The University of the State of New York

The State Education Department
State Review Officer
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No. 13-110

Application of a STUDENT WITH A DISABILITY, by his parents, for review of a determination of a hearing officer relating to the provision of educational services by the Board of Education of the City School District of New Rochelle

Appearances:
Mayerson & Associates, attorneys for petitioners, Jacqueline DeVore, Esq. and Gary S. Mayerson, Esq., of counsel

Bond Schoeneck & King, PLLC, attorneys for respondent, Andrea Green, 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. Petitioners (the parents) appeal from the decision of an impartial hearing officer (IHO) which found that respondent (the district) offered their son an appropriate educational placement for the 2010-2011 and 2011-2012 school years and denied their request to be reimbursed for the costs of the student's attendance at Chapel Haven, an out-of-state residential school, for the 2012-13 and 2013-14 school years and additional compensatory services. The appeal is 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

During the 2010-11 and 2011-12 school years, the student was a high school student found to be eligible for special education and related services and was classified as a student with autism (Dist. Exs. 3; 21; 48). The student received special education programs and services through a therapeutic support program run by the local BOCES (BOCES TSP) (Tr. pp. 74-76, 158, 174).[1]

[1] Although not defined in the hearing record, BOCES stands for "Board of Cooperative Educational Services" (see Educ. Law § 1950).

The student's three most recent IEPs indicate he wanted to attend college (Dist. Exs. 3 at p. 5; 21 at pp. 6, 10; 48 at pp. 6, 8). The student received two strength-based assessments,[2] one on April 28, 2010 (Dist. Ex 1), and one on March 16, 2012 (Dist. Ex. 38). Each of the strength-based assessments indicated the student wanted to attend college (Dist. Ex. 38 at p. 1; see Dist. Ex. 1 at p. 3).

A subcommittee of the CSE met on June 16, 2010 to develop an IEP for the student's 11th grade year (Dist. Ex. 3). Both of the student's parents, a special education teacher, a school psychologist, and a chairperson attended the meeting (Dist. Exs. 2 at p. 6; 3 at p. 6). The IEP included goals in study skills, reading, writing and mathematics (Dist. Ex. 3 at pp. 7-8). The IEP also provided for the related services of counseling, occupational therapy (OT), and speech-language therapy, along with accompanying annual goals (id. at pp. 1, 8-9). The CSE recommended door to door transportation with a matron (id. at p. 1). Program modifications, accommodations, and supplementary aids and services included access to a word processor, keyboarding instruction, and a behavioral intervention consultant for the teacher (id. at pp. 1-2). The IEP indicated the student benefited from scripting social situations, the use of role play, high levels of structure and routine, and frequent verbal cues and visual reminders (id. at p. 2). The IEP indicated the student was not to participate in the academic portion of the general education curriculum (id. at p. 3).[3] Parent counseling and training was recommended to provide the parents with "information about development" and to assist them in supporting the implementation of the IEP and generalizing the student's learning to the home environment (id.). The June 2010 IEP recommended placement in the BOCES TSP program for three hours per day (id. at p. 1).[4] The student was to participate in general physical education as well as adapted physical education (id. at p. 3). The IEP indicated the parents discussed the possibility of mainstreaming the student (id. at p. 6).

The June 2010 IEP includes post-secondary goals and a coordinated set of transition activities (Dist. Ex. 3 at p. 5). It notes the student's intent to attend college and to live independently (id.). It also notes he is unsure about his career goal (id.). To address these long-term goals, the IEP provided transition activities, including: a course of study leading to a Regents diploma, connecting with VESID and OMH,[5] providing the opportunity to take a college course, and further noted related services relevant to transition were in the related service section of the IEP (id.). It further referenced a strength-based career assessment and stated someone from

[2] The district director of special education described the strength-based assessment as a regionally designed assessment that focused on a student's strengths and aspirations and included input from parents and school personnel (Tr. pp. 260-61). The forms also included information on areas of need (see Dist. Exs. 1; 38).

[3] The district director of special education testified that the curriculum in the student's BOCES TSP program was not modified (Tr. p. 228). The statement on the IEP may have been intended to refer to participation in general education classes; however, it was not explained during the hearing and there is, therefore, no way to clarify this apparent contradiction.

[4] According to the district director of special education this meant the student would have been in general education classes for the remainder of the school day, or 2.5 hours (Tr. p 266-67). However, there is no evidence in the hearing record that the student was placed in a general education class.

[5] Presumably these references are to the New York State Education Department's (then-named) Office of Vocational and Educational Services for Individuals with Disabilities and the New York State Office of Mental Health.

BOCES would begin college exploration with the student and his family (id.). It also noted the student had adequate daily living skills, but staff would work on improving social skills and self-advocacy skills (id.).

The June 2010 IEP stated the student was expected to receive a Regents diploma in June 2012 (Dist. Ex. 3 at p. 3). The minutes from the meeting indicate the program staff were to meet with the parents to begin transition planning, career counseling, paperwork support, and to provide information on supports available (id. at p. 6). The parents voiced concerns about the student's adaptive behavior skills, and the minutes indicated the team would reconvene to address the parents' concerns; however, there is no evidence in the hearing record indicating that this meeting occurred (id.). The parents signed a form indicating approval of the program, services, and placement recommended in the June 2010 IEP (Dist. Ex. 4).

A transition planning meeting was held on October 27, 2010 (Dist. Ex. 9). Participants included the student's mother, a case manager (who was also the chairperson at the June 2010 CSE subcommittee meeting), a community worker, a school counselor, and a school psychologist (id. at p. 1). The notes indicate there were discussions regarding the PSAT, SAT, and ACT and the process for receiving accommodations (id. at p. 2).

The student's next IEP was developed at a meeting of the CSE subcommittee on May 26, 2011 (Dist. Ex. 21 at p. 1). The CSE subcommittee recommended programs and services for the 2011-12 school year, the student's 12th grade year (id.). Participants at the May 2011 CSE subcommittee meeting included the student's mother, the student's special education teacher, a school psychologist, a BOCES administrator, a case manager, and a chairperson (id.). Like the previous IEP, the May 2011 IEP included goals in study skills, reading, and writing (id. at p. 6). The IEP also provided for the related services of counseling, OT, and speech-language therapy with accompanying goals (id. at pp. 6-8). Many of the same accommodations and supports from the June 2010 IEP appear on this IEP (compare Dist. Ex. 3, with Dist. Ex. 21). The student was to receive door to door transportation with a matron (Dist. Ex. 21 at p. 11). In addition, use of a calculator and a word processor are referenced as related services in the transition activities section (id. at p. 10). The May 2011 IEP provides for a behavioral intervention consultant for the teacher as needed and included behavioral goals, but specifically stated the student did not require positive behavioral interventions (id. at pp. 5, 7-8). Under the postsecondary goals section, the IEP stated the student's goals were to attend college and pursue competitive employment (id. at pp. 5-6). It also specifically indicated independent living skills were not applicable for this student and, in the coordinated set of transition activities section of the IEP, stated the student was adequate in daily living skills (id. at pp. 6, 10). The May 2011 IEP includes a statement that the guidance counselor would discuss the student's course of study and future plans for attending college and noted he was in a "regents level prepatory program" (id. at p. 6). The IEP also includes one annual goal to address transitioning into adulthood: "[t]he student will state interests and abilities related to future career goals" (id. at p. 7). The IEP also provided transition activities, including: completing 12th grade and graduating with a high school diploma; improving skills using identified accommodations, as well as a calculator and a word processor; provision of information about vocational programs and supporting college exploration to the family; and the family and the student identifying resources for post-school living and employment (id. at pp. 9-10).

During this time period and extending into the student's senior year, the parents discussed their concerns with various district and BOCES staff, including the transition coordinator, the

BOCES community service worker, and the school psychologist (Tr. pp. 324-25, 360-61, 447-52, 454-55, 499-501, 665-67). They noted particular concerns about the student's readiness for college and independent living and his associated needs for training in daily living skills (see Tr. pp. 184-188, 228, 324-25360-61, 447-52, 454-55, 499-501, 665-67).

According to the May 2011 IEP, the student was to spend three hours per day in a special class (Dist. Ex. 21 at p. 7).[6] The IEP indicated the student's program was moving to a different high school (id. at p. 1). The IEP notes the student is on track to receive a Regents Diploma (id.). The parent signed a form indicating agreement with the plan (id. at p. 13).

The student's final IEP at issue in this proceeding was developed at an April 23, 2012, CSE meeting and was to be implemented for the remainder of the 2011-12 school year (Dist. Ex. 48 at p. 1). The CSE anticipated that the student would graduate in June 2012 (id. at p. 9). The IEP describes the April 2012 CSE meeting as a reevaluation review meeting and exit meeting (id. at p. 2). At the time of the meeting, the student was 17 years old (id. at p. 1). The student's father, two school psychologists, a general education teacher, a special education teacher, a BOCES administrator, a BOCES community worker, a guidance counselor, a speech-language therapist, and the district's director of special education participated in the meeting (Dist. Exs. 47 at pp. 3-4; 48 at p. 1). The IEP indicated one of the teachers reported the student had passed all required Regents exams, acquired 20.5 credits, and was on track to complete five additional credits (Dist. Ex. 48 at p. 2). It was reported that the district would certify the student as eligible for a Regents diploma on June 22, 2012 (id.). At the April 2012 CSE meeting the student's father expressed his belief that the student's ACT scores indicated he was not college ready (Dist. Exs. 47 at p. 5; 48 at p. 2).[7] The comments attached to the April 2012 IEP indicated that the student did not want to participate in a mainstreamed class and the father was concerned the student was not college ready (Dist. Ex. 48 at p. 2). At the April 2012 meeting the CSE made several recommendations regarding additions to the student's IEP in an effort to address the parents' concerns (id.). These additional recommendations included twelve weeks of travel training, the provision of a diagnostic vocational evaluation through the "JCCA Compass Project,"[8] medication management training, and participation in Fast Forward—a computer-based program designed to address processing speed and concentration (Dist. Ex. 48 at pp. 2, 10, 13). The postsecondary goals section of the April 2012 IEP includes goals to attend a college program that provides academic and social supports, pursue competitive employment opportunities with support, and live in a postsecondary college program with support (id. at p. 8). The student's needs are identified as being in an academic program in a therapeutic environment with counseling, as needing to attend a meeting with a counselor from the State Education Department's Office of Adult Career and Continuing Education Services-Vocational Rehabilitation (ACCESS-VR), and as needing to apply for SSI when he turned eighteen (id.). The section regarding the transition activities is similar to the prior May 2011 IEP (compare Dist. Ex. 48 at pp. 12-13, with Dist. Ex. 21 at pp. 9-10). However the April

[6] As with the 2010-11 school year, there is no evidence in the hearing record that the student attended a general education setting during the 2011-12 school year.

[7] On an October 2011 administration of the ACT, the student scored at or above the benchmark indicating readiness for first year college courses in English and below the benchmarks for math, reading, and science (Dist. Ex. 25 at p. 2).

[8] The hearing record reflects that JCCA stands for Jewish Child Care Associates (Tr. p. 114).

2012 IEP added the development of self-determination and self-advocacy skills, participation in travel training, and the completion of a vocational evaluation through the JCAA Compass Project (id.). The April 2012 IEP recommended placement in a special class for six hours per day (Dist. Ex. 48 at p. 10). The remainder of the April 2012 IEP is similar to the student's previous IEPs in terms of structural content (see Dist. Ex. 48).

In a letter dated April 27, 2012, the student's father wrote to the district's director of special education, noting the parents' interest in the proposed IEP changes but specifically noting that the entire plan appeared to be based on the student graduating in June 2012 with a Regents diploma (Dist. Ex. 49). The parents indicated that they were not willing to accept this condition (id.). On May 16, 2012, the district's director of special education replied (Dist. Ex. 51). The district's letter forwarded the April 2012 IEP and an exit summary indicating the student was certified to graduate and would graduate on June 22, 2012 with a Regents diploma (id.). The district asked whether the parents wanted to proceed with travel training, the diagnostic vocational evaluation, and Fast Forward (id.). The student did not attend graduation and did not pick up his diploma (Tr. pp. 1129-30).

The parents notified the district by letter dated June 4, 2012 they were not accepting the proposed placement and program (Parent Ex. Q). Further, the parents notified the district they were placing the student at Chapel Haven as part of his educational program and would seek reimbursement (id.). In July 2012, the student began attending the Asperger's Syndrome Adult Transition Program (ASAT) at Chapel Haven (Tr. pp. 924, 932, 937, 1211, 1491). The student had been accepted into the program by letter dated February 3, 2012 (Parent Ex. M).

A. Due Process Complaint Notice

On September 13, 2012, the student and his parents filed an amended due process complaint notice (Parent Ex. B).[9] The due process complaint notice specifically addressed the 2010-11, 2011-12, and 2012-13 school years (id.).[10] Although the original due process complaint notice contained a claim for pendency, pendency issues were waived during an August 14, 2013 prehearing conference (IHO Decision at p. 1; Parent Ex. A at pp. 2, 10).

[9] The parents originally filed a due process complaint notice on July 10, 2012 (Parent Ex. A). While the IHO decision references amended due process complaint notices dated July 12, 2012 and July 13, 2012, the hearing record does not provide any information regarding them (IHO Decision at p. 1). However, as they are not at issue here, the fact that they are not included in the hearing record does not have any substantive effect upon my review.

[10] The parents' due process complaint notice recognizes that there is a two year statute of limitations and specifically states that the demand applies only to the portion of the 2010-2011 school year that falls within the two year time period. Therefore this decision only addresses the two years preceding the filing of the due process complaint notice. Further, the student was not attending a district program during the 2012-2013 school year because he had graduated and, therefore as discussed below, a FAPE analysis is not applicable to the 2012-13 school year.

The amended due process complaint notice alleges, among other issues, that the district failed to:

1. Timely evaluate the student's transition needs and develop a transition plan;

2. Provide appropriate transition services and supports;

3. Provide IEP annual goals to address transition needs;

4. Provide parent training and counseling;

5. Develop appropriate IEPs; and

6. Develop a Functional Behavioral Assessment (FBA)

(Parent Ex. B at pp. 2-9).

The parents further claimed that the district improperly graduated the student over their objections (Parent Ex. B at pp. 4-5). As relief, the parents requested reimbursement, compensatory, or prospective funding of the costs of the student's tuition for the 2012-13 and 2013-14 school years at Chapel Haven, compensatory education services, and parent counseling and training (id. at p. 9).[11]

B. Impartial Hearing Officer Decision

The impartial due process hearing commenced on October 17, 2012 and continued for a total of eight days before concluding on February 25, 2013. In a decision dated May 20, 2013, the IHO found in favor of the district, dismissed the due process complaint notice in its entirety and denied the parents' requested relief (IHO Decision at pp. 81-84). In so doing the IHO found that the student was invited to CSE meetings; the district evaluated the student in a timely fashion; the student's vocational, occupational, and transitional present levels of performance were appropriately evaluated; the academic component of the IEPs offered the student a FAPE; the district provided services resulting in the student making social/emotional progress of the student; the district did not deny the student a FAPE by not providing supplemental parent counseling and training; the transition goals contained in the IEP were appropriate; the additional services recommended in the IEP were appropriate; the IEP was reasonably calculated to provide meaningful educational progress; and that the parents' refusal to accept the student's diploma did not invalidate his having earned sufficient credits to graduate and passing his Regents exams and thus the District was not obligated to provide the student with educational services subsequent to the end of the 201 1-2012 (IHO Decision at pp. 58-75, 81-82). The IHO further found that in any event, the parents' unilateral placement was not appropriate because it was not in the least restrictive environment in which the student could receive educational benefits (id. at pp. 75-78, 82). Finally, the IHO found that equitable considerations did not favor the parents' request for

[11] The parents waived requests for one hour per week of speech-language therapy, one hour per week of OT, and the tuition and costs, including transportation, of the student's attendance at a university (Parent Post-Hr'g Br. at p. 1).

funding of the student's tuition at Chapel Haven (id. at pp. 79-82).

IV. Appeal for State-Level Review

The parents appeal, arguing that the IHO erred in finding that the district offered the student a FAPE, and further contending that the district's failure to conduct vocational assessments and provide transition planning amounted to a gross violation of the IDEA warranting an award of compensatory relief. Petitioners contend that an appropriate award of compensatory education is placement at Chapel Haven for the two years subsequent to the student's graduation and that equitable considerations do not warrant a reduction or denial of the parents' requested relief. Parents request that the IHO's decision be reversed and that they be awarded two years of compensatory relief consisting of: (1) tuition and related costs for the student's placement at Chapel Haven for the 2012-2013 and 2013-2014 school years; (2) reimbursement for transportation to and from Chapel Haven during this time period; (3) up to four hours per month of parent counseling and training; and (4) additional compensatory education for services the district failed to provide during the 2010-11, 2011-12, and 2012-13 school years.

The district answers and asserts the IHO made detailed findings of fact supported by the evidence and the IHO explained the evidence and the reasons for his conclusions with specific references to the hearing record. The district contends that it did not deny the student a FAPE and there is no basis for awarding compensatory education. The district asserts that the IHO's decision should be upheld and the Petitioner's complaint should be dismissed in its entirety.

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 Sch. Dist. 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., 394 Fed. App'x 718, 720, 2010 WL 3242234 [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, 361 Fed. App'x 156, 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, 293 Fed. App'x 20, 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, 486 Fed. App'x 954, 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]).

The IDEA authorizes "appropriate" relief to be awarded for a denial of a FAPE, including compensatory education or additional services—specifically, the "replacement of educational services that the child should have received in the first place" (Reid, 401 F.3d at 518; accord Newington, 546 F.3d at 123). Compensatory education is an equitable remedy that is tailored to meet the unique circumstances of each case (Wenger v. Canastota, 979 F. Supp. 147, 151 [N.D.N.Y. 1997]). Within the Second Circuit, compensatory relief in the form of supplemental special education or related services has been awarded to students who are eligible for continued instruction under the IDEA if there has been a denial of a FAPE (see Newington, 546 F.3d at 123 [stating that "[t]he IDEA allows a hearing officer to fashion an appropriate remedy, and . . . compensatory education is an available option under the Act to make up for denial of a [FAPE]"]; Student X. v. New York City Dep't of Educ., 2008 WL 4890440, at *23 [E.D.N.Y. Oct. 30, 2008]; see generally R.C. v. Bd of Educ., 2008 WL 9731053, at *12-13 [S.D.N.Y. March 6, 2008]). In addition, compensatory education has been awarded to students who are ineligible by reason of age or graduation if there has been a gross violation of the IDEA resulting in the denial of, or exclusion from, educational services for a substantial period of time (see French v. New York State Dep't of Educ., 476 Fed. App'x 468, 471-72 [2d Cir. 2011]; Somoza v. New York City Dep't of Educ., 538 F.3d 106, 109 n.2, 113 n.6 [2d Cir. 2008]; Mrs. C. v. Wheaton, 916 F.2d 69 [2d Cir. 1990]; Burr v. Ambach, 863 F.2d 1071 [2d Cir. 1988]; Cosgrove v. Bd. of Educ., 175 F. Supp. 2d 375, 387 [N.D.N.Y. 2001]).

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. Graduation

The parents assert that the district graduated the student over their written objections. The parents requested that the student remain eligible for special education programs and services for the 2012-13 school year; however, the district rejected the parents' request and sent the parents a prior written notice indicating that the student would receive a Regents diploma on June 22, 2012 (Dist. Ex. 51 at pp. 5-8). In New York State, a student who is otherwise eligible as a student with a disability, may continue to obtain services under the IDEA until he or she either receives a local or Regents high school diploma (34 CFR 300.102[a][3][i]; 8 NYCRR 100.5[b][7][iii]), or until the conclusion of the ten-month school year in which he or she turns age 21 (Educ. Law §§ 3202[1], 4401[1], 4402[5][b];[12] 8 NYCRR 100.9[e], 200.1[zz]; see 34 CFR 300.102[a][1], [a][3][ii]).

According to the hearing record, the student met all of the requirements for graduation, passed his Regents exams, and graduated high school with a Regents diploma on June 21, 2012 (Dist. Exs. 53; 54; 56; 57; 65).[13] The parents raised concerns that the student was not ready to

[12] If a student with a disability reaches age 21 during July or August and is otherwise eligible, the student is entitled to continue in a summer program until the earlier of August 31 or the termination of the summer program (Educ. Law § 4402[5][a]).

[13] The student scored in the 80s on all of his Regents exams (Dist. Ex. 54); which the district director of special

graduate, primarily because they believed he lacked the necessary social and daily living skills to attend college and live independently (see Dist. Ex. 48 at p. 2). For these reasons, the parents rejected some of the transition oriented activities added to the April 2012 IEP, believing those services were tied to accepting graduation (Tr. pp. 1534-38; Dist. Ex. 49). The student did not attend graduation and has not picked up his diploma (Tr. pp. 237, 354, 467-68, 1129-30). As noted in the IHO's decision, the parents' and student's decision not to attend graduation or pick up the student's diploma did not alter the student's graduation status (IHO Decision at pp. 70-71). Accordingly, the student graduated on June 21, 2012, and his eligibility for special education programs and services as a student with a disability ended at that time (34 CFR 300.102[a][3][i]; 8 NYCRR 100.5[b][7][iii]; see T.M. v. Kingston City Sch. Dist., 891 F. Supp. 2d 289, 294-95 [N.D.N.Y. 2012]).[14]

B. Compensatory Education

Although the student's eligibility for special education programs and services as a student with a disability ended upon his graduation on June 21, 2012, the parents assert that the student is eligible for compensatory education for a denial of FAPE during the 2010-11 and 2011-12 school years, with such services to consist of placement at Chapel Haven during the 2012-13 and 2013-14 school years. However, unless the district committed a gross violation of the IDEA, the student would not be entitled to compensatory education after his eligibility as a student with a disability ended (French, 476 Fed. App'x at 471-72; see Somoza, 538 F.3d at 109 n.2; Mrs. C., 916 F.2d 69; Burr, 863 F.2d 1071). In addition, given the fact that graduation and receipt of a high school diploma are generally considered to be evidence of educational benefit (Pascoe v. Washington Cent. Sch. Dist., 1998 WL 684583 [S.D.N.Y. 1998]; Application of the Bd. of Educ., Appeal No. 05-037; see also Rowley, 458 U.S. at 207 n.28; Walczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 130 [2d Cir. 1998] [noting that "the attainment of passing grades and regular advancement from grade to grade are generally accepted indicators of satisfactory progress" under the IDEA]), the receipt of which terminates a student's entitlement to a FAPE (34 CFR 300.102[a][3][i]; 8 NYCRR 100.5[b][7][iii]; 200.4[i]; but see, 8 NYCRR 200.4[c][5] [noting that a student may still remain eligible for special education services even though he has advanced from grade to grade]), when taken together with the Second Circuit's standard requiring a gross violation of the IDEA during the student's period of eligibility (see Garro v. State of Connecticut, 23 F.3d 734, 737 [2d Cir. 1994]; Mrs. C., 916 F.2d at 75), it is a rare case where a student graduates with a Regents high school diploma and yet still qualifies for an award of compensatory education (see, e.g., J.B. v. Killingly Bd. of Educ., 990 F. Supp. 57 [D. Conn. 1997] [where student apparently graduated and received diploma prior to the district establishing the appropriate graduation requirements, court decided student had established a prima facie case of likelihood of success on the merits on a possible award of continued compensatory education]; Application of a Student with a Disability, Appeal No. 11-159; Application of the Dep't of Educ., Appeal No. 11-114; Application of a Child with a Disability, Appeal No. 05-089; Application of the Bd. of Educ., Appeal No. 05-037).

education described as an indication that the student was ready for college level courses (Tr. pp. 125-27).

[14] Although the parents initially sought pendency in their July 2012 due process complaint notice, they dropped their request for pendency in the amended September 2012 due process complaint notice as they had already placed the student at Chapel Haven (see IHO Ex. 1 at pp. 1-2).

The parents allege two reasons why the district did not offer the student a FAPE:[15] first, that the district did not conduct appropriate evaluations for transition services and, relatedly, did not recommend appropriate transition services in the student's IEPs, and second, that the district did not include parent counseling and training in the student's IEPs.

1. Transition Services

Under the IDEA, to the extent appropriate for each individual student, an IEP must focus on providing instruction and experiences that enable the student to prepare for later post-school activities, including postsecondary education, employment, and independent living (20 U.S.C. § 1401[34]; see Educ. Law § 4401[9]; 34 CFR § 300.43; 8 NYCRR 200.1[fff]). Accordingly, pursuant to federal law and State regulations, an IEP for a student who is at least 16 years of age (15 under State regulations), or younger if determined appropriate by the CSE, must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills (20 U.S.C. § 1414[d][1][A][i][VIII]; 34 CFR 300.320[b]; 8 NYCRR 200.4[d][2][ix]).

An IEP must also include the transition services needed to assist the student in reaching those goals (20 U.S.C. § 1414[d][1][A][i][VIII]; 34 CFR 300.320[b]). In this regard, State regulations require that an IEP include a statement of a student's needs as they relate to transition from school to post-school activities (8 NYCRR 200.4[d][2][ix][a]), as well as the transition service needs of the student that focus on the student's course of study, such as participation in advanced placement courses or a vocational education program (8 NYCRR 200.4[d][2][ix][c]). The regulations also require that the student's IEP include needed activities to facilitate the student's movement from school to post-school activities, including instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, when appropriate, acquisition of daily living skills and a functional vocational evaluation (8 NYCRR 200.4[d][2][ix][d]), as well as a statement of responsibilities of the school district (or participating agencies) for the provision of services and activities that "promote movement" from school to post-school.

In this instance, the hearing record does not support finding that the district failed to assess the student's transition needs to the extent that it resulted in a complete deprivation of a FAPE or a gross violation of the IDEA. The student, his parents, and program staff provided information for two strength-based assessments, the first on April 21, 2010, and the second on March 16, 2012 (Dist. Exs. 1; 38).[16] In addition, a Vineland Adaptive Behavior Scales, Second Edition (VABS) was completed as part of a psychological evaluation of the student in September 2010 (Dist. Ex. 6). According to the VABS, the student exhibited needs in the areas of verbal expression,

[15] While the parents raised additional claims in their due process complaint notice, they were not raised on appeal (see Parent Ex. B at pp. 4-9). For example, the due process complaint notice included allegations that the district failed to conduct an FBA or develop a BIP (id. at p. 5). To the extent that the parent has not raised claims appearing in the due process complaint notice on appeal, I consider them to have been waived.

[16] The strength-based assessments were based on information provided by the student, the family, and the school regarding the student's strengths, skills, interests and talents, hopes and dreams for the future, and what helped the student achieve. The strength-based assessments were intended to help in transition planning for the student (Tr. pp. 81, 184-185, 355, 458).

communication, and adaptive living skills (id. at pp. 2, 5).[17] However, despite an indication on the VABS that adaptive living skills were an area of need for the student, the student's May 2011 IEP indicated that the student was adequate in daily living skills (id. at pp. 6, 10).

As discussed above, the student's June 2010, May 2011, and April 2012 IEPs also included transition goals and activities to achieve those goals (Dist. Exs. 3; 21; 48). The transition activities focused on the student attending college after graduation, connecting the student with State agencies that provide services post-graduation, and identifying the student's career preferences (Dist. Exs. 21 at pp. 7, 9-10; 48 at pp. 8-10). In addition, the April 2012 IEP included recommendations for twelve weeks of travel training, the provision of a diagnostic vocational evaluation through the JCCA Compass Project, medication management training, and participation in Fast Forward (Dist. Ex. 48 at pp. 2, 9-10, 13). The hearing record indicates that the district suggested that the parents look into Think College, a postsecondary program that assists students with disabilities in transitioning into college classes in a general education setting (Tr. pp. 113-14, 240-41, 382; Dist. Ex. 38 at p. 1). The parents acknowledged that some of the activities would have benefitted the student, such as travel training, medication management training, and the administration of a diagnostic vocational evaluation (Dist. Ex. 49). However, the parents rejected those services, believing them to be tied to accepting graduation (Tr. pp. 1534-38; Dist. Ex. 49).[18]

Under these circumstances, although the district could have better addressed the student's independent living skills, the hearing record does not support a finding that the transition services offered were so bare as to constitute a gross violation of the IDEA (see French, 476 Fed. App'x at 471-72 & n.5 [holding that procedural violations, including failure to develop a transition plan for post-secondary placement, did not amount to a gross violation of the IDEA]). The parents focus much of their argument on a Massachusetts district court case, in which the district court found a student eligible for compensatory education after graduation from high school because the district denied the student a FAPE by failing to address the student's pragmatic language skills, vocational skills, and independent living skills while the student was eligible for special education programs and services (Dracut Sch. Comm. v. Bureau of Special Educ. Appeals, 737 F. Supp. 2d 35, 52-55 [D. Mass. 2010]).[19] However, as noted by the IHO, the court in Dracut did not apply the standard applicable in New York, i.e., that unless the district committed a gross violation of the IDEA resulting in "the student's complete deprivation of a FAPE" or the exclusion of the student from school for a substantial period of time, a student is not eligible for compensatory education after the student's eligibility as a student with a disability has ended (French, 476 Fed. App'x at 471-72; see Somoza, 538 F.3d at 109 n.2).

[17] The psychological report also indicated that these needs were being addressed through counseling (Dist. Ex. 6 at p. 4).

[18] The parents rejected Think College, in-part, because it was not a residential program (Dist. Ex. 49).

[19] It should also be noted that, contrary to the parents' interpretation of Dracut, the district did not get "slammed" with two years of placement in a residential facility as compensatory education (Pet. ¶ 8). Rather, the court remanded the matter to the hearing officer to determine an appropriate award of compensatory education (Dracut, 737 F. Supp. 2d at 55-57).

2. Parent Counseling and Training

Turning next to the parents' claim that the omission of parent counseling and training from the student's June 2010, May 2011, and April 2012 IEPs resulted in a gross violation of the IDEA, State regulations require that an IEP indicate the extent to which parent counseling and training will be provided to parents, when appropriate (8 NYCRR 200.4[d][2][v][b][5]). Parent counseling and training is defined as: "assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's individualized education program" (8 NYCRR 200.1[kk]; see 34 CFR 300.34[c][8]). State regulations further provide for the provision of parent counseling and training for the parents of students with autism to enable them "to perform appropriate follow-up intervention activities at home" (8 NYCRR 200.13[d]). The Second Circuit has explained that "[t]hough the failure to include parent counseling in the IEP may, in some cases (particularly when aggregated with other violations), result in a denial of a FAPE, in the ordinary case that failure, standing alone, is not sufficient to warrant reimbursement" (R.E., 694 F.3d at 191; see T.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 169-70 [2d Cir. 2014]; F.L. v. New York City Dep't of Educ., 553 Fed. App'x 2, 7 [2d Cir. 2014]; M.W. v. New York City Dep't of Educ., 725 F.3d 131, 141-42 [2d Cir. 2013]).

In this instance, the student's IEPs did not include a specific provision for parent counseling and training (Dist. Exs. 3; 21; 48).[20] Although parent counseling and training is not identified in the student's IEPs (see Dist. Exs. 3; 21; 48), there was testimony regarding the provision of parent counseling and training, as noted in the IHO's decision (IHO Decision at p. 13). For example, the BOCES community worker testified she provided the parents information about colleges (Tr. p. 336). The community worker also provided the parents information about vocational programs and weekend programs that might have benefitted Student (Tr. pp. 299, 336). The BOCES school psychologist also provided parent counseling and training (Tr. p. 447). She testified that she had frequent communications with the parents in an effort to address their needs in assisting the student (id.). The number of contacts varied, occurring up to five times per week depending on the circumstances at the time (id.). For example, the BOCES school psychologist discussed the student's need for exposure to real world experiences and events (Tr. pp. 449-50). She recommended that the student be given more responsibility for chores and for himself, and she recommended that the student participate more in activities such as shopping (Tr. pp. 449-450, 452).

Based on the above, although the district did not include a specific provision for parent counseling and training as a related service within the student's IEPs, the hearing record supports finding that the parent was provided with at least a minimal amount of parent counseling and training while the student was enrolled in the BOCES program. Additionally, to the extent that the district did commit a procedural violation in failing to specify parent counseling and training on the student's IEPs as a related service, such a failure is not a gross violation of the IDEA (see,

[20] The June 2010 IEP states "[p]arent counseling and training is recommended to assist [the] parents by providing parents with information about development and supporting the parents to practice the necessary skills that will allow them to support the implementation of their child's individualized education program and generalize [the student's] learning at home" (Dist. Ex. 3 at p. 3).

e.g., R.E., 694 F.3d at 191; but see S.A. v. New York City Dep't of Educ., 2014 WL 1311761, at *13 n.5 [S.D.N.Y. Mar. 30, 2014]).

C. Alternative Findings and Relief

Notwithstanding the above, even assuming for the sake of argument that I had found that the district committed a gross procedural violation, any deficiencies in this case would not require that the parents be awarded full funding of the student's placement at Chapel Haven for two years as equitable relief. The relief selected by the parents in this case would seem to have the practical effect of extending the student's eligibility at district expense, whereas any compensatory award due to a weaknesses in transition planning or services should be far more limited in scope because "[t]hat relief . . . arises from equity and is not a legislative authorization to extend the reaches of the statute" (Cosgrove, 175 F. Supp. 2d at 388).

The purpose of a compensatory education award is to remedy a denial of a FAPE (see Newington, 546 F.3d at 123 [holding that compensatory education is a remedy designed to "make up for" a denial of a FAPE]; see also Reid v. Dist. of Columbia, 401 F.3d 516, 524 [DC Cir. 2005] [holding that, in fashioning an appropriate compensatory education remedy, "the inquiry must be fact-specific, and to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place"]).

As compensatory education, the parents request placement of the student at Chapel Haven for two years at district expense. The parents enrolled the student in the ASAT program at Chapel Haven, which is described as a year-round two-year residential program (Tr. pp. 925-26, 931-32). The supervisor of ASAT described Chapel Haven as an agency for individuals with disabilities focused on assisting such individuals to learn independent living skills (Tr. p. 923). A total of 13 students are enrolled in ASAT, which has 6 staff members who supervise the residents and have case management responsibilities (Tr. pp. 927-28). In addition, a part-time cognitive behavioral therapist and a full time speech-language therapist are assigned to the program (Tr. p. 928). ASAT students live in apartments in one of two residential buildings (id.). One overnight staff person is assigned to each residence (id.). The program focuses on four curriculum domains: social communication, self-determination, college and vocational skills, and independent living skills (Tr. p. 929). The curriculum is implemented through one-on-one meetings, classes, community-based experiences, and apartment-based training and mentoring (id.).

Although, there is information in the hearing record regarding the services provided by Chapel Haven, the evidence of deprivation of services in the hearing record did not support placement in a two year residential facility was required in order to provide the student with the educational benefits that he would have received from special education services the district should have supplied in the first place.

As discussed above, the crux of the parents' argument is based on their assertions that the district failed to assess the student's transition needs and recommend appropriate transition activities.[21] Additionally, the parents criticized the district's failure to provide assistance with daily

[21] While the district did complete a VABS and two strength-based assessments, the April 2012 CSE recommended that the student also receive a diagnostic vocational evaluation (Dist. Ex. 48 at p. 9). Therefore, an appropriate

living skills such as travel, money management, medication management, banking, cooking, cleaning, laundry, using a telephone, or community engagement—skills directed at aiding the student to live, attend college, or work independently. While Chapel Haven addressed these skills, nothing in the hearing record indicates that a year round residential placement was necessary to provide such services. As compensatory education is an equitable remedy that is tailored to meet the unique circumstances of each case, it follows that equitable factors should be considered in fashioning an appropriate compensatory education award (Wenger v. Canastota, 979 F. Supp. at 151; see J.G. v. Kiryas Joel Union Free Sch. Dist., 777 F. Supp. 2d 606, 643-44 [S.D.N.Y. 2011]; see also Parents of Student W. v. Puyallup Sch. Dist. No. 3, 31 F.3d 1489, 1496-97 [9th Cir. 1994]). In the context of tuition reimbursement, such factors have included services provided beyond those required to address a student's educational needs (C.B. v. Garden Grove Unified Sch. Dist., 635 F. 3d 1155, 1160 [9th Cir. 2011]), as well as a parent's failure to locate a placement closer to home to obviate the need for a residential placement (Scarsdale Union Free Sch. Dist. v. R.C., 2013 WL 563377, at *10 [S.D.N.Y. Feb. 4, 2013]). In this instance, rather than full recovery for the costs of placement in a two year residential program, an appropriate compensatory education award may have been placement in a day program such as the "Think College" program suggested by the district during the 2012-13 school year, which also addressed independent living skills in preparation for college (Tr. pp. 112-14; see Dist. Exs. 38 at p. 1; 49; 66). However, the hearing record was not fully developed on this point and, although the parent is expected to identify and take a position regarding how the requested relief would make up for a denial of FAPE, the district should also be prepared to respond to the parent's demand with support in the hearing record that identifies its view of the appropriate form and amount of compensatory education, if such an award is required (see, e.g., Application of the Dep't of Educ., Appeal No. 14-014; Application of a Student with a Disability, Appeal No. 11-091). Moreover if neither party provides a sufficient evidentiary basis for an appropriate remedy in the first instance, the IHO may then have some responsibility in the admittedly difficult task of ensuring that adequate evidence is made available to support an order for an appropriate remedy. In this instance there is little benefit of remanding the matter to the IHO for further development of the record since, as discussed above, these are merely alternative findings and I have determined there was not a gross denial of a FAPE that requires a remedy.

VII. Conclusion

In this instance, any deficiencies in transition planning services or parent counseling and training do not present that rare case where a student who has graduated with a Regents diploma would remain eligible for compensatory education. Additionally, the hearing record does not support a finding of a gross violation of the IDEA that would warrant an award of compensatory education services beyond the period of the student's statutory entitlement (see Garro, 23 F.3d at

award of compensatory education could include a direction that the district conduct a diagnostic vocational assessment to the extent that it has not yet done so, or that the district reimburse the parents for such an assessment to the extent that the parents obtained one privately. However, it should also be noted that although the student is no longer eligible for special education programs and services due to his graduation, there are other resources available to him that may be able to provide some of the services that he is seeking. For example, ACCESS-VR provides transition and youth services, vocational rehabilitation, and independent living services (http://www.acces.nysed.gov/vr).

737; Mrs. C., 916 F.2d at 75; Burr, 863 F.2d at 1078). I have considered the parties' remaining contentions and find them to be without merit.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
February 26, 2015

JUSTYN P. BATES
STATE REVIEW OFFICER