010 WL 3398256, at \*7 [S.D.N.Y. Aug. 27, 2010]).

## **VI. Discussion**

### **A. Scope of Review**

Prior to addressing the merits of the instant case, I address the sufficiency of the parents' cross-appeal to the extent that the parents "repeat and re-allege all procedural and substantive claims set forth in the [due process complaint notice]" (Pet. ¶ 69). The parents' due process complaint notice is a four page single spaced letter containing numerous allegations; however, the parents raise specific arguments in their petition only as to a relatively small number of those allegations (compare Pet., with Parent Ex. A). A party appealing must "clearly indicate the reasons for challenging the impartial hearing officer's decision, identifying the findings, conclusions and orders to which exceptions are taken" and this includes clearly identifying which particular issues the that the appealing party believes the IHO erroneously failed to decide (see 8 NYCRR 279.4). The due process complaint predates the IHO's decision and obviously does not contain allegations error on the part of the IHO, and it is not this SRO's role to research and construct the appealing parties' arguments or guess what they may have intended (see, e.g., Gross v. Town of Cicero, Ill., 619 F.3d 697, 704 [7th Cir. 2010] [appellate review does not include researching and constructing the parties' arguments]; Fera v. Baldwin Borough, 350 Fed. App'x 749, 752-53 [3rd Cir. 2009] [a party on appeal should at least identify the factual issues in dispute]; Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 841 [10th Cir. 2005] [generalized assertion of error on appeal is not sufficient]; see also, Taylor v. American Chemistry Council, 576 F.3d 16, 32 n.16 [1st Cir. 2009]; Lance v. Adams, 2011 WL 1813061, at \*2 [E.D. Cal. May 6, 2011] [the tribunal need not guess at the parties' intended claims]; Bill Salter Advertising, Inc. v. City of Brewton, AL, 2007 WL 2409819, at \*4 n.3 [S.D. Ala. Aug. 23, 2007]).

While I have carefully reviewed the entire hearing record to consider those claims that the parents have specifically identified in their answer and cross-appeal (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]), I will not sift through the parents' due process complaint notice, the hearing record, and the IHO decision for the purpose of asserting claims on their behalf and I find the answer insufficient with respect to those issues not specifically raised on appeal (8 NYCRR 279.4[b]).

Accordingly, the parents' cross-appeal is insufficient to raise the allegations contained in the due process complaint notice that the assigned school location had too many other students for the student to function, that the class sizes for music, gym and art were too large for the student to be able to function, that the assigned school location was too far from the parents' home, that the

assigned school did not have an FM system to address the student's auditory processing issues, and that the assigned school lacked a sensory gym and sensory materials to address the student's sensory needs (see Pet.; Parent Ex. A. at pp. 3, 4).<sup>4</sup>

## **B. CSE Process**

### **1. Teleconferencing**

I next address the IHO's determination that the district violated New York State teleconferencing guidelines by not providing the student's Aaron School teacher, who participated by teleconference, with a copy of the student's most recent evaluation report. State regulations authorize a parent and the district representative of the CSE to agree to use alternative means of CSE meeting participation, such as videoconferences and conference calls (8 NYCRR 200.4[d][4][i][d]). Such regulation, effective December 2005, does not incorporate the requirements for telephonic participation, relied on heavily by the IHO in his decision, which were set forth in a June 1992 State Education Department field memo entitled, "The Use of Teleconferencing to Ensure Participation in Meetings to Develop the Individualized Education Program (I.E.P.)." The memo provided, among other things, that individuals who participate by telephone at CSE meetings must have access to the same material as other participants (see Application of a Student with a Disability, Appeal No. 10-002; Application of the Dep't of Educ., Appeal No. 09-078; Application of a Child with a Disability, Appeal No. 05-129).

Participants in the March 2011 CSE meeting included the student's parents, a district representative, a school psychologist, a social worker, and the student's Aaron School teacher (Tr. pp. 32-33; Dist. Ex. 2 at p. 1; Parent Ex. M. at p. 2).<sup>5</sup> All of the participants were at the meeting, except the student's teacher from the Aaron School, who participated via teleconference (Tr. p. 367; Dist. Ex. 2 at p. 1; Parent Ex. M at p. 2). The hearing record indicates that the student's Aaron School teacher fully participated in the meeting, provided input regarding the student's management needs and present levels of performance, and was on the telephone for the entire meeting, which lasted approximately one-and-a-half to two hours (Tr. pp. 48-49, 92, 111-12, 365-67). Although the CSE relied in part on the privately-obtained 2009 psychological evaluation in developing the March 2011 IEP, the district school psychologist who attended the CSE meeting testified that he did not know if the student's teacher had a copy of the report (Tr. p. 92). The school psychologist added that he would not have provided the teacher with a copy of the evaluation report absent a parental request because of confidentiality concerns, but that he did discuss the evaluation report during the meeting (*id.*). Pertinently, the evaluation report was obtained privately by the parents and the parents had their own copy of the evaluation report at the CSE meeting (Tr. pp. 345, 360). The district school psychologist also explained that the CSE relied on information provided by the student's Aaron School teacher to determine the student's functioning at the Aaron School and that the CSE changed the IEP at her request (Tr. pp. 47-50, 90-91). There is no evidence in the hearing record to suggest the student's then-current classroom teacher was unable to discuss the student's current levels of functional performance and

---

<sup>4</sup> However, for reasons discussed further below I would find these allegations to be without merit in any event.

<sup>5</sup> While the district representative was also a special education teacher, she did not serve in that capacity at the March 2011 CSE meeting (Tr. pp. 76-77; Dist. Ex. 2 at p. 1).

management needs without having a copy of the 2009 psychological evaluation in her possession. It is also worth noting that neither the student's teacher nor the parents objected to the participation of the student's teacher via teleconference or requested a copy of the psychological report during the meeting (see Dist. Ex. 2).

Considering the above, even if the district's failure to provide the student's Aaron School teacher with a copy of the 2009 psychological evaluation report were a procedural violation, it did not impede the student's right to a FAPE, significantly impede the parents' meaningful participation in the CSE process, or cause a deprivation of educational benefits (see 20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]). In determining whether there has been a denial of a FAPE due to a procedural violation, it is not necessary that every member of the CSE read a document in order for the body to have collectively considered the document (T.S. v. Board of Educ., 10 F.3d 87, 89-90 [2d Cir. 1993]). It is also not necessary that the document be physically present at the CSE meeting (F.B. v. New York City Dep't of Educ., 923 F. Supp. 2d 570, 578-82 [noting that the absence of an evaluation update at the CSE meeting did not support a finding that the update was not considered by the CSE]). Although it would have been prudent for the district to distribute copies of all available reports and evaluations to all CSE members at or prior to the CSE meeting, the failure to do so, in this instance, does not rise to the level of a denial of FAPE and therefore the IHO's determination on this matter must be overturned.

## **2. Evaluative Data and Parent Participation**

Turning to the sufficiency of the evaluative data available to the March 2011 CSE, the hearing record reflects that the CSE had before it adequate and current evaluative information with respect to the student, which the CSE utilized in the development of the student's March 2011 IEP. Regulations require that a district must conduct an evaluation of a student where the educational or related services needs of a student warrant a reevaluation or if the student's parent or teacher requests a reevaluation (34 CFR 300.303[a][2]; 8 NYCRR 200.4[b][4]); however, a district need not conduct a reevaluation more frequently than once per year unless the parent and the district otherwise agree and it must conduct one at least once every three years unless the district and the parent agree in writing that such a reevaluation is unnecessary (8 NYCRR 200.4[b][4]; see 34 CFR 300.303[b][1]-[2]). A CSE may direct that additional evaluations or assessments be conducted in order to appropriately assess the student in all areas related to the suspected disabilities (8 NYCRR 200.4[b][3]). Any evaluation of a student with a disability must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining, among other things, the content of the student's IEP (20 U.S.C. § 1414[b][2][A]; 34 CFR 300.304[b][1][ii]; see Letter to Clarke, 48 IDELR 77 [OSEP 2007]). In particular, a district must rely on technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors (20 U.S.C. § 1414[b][2][C]; 34 CFR 300.304[b][3]; 8 NYCRR 200.4[b][6][x]). A district must ensure that a student is appropriately assessed in all areas related to the suspected disability, including, where appropriate, social and emotional status (20 U.S.C. § 1414[b][3][B]; 34 CFR 300.304[c][4]; 8 NYCRR 200.4[b][6][vii]). An evaluation of a student must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified (34 CFR 300.304[c][6]; 8 NYCRR 200.4[b][6][ix]).

In this instance the CSE had a multitude of data available during the March 2011 CSE meeting, and contrary to the parents' allegations, the hearing record reflects that the CSE utilized the available data in formulating the student's March 2011 IEP. The CSE considered a 2009 psychological evaluation, a January 2011 classroom observation, as well as multiple reports produced by the Aaron School, including an October 2010 related services counseling plan, an October 2010 speech-language therapy plan, an October 2010 OT plan, and a February 2011 progress report (Tr. pp. 40, 43, 47-48; Dist. Exs. 3-7; Parent Ex. L). In addition, the CSE considered input from the student's parents and the student's Aaron School teacher (Tr. pp. 47-48, 394-96, 402). The district school psychologist also testified that the CSE requested the participation of the student's service providers from the Aaron School, but that it was the Aaron School's policy not to have them participate in CSE meetings (Tr. p. 88).<sup>6</sup>

In December 2009, the parents obtained a private psychological evaluation in anticipation of the student progressing from the CPSE to the CSE (Tr. pp. 345-47). As explained by the district school psychologist, the 2009 psychological evaluation was the latest evaluation of the student and contained test scores that continued to be relevant for the student at the time of the March 2011 CSE meeting (Tr. pp. 89-92). The school psychologist also testified that at the time of the CSE meeting another evaluation of the student was not necessary because the student was "cognitively solid" and was functioning academically in the average to high-average range (Tr. pp. 90-92). The parents agreed during the hearing that nothing had changed with the student since the 2009 psychological evaluation that would have warranted another social history (Tr. p. 392). Additionally, a reevaluation of the student was not yet required, as the 2009 evaluation was within the three years prior to the March 2011 CSE meeting and there is no indication in the hearing record that the parents requested a reevaluation during or prior to the March 2011 CSE meeting (see 34 CFR 300.303[b][1]-[2]; 8 NYCRR 200.4[b][4]).

The March 2011 CSE also satisfied its obligation to consider the parents' privately obtained 2009 psychological evaluation in developing the student's March 2011 IEP (see T.S., 10 F.3d at 89). A CSE must consider private evaluations obtained at private expense, provided that such evaluations meet the district's criteria, in any decision made with respect to the provision of a FAPE to a student (34 CFR 300.502[c]; 8 NYCRR 200.5[g][1][vi]). However, "consideration" does not require substantive discussion, that every member of the CSE read the document, or that the CSE accord the private evaluation any particular weight (T.S., 10 F.3d at 89-90; G.D. v. Westmoreland Sch. Dist., 930 F.2d 942, 947 [1st Cir. 1991]; see Michael P. v. Dep't of Educ., 656 F.3d 1057, 1066 n.9 [9th Cir. 2011]; K.E. v. Indep. Sch. Dist. No. 15, 647 F.3d 795, 805-06 [8th Cir. 2011]; Evans v. Dist. No. 17, 841 F.2d 824, 830 [8th Cir. 1988]; James D. v. Bd. of Educ., 642 F. Supp. 2d 804, 818 [N.D. Ill. 2009]). Although the parents testified that the district social worker, who conducted the January 2011 classroom observation, interrupted the district school psychologist during the March 2011 CSE meeting to state "[w]e're not getting into that neuro-psych report, that was part of the turning five process and it's not relevant to this meeting," the district school psychologist testified that he reviewed the 2009 psychological evaluation in preparation for the CSE meeting and discussed it with the parents during the meeting (Tr. pp. 94-96, 359-60; Dist. Ex. 2 at p. 1). The parents also confirmed that the district school psychologist

---

<sup>6</sup> The Aaron School director confirmed that the Aaron School's policy is to not allow the school's service providers to participate in CSE meetings (Tr. p. 340).

reviewed the 2009 psychological evaluation report during the March 2011 CSE meeting prior to being interrupted by the district's social worker (Tr. 359-60). Based on the above, the hearing record supports a finding that the March 2011 CSE sufficiently considered the 2009 psychological evaluation report (Tr. 94-96, 359-60).

Further, a district is not required to conduct its own evaluations in developing an IEP and recommending an appropriate program, but may rely on sufficiently comprehensive privately-obtained evaluations (D.B. v. New York City Dep't of Educ., 966 F. Supp. 2d 315, 329-31 [S.D.N.Y. 2013]; S.F. v. New York City Dep't of Educ., 2011 WL 5419847, at \*12 [S.D.N.Y. Nov. 9, 2011]; M.H. v. New York City Dep't of Educ., 2011 WL 609880, at \*9-\*10 [S.D.N.Y. Feb. 16, 2011]). In this instance, I do not find any fault in either the CSE's reliance on the parents' privately obtained 2009 psychological evaluation or the determination that further evaluations of the student were not necessary in light of the student's functional levels. This is especially so in light of the more current data provided by the student's private school, which was also available to and utilized by the March 2011 CSE (see P.K. v. Bedford Cent. Sch. Dist., 569 F. Supp. 2d 371, 383-84 [S.D.N.Y. 2008] [district used current information regarding the student provided by student's teachers and related service providers at student's private placement in development of IEP]).

In addition to the 2009 psychological evaluation and the district's January 2011 classroom observation, the CSE had the benefit of a number of reports produced by the Aaron School along with direct input from the student's Aaron School teacher (Tr. 40, 48-49; Dist. Exs. 3-6). As indicated by the district school psychologist, information from the Aaron School reports was used to describe the student's academic and social/emotional present levels of performance in the IEP (Tr. pp. 47-48; compare Dist Ex. 3 at pp. 5-6, and Dist. Ex. 4, with Parent Ex. M at pp. 3, 4). The Aaron School reports were also used to develop the student's academic, speech-language, OT, and counseling goals (Tr. pp. 48-49; compare Dist Exs. 4-6, with Parent Ex. M at pp. 6-15). Pertinently, the student's parents and the Aaron School director testified that those reports accurately described what the student was working on at the time (Tr. p. 303, 400). The CSE further reviewed the academic goals on the February 2011 Aaron School progress report with the student's Aaron School teacher in order to establish the progress the student was making towards achieving those goals and how much support the student required (Tr. pp. 48-49). Similarly, the CSE reviewed the student's management needs with the student's Aaron School teacher and incorporated the teacher's input into the IEP—as indicated by the handwritten notations on the IEP (Tr. pp. 50, 65, 68, 394-95; Dist. Ex. 2 at p. 1; Parent Ex. M at pp. 3-5). The parents confirmed that the CSE discussed the student's progress and how the student was doing at the beginning of the meeting and that the parents and the student's Aaron School teacher were able to provide input regarding the student (Tr. pp. 394-95, 402). The parents did not object to the description of the student in the IEP or the student's academic goals (Tr. pp. 390, 401). According to the district school psychologist, the only objection raised by the parents during the March 2011 CSE meeting was that the student did not require PT services and the CSE responded to the parents by requesting that the parents obtain a doctor's prescription so that they could remove PT from the IEP (Tr. pp. 42-43, 109-10, 397-98).<sup>7</sup> Absent any evidence in the hearing record to suggest that the parents

---

<sup>7</sup> The parents allege that they also raised concerns regarding the speech-language and OT goals (Tr. pp. 389-390). The parents' objections are addressed below along with the sufficiency of the academic goals contained in the March 2011 IEP.

were precluded from presenting their concerns to the district, there is no basis to find that the district "ignored" the parents' concerns or failed to afford the parents the opportunity to participate in the development of their son's IEP merely because the parents disagreed with the CSE's recommended placement (see 34 CFR 300.322; 8 NYCRR 200.5[d]; see also Cerra, 427 F.3d at 193; J.L. v. City Sch. Dist. of the City of New York, 2013 WL 625064, at \*12 [S.D.N.Y. Feb. 20, 2013]).

In formulating the March 2011 IEP and recommending placement in a 12:1 special class in a community school, I find that the CSE considered sufficient current evaluative data regarding the student, including the 2009 psychological evaluation report as well as a February 2011 Aaron School progress report, and October 2010 Aaron School related services plans (Dist. Exs. 3-7). There is insufficient evidence in the hearing record to suggest that the district's disagreement with the ultimate recommendations contained in the parents' privately obtained evaluation report should result in a finding that the parents were denied an opportunity to participate in the development of the IEP (see J.C.S. v. Blind Brook-Rye Union Free Sch. Dist., 2013 WL 3975942, at \*10-\*11 [S.D.N.Y. Aug. 5, 2013]; DiRocco v. Bd. of Educ., 2013 WL 25959, at \*18-\*20 [S.D.N.Y. Jan. 2, 2013]). "A professional disagreement is not an IDEA violation" (P.K., 569 F. Supp 2d at 383). Further, as discussed in more detail below, the district's position that the student could gain educational benefit in a 12:1 classroom in a community school based on the information obtained from the Aaron School regarding the progress the student had made during the prior school year is supported by the hearing record (id.).

### **C. March 2011 IEP**

#### **1. Student's Age and Date of Birth**

I now turn to the parents' allegation that the district's failure to correct the student's age and date of birth on the IEP resulted in a denial of FAPE. Although the IHO found that "there is no refuting the error," the 'parents' allegation that this error rose to the level of a denial of a FAPE is not supported by the hearing record. Initially, this de minimis error does not constitute a procedural violation under the IDEA or federal and State regulations—none of which require that a student's age or date of birth be specified on the student's IEP—and the parents' allegations regarding the student's age and date of birth are untenable (see 20 U.S.C. 1414[d][1][A]; 34 CFR 300.320; 8 NYCRR 200.4[d][2]). Furthermore, even were the student's age and date of birth required to be included on his IEP, the parents have cited to no authority for the proposition that a procedural error with respect to such biographical information may rise to the level of a denial of a FAPE under the circumstances presented herein. In fact, the student's date of birth, as listed on the IEP, is the same date as provided in numerous exhibits admitted into evidence, specifically: the notice of IEP meeting; Aaron School counseling plans from October 2010 and October 2011; Aaron School OT plans from October 2010 and October 2011; Aaron School speech-language therapy plans from October 2010 and October 2011; the 2009 psychological evaluation report; a January 2011 classroom observation report; the July 2011 FNR; and July 2011 and September 2011 letters from the parents (compare Parent Ex. M. at p. 1, with Dist. Exs. 1; 4-7, and Parent Exs. H-J; L; N-P). Additionally, the only time the student's date of birth was discussed during the hearing was during a preliminary statement made by the IHO, at which time the IHO identified the student's date of birth as the same date as on the IEP (Tr. p. 200; Parent Ex. M at p. 1). Reviewing the IEP further, the only error regarding the student's age or date of birth is that in the line marked "age",

the district mistakenly hand wrote in the date of the CSE meeting "3-9-2011" (Parent Ex. M at p. 1). This is at most a de minimis mistake, in that anyone reading the IEP would recognize the error. Additionally, the student's correct age is easily discernible from the IEP, as the student's date of birth is correctly listed on the first page (id.).<sup>8</sup>

## 2. Annual Goals

In regard to the sufficiency of the annual goals, a review of the March 2011 IEP reveals approximately 17 annual goals aligned to the student's academic and social/emotional needs (Parent Ex. M at pp. 3-4, 6-15).<sup>9</sup> The hearing record reflects that these goals were aligned to the student's present levels of academic performance and learning characteristics and social/emotional performance obtained through consideration of the previously discussed Aaron School reports, the classroom observation, and through participation by the student's teacher and parents (Tr. pp. 47-48, Parent Ex. M at pp. 3-4, 6-15). An IEP must include a written statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and meet each of the student's other educational needs that result from the student's disability (see 20 U.S.C. § 1414[d][1][A][i][II]; 34 CFR 300.320[a][2][i]; 8 NYCRR 200.4[d][2][iii]). Each annual goal shall include the evaluative criteria, evaluation procedures and schedules to be used to measure progress toward meeting the annual goal during the period beginning with placement and ending with the next scheduled review by the committee (8 NYCRR 200.4[d][2][iii][b]; see 20 U.S.C. § 1414[d][1][A][i][III]; 34 CFR 300.320[a][3]).<sup>10</sup>

In regard to the approximately 17 annual goals included in the March 2011 IEP, five of the goals were academic goals targeting the student's needs specific to math, sight word reading and reading decoding, reading comprehension, and writing (Parent Ex. M at pp. 6-15). The academic goals were specific as to various skills the student was required to display in order to work towards achieving each goal, the goals were measurable for all academic skills targeted, and the goals incorporated recommended academic management strategies (such as teacher modeling, scaffolding, guided practice, and use of visuals) (id. at pp. 3, 6-9; Tr. p. 50). As to the parents' complaint that the goals were insufficient because they failed to establish a method for assessing the student's progress and failed to include a baseline from which to work, the March 2011 IEP included the student's Aaron School teacher's estimates of his instructional level for decoding, reading comprehension, written expression, applied math problems, and calculation, which were provided by the teacher during the March 2011 CSE meeting (Tr. pp. 366, 394-396; Parent Ex. M

---

<sup>8</sup> To the extent the parents seek to have me infer from the CSE's carelessness in this respect that the CSE did not adequately consider the parents' concerns, for the reasons set forth above the hearing record supports a finding that the CSE considered materials and information provided by the parents.

<sup>9</sup> A review of the March 2011 IEP reveals that the academic goals included therein are partially repeated in the IEP (compare Parent Ex. M at pp. 6-7, with Parent Ex. M at pp. 8-9). The second set of the goals included in the March 2011 IEP includes a rubric for reporting the student's progress toward each goal (Parent Ex. M at pp. 8-9).

<sup>10</sup> The March 2011 CSE did not recommend that the student participate in the State Alternate Assessment (Parent Ex. M at p. 18). If a student is recommended to participate in the State Alternate Assessment the IEP must also include a description of the short-term instructional objectives and/or benchmarks that are the measurable intermediate steps between the student's present level of performance and the measurable annual goal (8 NYCRR 200.4[d][2][iv]).



at pp. 2-3).<sup>11</sup> In addition, all of the annual academic goals discussed above and the related services goals discussed below included recommended methods of measurement (i.e., teacher observation, teacher prepared tests or check lists, to be assessed within a prescribed time frame by the teacher and/or service provider) (Parent Ex. M at pp. 6-15).

In addition to academic goals, the March 2011 CSE developed annual goals for the student's related services, which included six OT annual goals, four speech-language annual goals, and two counseling annual goals (Parent Ex. M at pp. 10-15).<sup>12</sup> Although the parents objected during the CSE meeting, asserting that the student was currently working on the related services goals contained in the March 2011 IEP and had mastered some of those goals, particularly the OT graphomotor goals, the hearing record shows that the CSE developed the related services annual goals based on October 2010 Aaron School reports provided by the parents (Tr. p. 87-88, 393; compare Parent Ex. M at pp. 10-15, with Dist. Exs. 4-6). The Aaron School director testified that the October 2010 Aaron School reports accurately reflected what the student was working on at the time of the March 2011 CSE meeting and the student's parents testified that the related service reports were accurate as of the 2010-11 school year (Tr. pp. 303, 400). At the time of the March 2011 CSE meeting the October 2010 reports were the most current data available to the CSE regarding the student's speech-language, OT, and counseling needs (Tr. pp. 87-88, 393; Dist. Exs. 4-6). Additionally, as noted above the district school psychologist testified that he had invited the student's related service providers to attend the March 2011 CSE meeting, but the Aaron School had a policy not to allow related service providers to attend CSE meetings (Tr. p. 88). This policy was later confirmed by the Aaron School director (Tr. p. 340).

Consistent with the information available to the March 2011 CSE at the time of the meeting, the annual OT goals targeted the student's needs specific to motor planning and body awareness, ability to use sensory information to effectively interact with the environment, fine motor, graphomotor, and school-based self-help skills (Parent Ex. M at pp. 10-12). The annual speech-language goals targeted the student's needs specific to expressive language and verbal

---

<sup>11</sup> Testimony by the parent also confirms that the March 2011 CSE discussed the academic goals with the student's Aaron School teacher and incorporated the teacher's suggestions (Tr. p. 366). In addition, the parent testified the student's teacher said that what the CSE read to her "seemed to make sense" (Tr. pp. 366-67).

<sup>12</sup> While the parents do not allege on appeal that the student required PT services, they allege that the CSE's failure to discuss PT goals during the March 2011 CSE meeting prevented the parents from participating in the development of the student's IEP. However, testimony from the hearing indicates that the CSE discussed PT services and in particular whether PT services were still required by the student (Tr. pp. 42, 368). The district school psychologist testified that he advised the parents to contact the student's pediatrician regarding PT because PT was a "licensed area" and the CSE could not create goals or take PT off the student's IEP without a prescription or doctor's note (Tr. pp. 42, 109-10). In this instance, the student had mastered the PT goals from the CPSE and he did not receive PT while at the Aaron School (Tr. pp. 336-37, 369; 397). Additionally, the parents neither contacted their pediatrician regarding PT services, nor did they object to the district's request (Tr. 397-98). In light of this, I find that the lack of PT goals on the IEP did not result in a denial of FAPE for the student, as PT services were not necessary for the student at the time of the March 2011 CSE meeting; however, I remind the district that if there is a question as to whether PT services—or any related services—are warranted, it is the district's responsibility to assess the student to determine the necessity of those services (34 CFR 300.305[a][2][iii]; 8 NYCRR 200.4[b][4], [5][ii][a]). "The determination as to whether physical therapy or occupational therapy is a related service that is necessary to assist the child to benefit from special education must be made by the child's IEP team on a case-by-case basis in light of the child's unique needs" (Letter to Geigerman, 43 IDELR 85 [OSEP 2004]).

organization, critical thinking, verbal reasoning, problem solving, pragmatic and symbolic play, and attention and auditory processing skills (*id.* at pp. 13-14).<sup>13</sup> The annual counseling goals targeted the student's counseling needs; specifically the student's need to identify, express, and manage his emotions in the classroom and in counseling sessions, and demonstration of cognitive flexibility and social reciprocity in the classroom and in counseling sessions (*id.* at p. 15). Similar to the previous discussion about academic annual goals, all of the OT, speech-language, and counseling annual goals were specific as to various skills the student would be required to display in order to work towards achieving each goal (*see* Parent Ex. M at pp. 10-15). All of the related services goals were measurable for all targeted skills (*id.*). Furthermore, the IEP indicated the student's progress would be reported three times per year using the methods of assessment included in each annual related services goal and the included rubric (Parent Ex. M at pp. 8-15).

Accordingly I find that the annual goals and short-term objectives contained in the student's March 2011 IEP, examined as a whole as of the date of the CSE meeting, were sufficiently detailed and measurable and adequately and appropriately addressed the student's needs (*see* N.S. v. New York City Dep't of Educ., 2014 WL 2722967, at \*9-\*10 [S.D.N.Y. June 16, 2014]; B.K. v. New York City Dep't of Educ., 12 F. Supp. 3d 343, 359-63 [E.D.N.Y. 2014]; Tarlowe, 2008 WL 2736027, at \*9; M.C. v. Rye Neck Union Free Sch. Dist., 2008 WL 4449338, at \*11 [S.D.N.Y. Sept. 29, 2008]; W.S., 454 F. Supp. 2d at 146, 147).

### **3. 12:1 Special Class Placement**

Turning to the appropriateness of the recommended 12:1 special class placement with related services, the hearing record reflects that the CSE recommended an appropriate program with a combination of services designed to address the student's needs in the LRE.<sup>14</sup>

In this instance, the student's needs do not require the presence of supplementary school personnel during class time. According to State Regulations, a special class placement is designed for "students whose special education needs consist primarily of the need for specialized instruction which can best be accomplished in a self-contained setting" (8 NYCRR 200.6[h][4]). A 12:1+1 classroom, including one or more supplementary school personnel, is designed for "students whose management needs interfere with the instructional process, to the extent that an additional adult is needed within the classroom to assist in the instruction of such students" (8 NYCRR 200.6[h][4][i]). Management needs for students with disabilities are defined as "the nature of and degree to which environmental modifications and human or material resources are required to enable the student to benefit from instruction" (8 NYCRR 200.1[ww][3][i][d]), and are determined by factors which relate to the student's (a) academic achievement, functional performance, and learning characteristics; (b) social development; and (c) physical development (*id.*). In finding that an additional adult was necessary in the classroom to provide the student with a FAPE, the IHO relied heavily on the inclusion of direct teaching in the IEP and the recommendation in the private 2009 psychological evaluation that the student be placed in a small

---

<sup>13</sup> Testimony by the parent indicated, in regard to OT and speech-language goals, the March CSE handed her some "pre-drafted goals and asked [her] how they looked" (Tr. pp. 367-68). Testimony by the school psychologist indicated that all related services goals came from the available Aaron School reports; that each of the goals was read aloud "verbatim"; and that no one at the March 2011 CSE meeting objected to the goals (Tr. pp. 63-64).

<sup>14</sup> I note that the parent does not challenge the related services included in the IEP and only asserts that the student would not have received sufficient support in a 12:1 classroom without an additional aide.

structured class in a small supportive school (IHO Decision at p. 18). Initially, although a CSE must consider the results of privately obtained evaluations and relevant information provided by the parent, it is not obligated to adopt every recommendation made by private evaluators (*J.C.S.*, 2013 WL 3975942, at \*10-\*11; *T.B. v. Haverstraw-Stony Point Cent. School Dist.*, 2013 WL 1187479 at \*15 [S.D.N.Y. March 21, 2013]; *Watson v. Kingston City Sch. Dist.*, 325 F. Supp. 2d 141, 145 [N.D.N.Y. 2004]). Additionally, the IHO appears to have discounted evidence in the hearing record indicating that the student's needs with regard to self-regulation and distractibility had diminished to the point where they were not interfering with the student's academic functioning to the extent that an extra adult would be necessary. A review of the evidence in the hearing record supports a finding that placement in a 12:1 special classroom in a community school would have been appropriate for this student.

In recommending placement in a 12:1 special class in a community school with related services, the CSE also considered placement in an classroom providing integrated co-teaching services (ICT class) and placement in a 12:1+1 special class in a specialized school (Tr. 69, 72-73, 78-80, 86-87, 362-63; Parent Ex. M at p 17).<sup>15</sup> The parents testified that the CSE originally intended to place the student in an ICT class until the parents voiced their concerns that the student would not receive sufficient support, at which time the CSE altered its recommendation to a 12:1 special class in a community school (Tr. 72-73, 78-79, 362-63; Parent Ex. M at p 17). The March 2011 CSE determined that an ICT class would be too large for the student because he required a lot of support to engage in activities (Dist. Ex. 2 at pp. 1-2; Parent Ex. M. at p. 17). In response to the district's recommendation of a 12:1 special class, the parents testified that they had reservations that it would still not be supportive enough, but were willing to consider it (Tr. p. 364). The minutes from the March 2011 CSE meeting indicated that although the student's parents had reserved a spot for the student at the Aaron School, they were eager to see the placement offered by the district (Dist. Ex. 2 at p. 2).

According to a description of the student included in the February 2011 Aaron School progress report, the student was a "bright and playful boy" who was "confident" in his class of 12 students at the private school (Dist. Ex. 3 at pp. 1, 5). The Aaron School report indicated that throughout the school day, the student was provided with a variety of supports to improve his ability to process and express language and self-regulate (*id.* at p. 6). Examples of individualized supports and strategies used in his self-contained classroom included the teacher's use of exaggerated slowed speech, visual cues and prompts, hands-on experiences, a multi-sensory curriculum, modified seating and instructional materials, and a structured and predictable learning environment (*id.*). In regard to the CSE's recommendations for the 2011-12 school year, a review of the student's academic present performance and learning characteristics included in the March 2011 IEP reveals that the CSE included information from the February 2011 Aaron School progress report (compare Dist. Ex. 3 at pp. 1-6, with Parent Ex. M at p. 3). Consistent with the Aaron School report the IEP indicated, among other things, that the student learned best through teacher modeling, teacher facilitation to expand ideas, guided practice and direct teaching, and visual and verbal cues (Parent Ex. M at p. 3). Also consistent with the Aaron School report, the

---

<sup>15</sup> Although the hearing record refers to the class as a collaborative team teaching (CTT) class, for consistency with State regulations I refer to this type of class as an integrated co-teaching or ICT placement. ICT services are defined as "specially designed instruction and academic instruction provided to a group of students with disabilities and nondisabled students" (8 NYCRR 200.6[g]).

IEP specifically noted that academically and/or socially, the student was distracted by internal and external stimuli (*id.*). The March 2011 IEP indicates the student required visuals, previewing, prompting, scaffolding, sensory breaks (not to exceed ten minutes), teacher modeling, guided practice, redirection, visual and verbal cues, role playing, and scripting to teach the student how to express his wants, each of which is consistent with the description of the student's needs contained in the Aaron School progress report (Dist. Ex. 3 at pp. 1-6; Parent Ex. M at p. 3). As previously discussed, the student's goals incorporated his academic and social/emotional management needs (Parent Ex. M at pp. 3-4, 6-15).

Although the March 2011 IEP included social management needs that would benefit from some degree of individualized attention (i.e. role playing and scripting, teacher facilitation, sensory breaks, and direct teaching), the hearing record does not indicate that the student required these strategies to the extent that a teacher in a 12:1 classroom would not have been able to implement them without an additional aide (Parent Ex. M at pp 3-4). The student's Aaron School teacher testified that the student needed a lot of teacher modeling or teacher focus and redirection for the student to be socially appropriate with his friends; however, the teacher also described the student as "very smart and very high on academics," indicating that his academic management needs were less intensive (Tr. pp. 278, 285). The March 2011 IEP indicated that the student learns best through the use of teacher modeling, guided practice and direct teaching and the student's Aaron School teacher described his greatest areas of needs as "the sensory, the self-regulation issues, and the speech" (Tr. p. 286; Parent Ex. M at pp 3). The student's Aaron School teacher testified that the student's needs in these areas were addressed through redirecting and prompting, sensory breaks, and teacher modeling and role playing, consistent with the management needs specified in the IEP (Tr. p. 289; Parent Ex. M at pp. 3-4). The district's January 2011 classroom observation described the student as "quiet and somewhat distracted" and similarly indicated that he would benefit from teacher assistance, repetition, and redirection (Parent Ex. L). Additionally, the hearing record does not indicate that the student's sensory needs were so significant as to require the presence of an additional adult in the classroom, as the student's Aaron School teacher testified that they could be addressed by providing the student with gum to chew during class and through sensory movement breaks (Tr. p. 280-82, 289). Considering the above, the hearing record does not portray a student who required an additional adult in a 12:1 classroom in order to receive educational benefits.

Testimony from the district's special education teacher also provided some insight as to how the management needs included in the March 2011 IEP could have been addressed in a district 12:1 special classroom. Although the determination of whether an IEP is reasonably calculated to enable the student to receive educational benefits is a prospective analysis and includes the consideration of only the information known at the time the IEP was developed, the Second Circuit has rejected a rigid "four corners" rule prohibiting testimony that goes beyond the face of the IEP (R.E., 694 F. 3d at 185-89 [explaining that with the exception of amendments made during the resolution period, the adequacy of an IEP must be examined prospectively as of the time of its drafting and that "retrospective testimony" regarding services not listed in the IEP may not be considered]). While testimony that materially alters the written plan is not permitted, testimony may be received that explains or justifies the services listed in the IEP (R.E. 694 F.3d at 186). While the district's special education teacher mostly testified about how her 12:1 classroom functioned, she also provided some explanation as to how some of the management needs included

in the IEP could be utilized in a 12:1 special classroom (Tr. pp. 232-33, 237-38, 245-46).<sup>16</sup> Specific to the student, the teacher testified that the majority of her students had similar attention, self-regulation, and academic difficulties to the student, which she addressed by using management strategies similar to those listed on the student's IEP, such as preferential seating, use of sensory tools, facilitation by the teacher, repetition, and use of visuals (Tr. pp. 237-38, 245-46). The teacher's testimony reflects that the academic management needs that were included in the March 2011 IEP were capable of being implemented in a 12:1 special class setting (Tr. pp. 172, 174-75). The teacher's testimony revealed she found certain strategies that were included in the March 2011 IEP to also be effective for her students due to 'their language difficulties, including scaffolding and breaking directions into smaller parts (Tr. 175; Parent Ex. M at p. 3). A number of the management strategies explained by the district special education teacher are the same strategies included on the IEP, specifically the use of sensory breaks, scaffolding, facilitation by the teacher, teacher modeling, social roleplay, repetition, and use of visuals (Parent Ex. M at pp. 3-4).

#### **D. Assigned School**

Finally, the parents contend that the IHO erred in not addressing whether the assigned public school site would be able to implement the student's March 2011 IEP, asserting that the differing functional levels of the students in the proposed classroom in the assigned public school site at the beginning of the school year and the teaching methodologies utilized in the classroom would have prevented the student from making educational progress.<sup>17</sup> For the reasons explained more fully below, the parents' contentions must be dismissed.

Challenges to an assigned public school site are generally relevant to whether the district properly implemented a student's IEP, which is speculative when the student never attended the recommended placement. Generally, the sufficiency of the district's offered program must be determined on the basis of the IEP itself (R.E., 694 F.3d at 186-88). The Second Circuit has explained that the parents' "[s]peculation that the school district will not adequately adhere to the IEP is not an appropriate basis for unilateral placement" (R.E., 694 F.3d at 195; see F.L., 553 Fed.

---

<sup>16</sup> I note that the proposed 12:1 classroom in the assigned public school site contained only five students as of September, 2011, when the March 2011 IEP would have been implemented, and also at times included an assistant to the teacher serving as an additional adult in the classroom (Tr. 155, 158, 223-26, 232, 259). To the extent that the district provided testimony that the assigned classroom provided a different student/teacher ratio than that listed on the IEP, or that the district would have provided services not listed on the IEP, that testimony is retrospective and was not considered in rendering my decision (R.E., 694 F. 3d at 185-89).

<sup>17</sup> To the extent that the parents assert on appeal that the teaching methodologies utilized in the assigned classroom would have prevented the student from obtaining an educational benefit, that claim was not raised in the parents' due process complaint notice (Parent Ex. A). A party requesting an impartial hearing may not raise issues at the impartial hearing that were not raised in its due process complaint notice unless the other party agrees (20 U.S.C. § 1415[f][3][B]; 34 CFR 300.508[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 300.508[d][3][ii]; 8 NYCRR 200.5[i][7][b]; B.M. v New York City Dep't of Educ., 569 Fed. App'x 57, 59 [2d Cir. 2014]). In addition, upon review of the hearing record, the district did not open the door to this issue (see B.M., 569 Fed. App'x at 59; M.H., 685 F.3d at 249-50). Accordingly, the appropriateness of the teaching methodologies utilized at the assigned school is outside the scope of the impartial hearing and my review.

App'x 2, 9 [2d Cir. 2014]; see also K.L. v. New York City Dep't of Educ., 530 Fed. App'x 81, 87 [2d Cir. 2013]; R.C. v. Byram Hills Sch. Dist., 906 F. Supp. 2d 256, 273 [S.D.N.Y. 2012] [explaining that "[g]iven the Second Circuit's recent pronouncement that a school district may not rely on evidence that a child would have had a specific teacher or specific aide to support an otherwise deficient IEP, it would be inconsistent to require evidence of the actual classroom a student would be placed in where the parent rejected an IEP before the student's classroom arrangements were even made").

The Second Circuit has also clarified that, under factual circumstances similar to those in this case, in which the parents have rejected and unilaterally placed the student prior to IEP implementation, "[p]arents are entitled to rely on the IEP for a description of the services that will be provided to their child" (P.K. v. New York City Dep't of Educ., 526 Fed. App'x 135, 141 [2d Cir. 2013]) and, even more clearly, that "[t]he appropriate inquiry is into the nature of the program actually offered in the written plan,' not a retrospective assessment of how that plan would have been executed" (K.L., 530 Fed. App'x at 87, quoting R.E., 694 F.3d at 187; see C.F. v. New York City Dep't of Educ., 746 F.3d 68, 79 [2d Cir. 2014]). Thus, the analysis of the adequacy of an IEP in accordance with R.E. is prospective in nature, but the analysis of the IEP's implementation is retrospective. Therefore, if it becomes clear that the student will not be educated under the proposed IEP, there can be no denial of a FAPE due to the failure to implement the IEP (R.E., 694 F.3d at 186-88; see also Grim, 346 F.3d at 381-82 [holding that the district was not liable for a denial of a FAPE where the challenged IEP was determined to be appropriate, but the parents chose not to avail themselves of the public school program]).<sup>18</sup> When the Second Circuit spoke recently with regard to the topic of assessing the district's offer of an IEP versus later acquired school site information obtained and rejected by the parent as inappropriate, the Court disallowed a challenge to a recommended public school site, reasoning that "the appropriate forum for such a claim is 'a later proceeding' to show that the child was denied a free and appropriate public education 'because necessary services included in the IEP were not provided in practice'" (F.L., 553 Fed. App'x at 9, quoting R.E., 694 F.3d at 187 n.3).

---

<sup>18</sup> While the IDEA and State regulations provide parents with the opportunity to offer input in the development of a student's IEP, the assignment of a particular school is an administrative decision that must be made in conformance with the CSE's educational placement recommendation (T.Y. v. New York City Dep't of Educ., 584 F.3d 412, 420 [2d Cir. 2009]; see K.L.A. v. Windham Southeast Supervisory Union, 371 Fed. App'x 151, 154 [2d Cir. Mar. 30, 2010]). A school district "may have two or more equally appropriate locations that meet the child's special education and related services needs and school administrators should have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group determining placement" (Placements, 71 Fed. Reg. 46588 [Aug. 14, 2006]). Once a parent consents to a district's provision of special education services, such services must be provided by the district in conformity with the student's IEP (20 U.S.C. § 1401[9][D]; 34 CFR 300.17[d]; see 20 U.S.C. § 1414[d]; 34 CFR 300.320). The Second Circuit recently reiterated that while parents are entitled to participate in the determination of the type of placement their child will attend, the IDEA confers no rights on parents with regard to school site selection (C.F., 746 F.3d at 79). However, the Second Circuit has also made clear that just because a district is not required to place implementation details such as the particular public school site or classroom location on a student's IEP, the district is not permitted to choose any school and provide services that deviate from the provisions set forth in the IEP (see R.E., 694 F.3d at 191-92; T.Y., 584 F.3d at 420 [the district does not have carte blanche to provide services to a child at a school that cannot satisfy the IEP's requirements]). The district has no option but to implement the written IEP and parents are well within their rights to compel a non-compliant district to adhere to the terms of the written plan

In view of the foregoing, the parents cannot prevail on their claims regarding implementation of the March 2011 IEP because a retrospective analysis of how the district would have implemented the student's March 2011 IEP at the assigned public school site is not an appropriate inquiry under the circumstances of this case (K.L., 530 Fed. App'x at 87; R.E., 694 F.3d at 186; R.C., 906 F. Supp. 2d at 273). Here, it is undisputed that the parents rejected the assigned public school site that the student would have attended and instead chose to enroll the student in a nonpublic school of their choosing prior to the time the district became obligated to implement the March 2011 IEP (see Parent Ex. B). Therefore, the district is correct that the issues raised and the arguments asserted by the parents with respect to the assigned public school site are speculative. Furthermore, in a case in which a student has been unilaterally placed prior to the implementation of an IEP, it would be inequitable to allow the parents to acquire and rely on information that post-dates the relevant CSE meeting and IEP and then use such information against a district in an impartial hearing while at the same time confining a school district's case to describing a snapshot of the special education services set forth in an IEP (C.L.K. v. Arlington Sch. Dist., 2013 WL 6818376, at \*13 [S.D.N.Y. Dec. 23, 2013] [stating that in addition to districts not being permitted to rehabilitate a defective IEP through retrospective testimony, "[t]he converse is also true; a substantively appropriate IEP may not be rendered inadequate through testimony and exhibits that were not before the CSE about subsequent events and evaluations that seek to alter the information available to the CSE"]). Based on the foregoing, the district was not obligated to present retrospective evidence at the impartial hearing regarding the execution of the student's program or to refute the parents' claims (K.L., 530 Fed. App'x at 87; R.E., 694 F.3d at 186; R.C., 906 F. Supp. 2d at 273). Accordingly, the parents cannot prevail on their claims that the assigned public school site would not have properly implemented the March 2011 IEP.

However, even assuming for the sake of argument that the parents could make such speculative claims or that the student had attended the district's recommended program at the assigned public school site, the evidence in the hearing record does not support the conclusion that the district would have violated the FAPE legal standard related to IEP implementation—that is, that the district would have deviated from the student's IEP in a material or substantial way (A.P. v. Woodstock Bd. of Educ., 370 Fed. App'x 202, 205, 2010 WL 1049297 [2d Cir. Mar. 23, 2010]; Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 [9th Cir. 2007]; Houston Indep. Sch. Dist. v. Bobby R., 200 F.3d 341, 349 [5th Cir. 2000]; see D. D-S. v. Southold Union Free Sch. Dist., 2011 WL 3919040, at \*13 [E.D.N.Y. Sept. 2, 2011]; A.L. v. New York City Dep't of Educ., 812 F. Supp. 2d 495, 502-03 [S.D.N.Y. 2011]). In particular, the hearing record reflects that the student could have been appropriately grouped at the assigned public school site with students exhibiting similar needs and abilities and that he could have been suitably grouped for instructional purposes in compliance with State regulations (Tr. pp. 152-53, 155, 158-60, 163-64, 166-70, 173, 177-81, 183, 185-86, 192-93, 215-16, 218-19, 221, 226, 237-38, 257, 259-60; Parent Ex. M at pp. 3-4).

**VII. Conclusion**

Based on the evidence in the hearing record, I find that the recommended 12:1 special class in a community school with related services was reasonably calculated to provide the student with educational benefits and, therefore, offered him a FAPE during the 2011-12 school year. Having determined that the district offered the student a FAPE for the 2011-12 school year, it is not necessary for me to consider the appropriateness of the Aaron School or whether the equities support the parents' claim for the tuition costs at public expense (see M.C. v. Voluntown, 226 F.3d 60, 66 [2d Cir. 2000]).

I have considered the parties' remaining contentions and find that I need not reach them in light of my determination herein.

**THE APPEAL IS SUSTAINED.**

**THE CROSS-APPEAL IS DISMISSED.**

**IT IS ORDERED** that the IHO's decision dated June 22, 2012 is modified, by reversing those portions which determined that the district failed to offer the student a FAPE for the 2011-12 school year and ordered the district to reimburse the parents for the cost of the student's attendance at the Aaron School for the 2011-12 school year.

**Dated:**            **Albany, New York**  
                      **November 24, 2014**

\_\_\_\_\_  
**JUSTYN P. BATES**  
**STATE REVIEW OFFICER**