The University of the State of New York

The State Education Department
State Review Officer
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No. 12-157

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, Ariel S. Zitrin, Esq., of counsel

Nancy A. Hampton, Esq., attorney for respondents

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') daughter and ordered it to reimburse the parents for their daughter's tuition costs at the Rebecca School for the 2011-12 school year. The appeal must be sustained.

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 school 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 16 years old and eligible for special education programs and related services as a student with autism (Tr. pp. 139-40; Dist. Ex. 3 at p. 1; see 34 CFR 300.8[c][1]; 8 NYCRR 200.1[zz][1]). The hearing record reflects that the student has received diagnoses of a seizure disorder and autism (Tr. pp. 138-39; Dist. Ex. 7 at p. 1). Her intellectual functioning is in the moderately impaired range and she exhibits academic skills within a kindergarten to second grade range (Tr. pp. 37-38; Dist. Ex. 7 at pp. 2-3). The student becomes easily dysregulated and requires adult support to manage her anxiety (Tr. pp. 39-40; Parent Ex. B).

The student attended a nonpublic school (the NPS) from September 2007 to March 2009 at district expense, when the parents removed the student from the NPS (Tr. pp. 150-53).

Subsequently, the student intermittently received home instruction and occupational therapy (OT) for eight months while the CSE attempted to find an appropriate nonpublic school placement for the student (Tr. pp. 154-58). The student began attending the Rebecca School in December 2009 and attended for the remainder of the 2009-10 school year (Tr. p. 159).

On March 2, 2011, the CSE convened to develop the student's IEP for the 2011-12 school year (Dist. Ex. 3). The CSE was composed of the parents, a district special education teacher who also served as the district representative, a district school psychologist, an additional parent member, a social worker from the Rebecca School, and the student's Rebecca School classroom teacher (by telephone) (id. at p. 2; Dist. Ex. 4). The March 2011 CSE determined that the student was eligible for special education programs and services as a student with autism and recommended that the student attend a 12-month, 6:1+1 special class with the support of a 1:1 paraprofessional and related services including individual and group speech-language therapy, individual and group counseling, and individual OT (Dist. Ex. 3 at pp. 1, 15).

In a June 14, 2011 letter to the CSE, the parents informed the district that they had not yet received a copy of the student's IEP or information regarding her placement for the 2011-12 school year (Parent Ex. E). In a June 14, 2011 final notice of recommendation (FNR), the district informed the parents of the 6:1+1 special class placement and related services the March 2011 CSE had recommended, and the public school site to which the student had been assigned for the 2011-12 school year (Dist. Ex. 9).[1]

On June 18, 2011, the parents signed a contract with the Rebecca School for the student's enrollment for the 12-month 2011-12 school year (Parent Ex. K).

In a June 22, 2011 letter to the CSE, the parents indicated that they believed the district had failed to offer the student a free appropriate public education (FAPE) for the 2011-12 school year and that they were therefore unilaterally placing the student at the Rebecca School (Parent Ex. F at p. 1). The parents further informed the district that they intended to initiate an impartial hearing to seek reimbursement from the district for the student's unilateral placement (id.). Subsequently, the parents indicated in a June 29, 2011 letter to the CSE that since receiving the FNR, they had attempted unsuccessfully to contact the assigned public school site multiple times to schedule a visit (Parent Ex. G at p. 2). By separate letter of the same date, the parents again advised the CSE that they had not yet received the March 2011 IEP and requested that the CSE send them a copy (id. at p. 1). According to the parents, they did not receive the student's 2011-12 IEP until August 2011 (Tr. pp. 171-72).[2]

[1] I note that although the FNR indicated that the student would receive two sessions of group counseling in a 2:1 ratio; the March 2011 IEP indicated that the ratio would have been 3:1 (compare Dist. Ex. 3 at p. 15, with Dist. Ex. 9).

[2] Documentation in the hearing record indicates that the IEP was sent to the parents on March 3, 2011 (Dist. Ex. 3 at p. 2) and as an attachment to the June 14, 2011 FNR (Parent Ex. H). This discrepancy was not noted or resolved at the impartial hearing.

A. Due Process Complaint Notice

By due process complaint notice dated September 19, 2011, the parents requested an impartial hearing asserting that the student was denied a FAPE because the district failed to recommend an appropriate "placement" for the student for the 2011-12 school year (Parent Ex. A at p. 2). The parents asserted that the district did not conduct any testing of the student's current levels of functioning and that as a result, the IEP did not reflect the student's current performance levels (id.). The parents also challenged the IEP for recommending a 12-month program in a 6:1+1 special class in a specialized school, indicating that this placement recommendation was "insufficiently supportive" (id.). The parents further challenged the CSE's recommendation for a 1:1 paraprofessional, stating that the student had not "required that service in the past" (id.). The parents generally asserted that the IEP recommended services that were "overly restrictive" (id.). As a final challenge to the content of the March 2011 IEP, the parents asserted that the CSE failed to include a recommendation for parent counseling and training on the IEP (id.).

The parents further alleged that the March 2011 CSE did not advise them of the location of the assigned school until June 18, 2011 (Parent Ex. A at p. 2).[3] As a result of their inability to reach anyone at the school to schedule a visit, the parents asserted in their due process complaint notice that the assigned school must not have included a 12-month program and therefore, could not have implemented the student's IEP (id.). Furthermore, the parents alleged that despite making repeated requests from the CSE for the student's IEP, they did not receive a copy until August 20, 2011 (id.). The parents indicated that because of the district's failure to recommend an appropriate program, they had placed the student at the Rebecca School and were seeking reimbursement for the costs of her tuition (id.).

B. Impartial Hearing Officer Decision

An impartial hearing convened on January 25, 2012 and was completed on April 4, 2012, after three nonconsecutive hearing dates (Tr. pp. 1-380). By decision dated July 2, 2012, the IHO found that the district had failed to offer the student a FAPE for the 2011-12 school year, the Rebecca School was an appropriate placement for the student, and equitable considerations supported the parents' request for tuition reimbursement (IHO Decision at pp. 16-31).

With respect to the adequacy of the evaluative information used by the CSE to develop the March 2011 IEP, the IHO found that the CSE had adequate descriptions of the student's levels of functioning based on a psychological evaluation from 2009 and a December 2010 Rebecca School progress report (IHO Decision at pp. 16-18). Similarly, the IHO found that although the district did not conduct a functional behavioral assessment (FBA), the CSE had a sufficient understanding of the student's social/emotional functioning and the March 2011 IEP adequately addressed the student's social/emotional and behavioral needs (id. at pp. 18-19).

The IHO next found that the CSE was not properly composed because there was no member present "who was knowledgeable regarding 6:1:1 placements . . . and who could explain

[3] In the due process complaint notice, the parents mistakenly reference the date they received the FNR as June 18, 2010 (Parent Ex. A at p. 2). It is clear from the context of the hearing record that the correct date was June 18, 2011 (see Dist. Ex. 9).

how the March 2, 2011 IEP would be implemented" (IHO Decision at p. 20). He further found that the district's failure to include a special education teacher who had previously taught in a 6:1+1 special class in a specialized school or a special education teacher from the assigned school denied the parents of an opportunity to participate in the decision making process regarding the student's placement (id. at pp. 20-21). The IHO also found a denial of this opportunity because the district did not provide the parents with a "placement meeting" explaining how the March 2011 IEP would be implemented in the assigned school (id. at pp. 19-20, 23-24). The IHO further found a denial of the parents' right to participate in the decision making process based on the district's failure to make a recommendation regarding the assigned school within 60 days and provide the parents with the student's IEP prior to the beginning of the 2011-12 school year (id. at pp. 21-22). With regard to these impediments to the parents' opportunity to participate, the IHO noted that the parents were never informed as to how the student's seizure disorder would have been addressed at the assigned school and thus could not know whether staff at the assigned school would have been appropriately trained or if the assigned school could implement the accommodations promised by the student's IEP (id. at pp. 22-23).[4]

Addressing the CSE's program recommendation, the IHO found that the district failed to establish that a 1:1 paraprofessional could properly address the student's seizure disorder, her behavioral needs, or provide appropriate instructional support (IHO Decision at p. 24). The IHO also found that the district failed to establish how the CSE's recommended placement could meet the student's needs, despite offering a larger student-to-teacher ratio than she received at the Rebecca School (id. at pp. 24, 25 n.7). In particular, the IHO noted that a 1:1 paraprofessional is not permitted to provide special education instruction, and is therefore an inappropriate substitute for the instructors available to the student at the Rebecca School (id. at pp. 24-25). Furthermore, the IHO found that none of the district members of the CSE had any particular knowledge or expertise regarding the assigned school, and so could not justify the CSE's recommendation that the student attends a 6:1+1 special class (id. at p. 25).[5]

Having found that the district had not met its burden of establishing that the recommended program could offer the student a FAPE, the IHO found that the Rebecca School was an appropriate placement based on the student's past progress at the school, its provision of necessary related services, staff training to address the student's seizure disorder, and the transition program provided (IHO Decision at pp. 25-29). With respect to equitable considerations, the IHO found that the parents cooperated with the district, participated in the March 2011 CSE meeting, and attempted to visit the assigned school prior to the beginning of the school year, while the district did not make a recommendation regarding the assigned school until shortly before the beginning of the school year and "apparently" failed to send the parents a copy of the IEP before the school

[4] The IHO also found that while the methodology used in the assigned school was "very significant" and "likely to impact" the student's seizure disorder and progress (IHO Decision at p. 23), the issue was not before him because the hearing record did not indicate that the parents had made their concerns known to the CSE (id. at p. 23 n.6).

[5] The IHO dismissed the parents' argument regarding the substantive adequacy of the assigned school for their failure to raise it in the due process complaint notice and dismissed their argument that the CSE failed to recommend parent counseling and training on the IEP as being without merit (IHO Decision at p. 30).

year began (id. at pp. 29-30). Accordingly, the IHO granted the parents' request for reimbursement of the student's Rebecca School tuition for the 2011-12 school year (id. at pp. 30-31).

IV. Appeal for State-Level Review

The district appeals, asserting that the IHO erred in finding that it did not offer the student a FAPE for the 2011-12 school year and in granting the parents' request for tuition reimbursement. Initially, the district contends that the IHO erred in considering the composition of the March 2011 CSE, as the parents raised no such challenges in the due process complaint notice. In any event, the district asserts that the CSE was composed of all required members and that the IDEA does not require the presence of a special education teacher with experience in a particular student-to-teacher classroom ratio. Furthermore, the district argues that the hearing record does not support the conclusion that any deficiency in the composition of the CSE negatively impacted the provision of a FAPE to the student.

Addressing the IHO's findings regarding the appropriateness of the recommended district placement, the district asserts that it established the appropriateness of such a placement for the student. Specifically, the district argues that the hearing record indicates that the student required a small student-to-teacher ratio as a result of her significant needs, which it established could be met in a 6:1+1 special class with the support of a 1:1 paraprofessional. The district further contends that the 1:1 support the student required to address the aggressive behaviors resulting from her seizure disorder could be provided by the 1:1 paraprofessional.

With regard to the assigned school, the district contends that because the parents rejected the recommended program prior to the beginning of the 2011-12 school year, any claims regarding the implementation of the March 2011 IEP are speculative and should not have been addressed by the IHO. With respect to the IHO's determinations that the CSE should have included staff members from the assigned school and that the district was obligated to discuss the recommendation of a particular school at the CSE meeting or make a placement meeting available to the parents, the district argues that no claims regarding the assigned school were raised in the due process complaint notice and should not have been addressed. Additionally, the district asserts that because the CSE was not required to discuss a specific school location at the CSE meeting, it was error for the IHO to find that the absence of a teacher from the assigned school at the CSE meeting constituted a denial of a FAPE. With respect to the IHO's finding that the lateness of the recommendation of a particular district school contributed to impeding the parents' participation, the district argues that it met its obligation of having a school placement available to the student at the beginning of the school year. Finally, the district asserts that equitable considerations do not support the parents' request for reimbursement because the parents never intended to place the student in a public school placement and did not provide the district with the required 10-day notice before unilaterally placing the student at the Rebecca School and seeking tuition reimbursement.[6]

The parents answer and assert that the IHO did not address matters outside the scope of the due process complaint notice and that, rather than addressing CSE composition as such, the IHO found a general impediment to the parents' opportunity to participate in the decision making

[6] The district does not appeal the IHO's finding that the Rebecca School was an appropriate placement for the student.

process regarding the student's educational program and placement, which was properly alleged in the due process complaint notice. Furthermore, the parents assert that because the CSE was recommending that the student attend a school other than the one she would attend if she were not disabled, federal and State regulations required a representative of that school at the CSE meeting. The parents contend that the IHO properly found that their ability to participate in the decision making process with respect to the student's school placement was impeded by the district's failure to respond to their attempts to visit the assigned school. Lastly, the parents argue that on appeal, the district improperly raises for the first time an argument regarding the 10-day notice requirement. Even if such argument were properly raised, the parents assert that the district's argument is without merit and the IHO was correct in finding that equitable considerations support an award of tuition reimbursement.

In a reply, the district contends that it is not precluded from raising arguments on appeal that were not raised at the impartial hearing below.

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 U.S. 230, 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., 2010 WL 3242234, at *2 [2d Cir.

Aug. 16, 2010]; E.H. v. Bd. of Educ., 2008 WL 3930028, at *7 [N.D.N.Y. Aug. 21, 2008], aff'd, 2009 WL 3326627 [2d Cir. Oct. 16, 2009]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007] aff'd, 2008 WL 3852180 [2d Cir. Aug. 19, 2008]).

The IDEA directs that, in general, an 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, 2012 WL 4946429 [2d Cir. Oct. 18, 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]; see also Application of the Dep't of Educ., Appeal No. 07-018; Application of a Child with a Disability, Appeal No. 06-059; Application of the Dep't of Educ., Appeal No. 06-029; Application of a Child with a Disability, Appeal No. 04-046; Application of a Child with a Disability, Appeal No. 02-014; Application of a Child with a Disability, Appeal No. 01-095; Application of a Child Suspected of Having a Disability, Appeal No. 93-9).

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. CSE Process—CSE Composition

As noted above, participants in the March 2011 CSE meeting included the parents, a district special education teacher who also served as the district's representative, a district school psychologist, an additional parent member, a social worker from the Rebecca School, and, by telephone, the student's Rebecca School classroom teacher (Dist. Exs. 3 at p. 2; 4).[7] The parents submitted no evidence to show that the special education teacher/district representative at the CSE meeting was unqualified to serve in either of those positions, and the hearing record does not support the IHO's conclusions to the contrary. The CSE is required to include a district representative who is "qualified to provide or supervise special education and who is knowledgeable about the general education curriculum and the availability of the resources of the school district" (8 NYCRR 200.3[a][1][v]). The school psychologist testified that the district representative was qualified to serve, as she was "familiar with what is available at the District in terms of programs and the various placements" (Tr. p. 28). There is no evidence in the hearing record that this was not the case. On appeal, the parents now assert that rather than challenging the qualifications of the members of the March 2011 CSE, they object to the district's failure to include a representative of the assigned school. However, the regulations to which they cite to support this proposition contemplate the placement of students in schools or with agencies outside of the district (see 34 CFR 300.325[a][2]; 8 NYCRR 200.4[d][4][i][a]), rather than the placement of the student in a public school in the district that he would not attend if he were not a student with a disability. In the former instance, the representative of the private agency or other educational agency serves a role similar to that of the district representative: one who is knowledgeable of the services available to the student in that placement. Furthermore, a district court confronted with a similar argument recently held that the requirement that the CSE include

[7] While I agree with the district that the issue of CSE composition was not raised in the parents' due process complaint notice, because it is at least arguable that the district "opened the door" to whether the CSE was properly constituted during its questioning of the school psychologist (Tr. pp. 9-10, 27-31), I address the IHO's determinations on the merits of this issue (M.H., 685 F.3d at 249-51; see B.M. v. New York City Dep't of Educ., 2013 WL 1972144 [S.D.N.Y. May 14, 2013]).

a district representative cannot be so broadly read as to require the presence of a CSE member who "was responsible for implementing the IEP [or] could advise [the parents] how this setting would be appropriate" for the student (R.C. v. Byram Hills Sch. Dist., 2012 WL 5862736, at *13-*14 [S.D.N.Y. Nov. 16, 2012]).[8]

According to the Official Analysis of Comments to the federal regulations, the special education teacher member of the CSE "should be the person who is, or will be, responsible for implementing the IEP" (IEP Team, 71 Fed. Reg. 46670 [Aug. 14, 2006]). I note that even if the district representative did not meet this requirement, the participation of the student's Rebecca School teacher was sufficient, as the language of the IDEA and federal and State regulations do not require that the special education teacher "of the student" at the CSE meeting be a district employee (8 NYCRR 200.3[a][1][iii]; see 20 U.S.C. § 1414[d][1][B][iii]; 34 CFR 300.321[a][3]). Furthermore, the language in the Official Analysis of Comments indicating that the special education teacher or provider "should" be the person who is or will be responsible for implementing the student's IEP (IEP Team, 71 Fed. Reg. 46670 [Aug. 14, 2006]) does not constitute a binding requirement but rather appears to provide aspirational guidance that contemplates circumstances in which the student has been and will continue to be in attendance in a public school placement (see Application of the Dep't of Educ., Appeal No. 11-040). Accordingly, I find that the IHO erred in determining that the March 2011 CSE was not properly composed.

Even if the CSE had been improperly composed, the hearing record does not reflect that the parents were significantly impeded in their opportunity to participate in the development of the student's IEP. The student's mother testified that the only area of the March 2011 IEP with which she disagreed was the recommendation for a 1:1 paraprofessional and that she was able to express in detail her disagreement with this service to the other members of the CSE (Tr. pp. 164-65, 191-93). Additionally, the student's mother indicated that the March 2011 CSE discussed the student's annual IEP goals in detail (Tr. p. 163), she agreed with the recommendations for related services made by the district (Tr. pp. 191-92), and the March 2011 IEP accurately described the student's functional levels of academic and social/emotional performance (Tr. pp. 212-13, 218-19). Even though the parents disagreed with the IEP developed by the March 2011 CSE, "'[n]othing in the IDEA requires the parents' consent to finalize an IEP. Instead, the IDEA only requires that the parents have an opportunity to participate in the drafting process'" (D.D.-S. v. Southold Union Free Sch. Dist., 2011 WL 3919040, at *11 [E.D.N.Y. Sept. 2, 2011], quoting A.E. v. Westport Bd. of Educ., 463 F. Supp. 2d 208, 216 [D. Conn. 2006]; see T.Y. v. New York City Dep't of Educ., 584 F.3d 412, 420 [2d Cir. 2009] [the IDEA gives parents the right to participate in the development of their child's IEP, not a veto power over those aspects of the IEP with which they do not agree]).

[8] I also note that the Second Circuit has reaffirmed that the specific school building location a student will attend is an administrative determinative that need not be specified on an IEP (R.E., 694 F.3d at 191-92; see K.L.A. v. Windham Southeast Supervisory Union, 2010 WL 1193082, at *2 [2d Cir. Mar. 30, 2010]; T.Y. v. New York City Dep't of Educ., 584 F.3d 412, 419-20 [2d Cir. 2009]), precluding the possibility that a staff member from an assigned public school site which had not yet been determined could have been present at the March 2011 CSE meeting.

B. March 2011 IEP—6:1+1 Classroom and 1:1 Paraprofessional Recommendation

While the IHO determined that the district failed to demonstrate that a 6:1+1 special class with the support of a 1:1 paraprofessional and related services would have met the student's needs, as discussed below, a review of the hearing record supports a contrary conclusion.

The hearing record and the March 2011 IEP show that information contained in the present levels of performance was commensurate with information taken from the April 2009 psychoeducational evaluation and December 2010 Rebecca School progress reports, and information provided during the March 2011 CSE meeting (Tr. pp. 31-32, 34-35, 37-40; Dist. Exs. 3 at pp. 3-5; 4; 7 at pp. 2-3; Parent Ex. B at p. 1-6). According to the CSE meeting minutes, the March 2011 CSE reviewed the April 2009 psychoeducational evaluation report, a November 1, 2010 classroom observation report, and the December 2010 Rebecca School progress report during the development of the student's IEP for the 2011-12 school year (Dist. Exs. 4 at p. 1; 6; 7; Parent Ex. J).

For the 2011-12 school year, the March 2011 CSE recommended placement of the student in a 12-month, 6:1+1 special class with the services of a full-time 1:1 paraprofessional (Dist. Ex. 3 at pp. 1, 15). State regulations describe such placements as containing "students whose management needs are determined to be highly intensive, and requiring a high degree of individualized attention and intervention" (8 NYCRR 200.6[h][4][ii][a]). The school psychologist testified that the CSE recommended a 6:1+1 placement because in her experience such settings were "structured, well organized," and composed of teaching staff who take student needs into consideration (Tr. p. 36). She further stated that the CSE recognized that the student exhibited "very significant needs" requiring a very small student-to-teacher ratio, which would be provided by a 6:1+1 special class (id.). According to the March 2011 IEP, the CSE also determined that the student required the structure and support of a 12-month school year, and further considered and subsequently rejected 12:1+1 and 8:1+1 special classes as being "insufficiently supportive," noting that the student "require[d] a smaller student to teacher ratio in order to progress and achieve her IEP goals" (Dist. Ex. 3 at p. 14). The hearing record shows that the parents did not disagree with the 6:1+1 special class placement recommendation at the time of the CSE meeting, but did express their disagreement with the recommendation for a 1:1 paraprofessional (Tr. pp. 60, 75, 191-94). Although the IHO opined that it was incumbent upon the district to establish how a district placement that would involve a "reduction of instructional support" from her Rebecca School placement would continue to meet the student's needs (IHO Decision at pp. 24-25 & n.7),[9] the IDEA requires that the district address the student's needs, not that it explain how every service provided by a nonpublic school will be replicated in a district placement (see Grim, 346 F.3d at 379 [districts need not provide "every special service necessary to maximize each handicapped child's potential"], quoting Rowley, 458 U.S. at 199; Walczak, 142 F.3d at 132; Tucker, 873 F.2d at 567; A.D. v. New York City Dep't of Educ., 2013 WL 1155570, at *1 [S.D.N.Y. Mar. 19 2013]; Watson v. Kingston City Sch. Dist., 325 F. Supp. 2d 141, 144-45 [N.D.N.Y. 2004], aff'd 2005 WL

[9] The hearing record indicates that the student's program at the Rebecca School consisted of placement in an 8:1+4 classroom and received related services including three 30-minute sessions per week of speech-language therapy, four 30-minute sessions per week of OT, and two 30-minute sessions weekly of counseling (Parent Ex. J at pp. 1, 8-9).

1791553 [2d Cir. July 25, 2005] [the district need not provide a student with "the best educational services" possible or follow the recommendations of private evaluators]).

The hearing record also shows that the March 2011 CSE considered placement of the student in a 6:1+1 special class without the services of a 1:1 paraprofessional, but following a discussion "at length," ultimately determined that the student required individual support and therefore recommended 1:1 paraprofessional services (Tr. pp. 59-60; Dist. Ex. 3 at pp. 1, 14-15). According to the school psychologist, the CSE determined that the student required this service due to the potential for the student to exhibit aggressive behaviors and difficulty with transitions, and her need for 1:1 support throughout the school day (Tr. pp. 58-60).

I find that the information reviewed by the March 2011 CSE supported its recommendation for a 6:1+1 special class with 1:1 paraprofessional services. Specifically, the April 2009 psychoeducational evaluation indicated that the student presented as very anxious, became agitated and appeared to bite at her wrists; however, she "calmed down" upon entering the testing room and established a rapport with the evaluator (Dist. Ex. 7 at p. 2). According to an analysis of the parent's responses to the Vineland Adaptive Behavior Scales, Second Edition (Vineland-II), the student's adaptive functioning skills fell within the low range in the areas of communication, daily living skills, socialization, and adaptive behavior (id. at p. 4). The report indicated that the student experienced a great deal of anxiety and did not appropriately express her emotions consistently, noting that her seizure disorder may result in behaviors that are misinterpreted as having an aggressive intent (id.).

The December 2010 Rebecca School progress report similarly described that when dysregulated, the student exhibited hitting, pinching, scratching, and self-injurious behaviors (Parent Ex. B at pp. 1, 5). During the November 2010 Rebecca School classroom observation, the student was observed with a 1:1 assistant at all times, both inside and outside of the classroom (Dist. Ex. 6). The December 2010 Rebecca School progress report detailed the ways in which the student required adult support to initiate interactions with peers, sustain engagement and regulation, demonstrate problem solving skills, complete academic activities, navigate the school setting, remain safe in the community, and perform hygiene tasks (Parent Ex. B at pp. 1-5). Additionally, the report indicated that a "most favorable environment" for the student included, among other things, "one-on-one attention," and that it was difficult for her to remain in an interaction when the environment was loud and crowded, and if there was "not enough adult support and attention" (id. at pp. 1-2). When "anxious," the student exhibited heavy breathing and looking away behaviors (id. at pp. 2, 8). The student experienced difficulty and at times became dysregulated in loud, crowded, unpredictable environments and in situations where there was not enough adult support and attention, or she could not express herself (id. at pp. 1-2, 5). The report indicated that the student "struggle[d] to remain regulated and engaged if the attention of the adult [was] placed toward another student for a moment" (id. at p. 2). At times when the student was "exceptionally dysregulated," she could become aggressive toward staff and peers and/or self injurious (id. at pp. 1, 3). According to the report, the student would become regulated again once provided with a quiet space or adult support (id. at pp. 1, 5).

In conjunction with the special class placement and 1:1 support, the March 2011 IEP recommended providing the student with management strategies including redirection using high affect, repetition, visual and verbal cues, access to sensory tools, sensory breaks, access to a quiet

space when dysregulated, minimization of stimuli, and refocusing by a calm, soothing adult (Dist. Ex. 3 at pp. 3-4). During times when the student exhibited anxiety and/or behavior concerns, the IEP recommended strategies such as an adult confirming/affirming an understanding of the student's emotional state, discussing events in the student's environment to help her process information, providing her with additional time to process information, and avoiding changes in her visual environment (id. at p. 17). The IEP also noted that the student was more responsive when new topics were introduced with high affect, that she may need to transition before or after peers in a less crowded environment, and that she required rest time after a seizure (id. at pp. 4-5). The March 2011 CSE developed annual goals and short-term objectives designed to improve the student's ability to remain regulated across different activities with the support of a 1:1 paraprofessional under the supervision of the special education teacher (id. at pp. 7, 12).

The March 2011 IEP also provided the student with related services including two 45-minute sessions of both individual and small group counseling per week (Dist. Ex. 3 at p. 15). According to the school psychologist, the March 2011 CSE discussed the recommended frequency of related services at the meeting and increased the student's counseling services by one group session from the previous CSE recommendation because it determined that due to her ongoing social/emotional needs, the student could benefit from the additional service (Tr. pp. 53-56).

Additionally, I note that the IEP identified the student's seizure disorder as a "special medical/physical alert," described certain characteristics of her seizures, indicated that her seizure activity could result in behavioral concerns, and acknowledged the student's need for an on-site nurse to administer medication if needed (Dist. Ex. 3 at pp. 1, 5, 17). In any event, the director of the Rebecca School testified that her staff were trained to address the student's seizure disorder by the Rebecca School's school nurse (Tr. p. 257) and the hearing record contains no reason to believe that, had the student attended a district school, the district would not have appropriately trained its staff to adequately address the student's needs. The IEP provided supports to the student including 1:1 paraprofessional services, an indication that she may need rest time after having a seizure, discussion of events in her environment to help the student process information, and access to a quiet environment; supports similar to those provided by the Rebecca School during times the student experienced a seizure (compare Tr. pp. 266-71, 286-87, with Dist. Ex. 3 at pp. 1, 5, 17).

I find that, based on the above, the hearing record supports a finding that the March 2011 CSE's recommendation of a 6:1+1 special class with the additional support of a 1:1 paraprofessional was reasonably calculated to meet the student's need for one-to-one attention and behavioral support so that she could make academic and social/emotional progress.[10]

C. Public School Site Selection

Finally, I address the IHO's finding that the parents were entitled to participate in the selection of the district school at which the March 2011 IEP would be implemented. The IDEA requires "that the parents of each child with a disability are members of any group that makes

[10] With regard to the parents' argument that the 1:1 paraprofessional services are overly restrictive because the student has never before required a 1:1 paraprofessional (Parent Ex. A at p. 2), for the reasons stated above, the hearing record does not support a finding that the 1:1 paraprofessional would have been overly restrictive for the student to the extent that it would hinder her progress.

decisions on the educational placement of their child" (20 U.S.C. § 1414[e]; 34 CFR 300.501[c][1]), which provision the IHO found was violated by the district's failure to respond to the parents' requests for the student's IEP and to visit the assigned school (IHO Decision at p. 22). The hearing record does not support the IHO's conclusion.

To meet its legal obligations, a district must have an IEP in effect at the beginning of each school year for each child in its jurisdiction with a disability (34 CFR 300.323[a]; 8 NYCRR 200.4[e][1][ii]; Cerra, 427 F.3d at 194; Tarlowe, 2008 WL 2736027, at *6 [stating a district's delay does not violate the IDEA so long as a placement is found before the beginning of the school year]). The district argues that, assuming that the failure to provide the March 2011 IEP to the parents in a timely fashion constituted a violation of the IDEA, it did not rise to the level of a denial of a FAPE in this instance because the parents had actual notice of the contents of the IEP and rejected those recommendations prior to the time that the district would have been required to implement the student's IEP had she attended the district's recommended placement. I agree, and note that the hearing record reflects that the parents received the FNR prior to the beginning of the 2011-12 school year (Tr. p. 168; Dist. Ex. 9) and rejected the recommended placement by letter dated June 22, 2011 (Parent Ex. F at p. 1; see Parent Ex. G at pp. 1-2), prior to their attempts to contact the assigned school (Tr. pp. 169-71) or the time the district became obligated to implement the March 2011 IEP (20 U.S.C. § 1414[d][2][A]; 34 CFR 300.323[a]; 8 NYCRR 200.4[e][1][ii]).[11] The IDEA does not require districts to maintain classroom openings for students enrolled in nonpublic schools (see Application of the Dep't of Educ., Appeal No. 12-070; Application of the Dep't of Educ., Appeal No. 11-015; Application of a Student with a Disability, Appeal No. 11-008; see also S.F. v. New York City Dep't of Educ., 2011 WL 5419847, at *12 [S.D.N.Y. Nov. 9, 2011]). Moreover, there is no legal authority requiring districts to produce an IEP at the time that the parents demand; districts must only ensure that a student's IEP is in effect at the beginning of each school year and that the parents are provided with a copy (34 CFR 300.323[a]; 8 NYCRR 200.4[e][1][ii]; J.G. v. Briarcliff Manor Union Free School Dist., 682 F. Supp. 2d 387, 396 [S.D.N.Y. 2010]). Although it is unclear from the hearing record when the parents received from the district a copy of the student's IEP (compare Tr. pp. 171-72, with Dist. Ex. 3 at p. 2 and Parent Ex. H), even assuming for the sake of argument that the district somehow improperly delayed delivery of the IEP, there is no evidence in the hearing record that such a delay impeded the student's right to a FAPE, significantly impeded the parents' meaningful participation in the CSE process, or caused a deprivation of educational benefits in this case (see 20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; A.H., 2010 WL 3242234, at *2; Application of the Dep't of Educ., Appeal No. 10-070).

Furthermore, the Second Circuit has established that "'educational placement' refers to the general educational program—such as the classes, individualized attention and additional services a child will receive—rather than the 'bricks and mortar' of the specific school" (R.E., 694 F.3d at 191-92; T.Y., 584 F.3d at 419-20; see A.L. v. New York City Dep't of Educ., 812 F. Supp. 2d 492, 504 [S.D.N.Y. Aug. 19, 2011]; R.K. v. Dep't of Educ., 2011 WL 1131492, at *15-*17 [E.D.N.Y. Jan. 21, 2011], adopted at, 2011 WL 1131522 [E.D.N.Y. Mar. 28, 2011], aff'd, 694 F.3d 167; Concerned Parents & Citizens for the Continuing Educ. at Malcolm X Pub. Sch. 79 v. New York City Bd. of Educ., 629 F.2d 751, 756 [2d Cir. 1980]). Moreover, the R.E. Court found that "[t]he

[11] As a matter of State law, the school year runs from July 1 through June 30 (Educ. Law § 2[15]).

requirement that an IEP specify the 'location' does not mean that the IEP must specify a specific school site," and that "[t]he [district] may select the specific school without the advice of the parents so long as it conforms to the program offered in the IEP" (R.E., 694 F.3d at 191-92; see S.M. v. Taconic Hills Cent. Sch. Dist., 2013 WL 773098, at *5 [N.D.N.Y. Feb. 28, 2013]; J.L. v. City Sch. Dist. of City of New York, 2013 WL 625064, at *10 [S.D.N.Y. Feb. 20, 2013];F.L. v. New York City Dep't of Educ., 2012 WL 4891748, at *12 [S.D.N.Y. Oct. 16, 2012]); K.L. v. New York City Dep't of Educ., 2012 WL 4017822, at *13 [S.D.N.Y. Aug. 23, 2012]; J.S. v. Scarsdale Union Free Sch. Dist., 826 F. Supp. 2d 635, 668 [S.D.N.Y. Nov. 18, 2011]; S.F., 2011 WL 5419847, at *12, *14; C.F. v. New York City Dep't of Educ., 2011 WL 5130101, at *8-*9 [S.D.N.Y. Oct. 28, 2011]; A.L, 812 F. Supp. 2d at 504).

Although the district offered the parents the opportunity to visit the assigned public school site, neither the IDEA nor State regulations confer upon parents the right to visit a recommended school and classroom.[12] The United States Department of Education's Office of Special Education Programs (OSEP) has opined that the IDEA does not provide a general entitlement to parents of students with disabilities to observe their children in any current classroom or proposed educational placement (Letter to Mamas, 42 IDELR 10 [OSEP 2004]; see Application of a Student with a Disability, Appeal No. 12-047; Application of a Student with a Disability, Appeal No. 09-082; Application of the Dep't of Educ., Appeal No. 08-097; Application of a Child with a Disability, Appeal No. 07-049; Application of a Child with a Disability, Appeal No. 07-013).[13]

Accordingly, the IHO erred in finding that the parents' participation in the development of an educational program for the student was impeded based on their inability to participate in the selection of a specific school within the district at which the IEP would be implemented (see T.Y., 584 F.3d at 416, 419-20; J.L., 2013 WL 625064, at *10; S.F., 2011 WL 5419847, at *12; C.F., 2011 WL 5130101, at *8-*9).[14]

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[12] Nothing in this decision, however, is intended to discourage districts from offering parents the opportunity to view school or classroom placements as such opportunities can only foster the collaborative process between parents and districts. If parents visit a particular classroom and, at that point, have new concerns, the IDEA and the Education Law contemplate that the collaborative process for revising the IEP will continue—that the parents will ask to return to the CSE and share those concerns with the objective of improving the student's IEP.

[13] On appeal, the parents assert that because the district "stonewalled" their attempts to visit the assigned school, it should not be entitled to invoke precedent establishing that the parent has no right to do so. The case quoted to support this proposition; however, held only that it was not incorrect for the IHO and District Court to take such behavior into consideration when balancing the equities with regard to an award of tuition reimbursement (M.H., 685 F.3d at 254-55). I note also that the Second Circuit indicated that the school district in M.H. did not raise any specific challenges to the District Court's holding that it "'consistently stonewalled M.H.'s inquiries into the appropriateness' of the school" (id. at 254, quoting M.H. v. New York City Dep't of Educ., 712 F. Supp. 2d 125, 168 [S.D.N.Y. 2010]).

[14] The Second Circuit has also made clear that just because a school district is not required to place details such as the particular school site or classroom location on a student's IEP, a school district is not free to choose any random classroom and services that deviate from the provisions set forth in the IEP (see T.Y., 584 F.3d 412, 420 [2d Cir. 2009] [explaining that a school district does not have carte blanche to provide services to a child at a school that cannot satisfy the IEP's requirements]). Thus, in reaffirming T.Y., the Court held that, a school district "may select the specific school without the advice of the parents so long as it conforms to the program offered in the IEP" (R.E., 694 F.3d 167, 191-92).

VII. Conclusion

Having found that the district offered the student a FAPE in the LRE for the 2010-11 school year, the necessary inquiry is at an end and I need not determine whether equitable considerations support the parents' request for reimbursement (see M.C. v. Voluntown, 226 F.3d 60, 66 [2d Cir. 2000]; C.F., 2011 WL 5130101, at *12 [S.D.N.Y. 2011]; D.D-S., 2011 WL 3919040, at *13). Nonetheless, I agree with the parents that the district failed to include parent counseling and training on the student's IEP as required by State regulation (8 NYCRR 200.4[d][2][v][b][5]; 200.13[d]). As stated by the Second Circuit, the district "remain[s] accountable for its failure to [provide parent counseling and training] no matter the contents of the IEP," due to the requirements in State regulation (R.E., 694 F.3d at 191). In light of the district's failure in this case to identify parent counseling and training on the student's IEP as required by the IDEA and State regulations, I order that when the CSE next reconvenes to develop a program for the student, the district shall consider whether the related service of parent counseling and training is required to enable the student to benefit from instruction and, after due consideration, provide the parent with prior written notice on the form prescribed by the Commissioner that, among other things, specifically describes whether the CSE recommended or refused to recommend parent counseling and training on the student's IEP together with an explanation of the basis for the CSE's recommendation in conformity with the procedural safeguards of the IDEA and State regulations (34 CFR 300.503[b][1]-[2]; see 8 NYCRR 200.1[oo]). I have considered the parties' remaining contentions and find that they are without merit and that I need not address them in light of the determinations made herein.

THE APPEAL IS SUSTAINED.

IT IS ORDERED that the IHO's decision dated July 2, 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 student's Rebecca School tuition costs; and

IT IS FURTHER ORDERED that at the next CSE meeting regarding the student's special education programming, the district shall consider whether it is appropriate to include parent counseling and training on the student's IEP and, thereafter, shall provide the parents with prior written notice consistent with the body of this decision.

Dated: **Albany, New York**
June 7, 2013

STEPHANIE DEYOE
STATE REVIEW OFFICER