The University of the State of New York

The State Education Department
State Review Officer
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No. 13-148

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 New York City Department of Education

Appearances:
Law Offices of Neal H. Rosenberg, attorneys for petitioners, Jennifer D. Frank, Esq., of counsel

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for respondent, Gail M. Eckstein, 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 denied their request to be reimbursed for the costs of the student's tuition at Bay Ridge Preparatory School (Bay Ridge) for the 2012-13 school year. The appeal must be dismissed.

II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education 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

On March 23, 2012, a CSE convened to conduct the student's annual review and to develop his IEP for the 2012-13 school year (Dist. Ex. 1 at pp. 1, 9).[1] Finding that the student remained eligible for special education and related services as a student with a learning disability, the CSE recommended a 15:1 special class placement in a community school and daily, individual school

[1] The district conducted a psychoeducational reevaluation of the student in January 2012, which at times was referred to as the student's "triennial" evaluation, or reevaluation, during the impartial hearing (see Tr. pp. 23-25; Dist. Ex. 2 at p. 1). For purposes of clarity and consistency, this assessment will be referred to as the January 2012 reevaluation throughout this decision.

health services (id. at pp. 1, 5, 8-9).[2] In addition, the CSE developed annual goals, management needs, and a transition plan, and recommended accommodations to further support and address the student's needs (id. at pp. 2-7).

In a final notice of deferred placement, dated April 17, 2012, the district summarized the student's special education and related services recommended for the 2012-13 school year, and indicated that it would be in the student's "best interest" to defer his placement into the program identified in the notice until September 6, 2012 (Parent Ex. D). The notice also indicated that the student could remain in his current program, and the parents would receive a final notice of recommendation (FNR) regarding the specific public school site for the 2012-13 school year (id.).

On May 8, 2012, the parents executed an enrollment contract with Bay Ridge for the student's attendance during the 2012-13 school year beginning September 2012 (Parent Ex. H at pp. 1-2).[3]

On the final notice of deferred placement in a handwritten note, dated May 24, 2012, the parents indicated that although they "agreed" that the student did not require a "placement for this year," they requested that the district send a "placement . . . as soon as possible" so the parents could "visit the placement" to determine whether it would be appropriate (Parent Ex. D). The parents further indicated that at that time, they did not "consent to the recommendations" because they did not know "where" the program would be "implemented" (id.). The parents reserved their rights to unilaterally place the student if the "program" could not meet the student's needs and to seek tuition reimbursement (id.).

In an FNR, dated June 8, 2012, the district summarized the student's special education and related services recommended for the 2012-13 school year, and identified the particular public school site to which the district assigned the student to attend for the 2012-13 school year (Dist. Ex. 3).

By letter dated August 21, 2012, the parents indicated that although they could not visit the assigned public school site, they had "significant concerns" about the student's recommended placement in a 15:1 special class in a community school, which they had expressed at the CSE meeting (Parent Ex. C at p. 1). The parents further indicated that the student required a small class in a small school with "full time" special education so he could receive individualized attention (id.). As such, the parents notified the district that the placement was not appropriate for the student, and the student would attend Bay Ridge for the 2012-13 school year beginning in September 2012 (id.). The parents also indicated their intention to seek reimbursement for the costs of the student's tuition at Bay Ridge (id.).

[2] The student's eligibility for special education and related services as a student with a learning disability is not in dispute (see 34 CFR 300.8[c][10]; 8 NYCRR 200.1[zz][6]).

[3] The Commissioner of Education has not approved Bay Ridge as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

A. Due Process Complaint Notice

In a due process complaint notice dated December 18, 2012, the parents alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2012-13 school year (see Parent Ex. A at pp. 1-2). The parents contended that the March 2012 CSE was not validly composed, and did not comply with appropriate CSE procedure (id. at p. 1). The parents also asserted that the March 2012 CSE failed to consider a psychoeducational evaluation report (2009 evaluation report), which detailed the student's need to attend a "small class in a small full-time special education program," and instead, recommended a 15:1 special class placement in a community school (id.). In addition, the parents alleged that the March 2012 IEP failed to include sufficient annual goals and short-term objectives, and did not detail the student's academic performance (id.). The parents also objected to the recommended public school site, arguing that the large classes and school setting would not provide the student with "enough individualized support;" the students in the observed classroom appeared "cognitively below" the student's levels; and the recommended public school site was not appropriate to meet the student's "academic, social, and emotional" needs (id.). The parents indicated that during the visit to the recommended public school site, they did not observe the actual class the student would attend, and district staff could not answer questions about the student's IEP and classes (id.). Finally, the parents asserted that the district did not respond to their written concerns (id.). As relief, the parents requested reimbursement for costs of the student's tuition at Bay Ridge, and the provision of transportation and related services (id. at p. 2).

B. Impartial Hearing Officer Decision

After an impartial hearing held on May 6, and May 20, 2013, the IHO issued a decision, dated July 9, 2013, concluding that the district offered the student a FAPE for the 2012-13 school year (see Tr. pp. 1-208; IHO Decision at pp. 9-17). The IHO found that the March 2012 CSE was properly composed, and relied upon adequate evaluative information to develop the student's IEP (id. at pp. 12-15). Further, the IHO found that based upon the information provided in the January 2012 reevaluation report and input from the student's then-current teacher at Bay Ridge, the March 2012 CSE was not obligated to conduct a classroom observation of the student (id. at p. 14). The IHO also found that the March 2012 CSE did not commit "reversible error" in failing to adopt a recommendation contained in a 2009 evaluation report (id. at pp. 14-15). The IHO further found that the annual goals in the March 2012 IEP addressed the student's educational needs, and included evaluative criteria, evaluation procedures, and schedules to measure progress (id. at pp. 15-16). Additionally, the IHO determined that the March 2012 CSE's recommended 15:1 special class placement would allow the student to receive "personalized instruction with sufficient support services," and receive education benefit from that instruction (id. at pp. 16-17). Finally, the IHO found that the hearing record did not support the parents' concerns about the size of the assigned public school building, and were "indeed" speculative (id. at p. 17).

Having determined that the district offered the student a FAPE for the 2012-13 school year, the IHO did not reach the issues of whether the student's unilateral placement at Bay Ridge was appropriate or whether equitable considerations weighed in favor of the parents' requested relief (see IHO Decision at p. 17). The IHO did note, however, that because the parents presented no evidence about privately secured related services or whether the district failed to provide the student with related services during the 2012-13 school year, the parents' request for

reimbursement for these services was denied (id.). The IHO also denied the parents' request for reimbursement for round-trip transportation costs for the student's attendance at Bay Ridge for the 2012-13 school year (id. at pp. 17-18).

IV. Appeal for State-Level Review

The parents appeal, arguing that the IHO erroneously found that the district offered the student a FAPE for the 2012-13 school year. More specifically, the parents argue that the March 2012 CSE failed to properly consider all evaluative material because it did not adequately consider a 2009 evaluation report. The parents also assert that the IHO erred in concluding that the March 2012 CSE was not required to conduct a classroom observation—or to update the student's social history—as part of the January 2012 reevaluation of the student, and therefore, the March 2012 CSE did not have sufficient information to determine the student's needs. The parents also argue that the 15:1 special class placement and school health services were not appropriate to meet the student's academic and social/emotional needs, the March 2012 IEP did not include any management needs or otherwise address the student's needs related to anxiety and self-esteem, and the March 2012 IEP failed to include a recommendation for counseling.

With respect to the assigned school, the parents allege that the district failed to sustain its burden to establish that the student would have been appropriately placed at the assigned public school site, or that the recommended site would not have provided the student with an opportunity to make progress. Finally, the parents argue that the student's unilateral placement at Bay Ridge was appropriate and that equitable considerations weigh in favor of their request for an award of tuition reimbursement.[4]

In an answer, the district asserts that the IHO properly concluded that the district offered the student a FAPE for the 2012-13 school year, and seeks to uphold the IHO's decision in its entirety The district argues that Bay Ridge was not an appropriate placement because the student did not make progress, and equitable considerations do not weigh in favor of the parents' request for an award of tuition reimbursement because the parents executed a tuition agreement, and paid a deposit prior to receiving the FNR.

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]).

[4] The parents do not appeal the IHO's determinations that the March 2012 CSE was properly composed or that the March 2012 IEP contained appropriate annual goals and short-term objectives (see IHO Decision at pp. 12-13, 15-16). Accordingly, these determinations have become final and binding on the parties and will not be reviewed on appeal (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]).

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. Scope of Impartial Hearing and Review

Before reaching the merits in this case, a determination must be made regarding which claims are properly before me on appeal. First, a review of the hearing record reveals that the IHO exceeded his jurisdiction by sua sponte raising and addressing in the decision whether the district was obligated to conduct a classroom observation of the student as part of its January 2012 reevaluation because the parents did not raise this issue in their due process complaint notice (see

Tr. pp. 1-208; Dist. Exs. 1-3; Parent Exs. A-L; IHO Exs. I-V; compare IHO Decision at p. 14, with Parent Ex. A at pp. 1-2).

Second, a review of the hearing record also reveals that the parents raise the following issues in the petition for the first time on appeal as a basis upon which to conclude that the district failed to offer the student a FAPE for the 2012-13 school year, which were not raised in their due process complaint notice: the March 2012 CSE failed to complete an updated social history as part of its January 2012 reevaluation, the 15:1 special class placement would not meet the student's social/emotional needs, the March 2012 IEP failed to include management needs or otherwise address the student's needs related to anxiety and self-esteem, and the March 2012 IEP failed to include a recommendation for counseling (see Tr. pp. 1-208; Dist. Exs. 1-3; Parent Exs. A-L; IHO Exs. I-V; compare Pet. ¶¶ 11-13, 21-23, with Parent Ex. A at pp. 1-2).[5]

With respect to the issue raised concerning the classroom observation addressed sua sponte by the IHO in the decision and the allegations now raised in the parents' petition for the first time on appeal, the party requesting an impartial hearing has the first opportunity to identify the range of issues to be addressed at the hearing (Application of a Student with a Disability, Appeal No. 09-141; Application of the Dep't of Educ., Appeal No. 08-056). However, a party requesting an impartial hearing may not raise issues at the impartial hearing that were not raised in its due process complaint notice unless the other party agrees (20 U.S.C. § 1415[f][3][B]; 34 CFR 300.508[d][3][i], 300.511[d]; 8 NYCRR 200.5[j][1][ii]), or the original due process complaint is amended prior to the impartial hearing per permission given by the IHO at least five days prior to the impartial hearing (20 U.S.C. § 1415[c][2][E][i][II]; 34 CFR 300.508[d][3][ii]; 8 NYCRR 200.5[i][7][b]; B.P. v. New York City Dep't of Educ., 2012 WL 33984, at *4-*5 [E.D.N.Y. Jan. 6, 2012]; M.R. v. S. Orangetown Cent. Sch. Dist., 2011 WL 6307563, at *12-*13 [S.D.N.Y. Dec. 16, 2011]; C.F. v. New York City Dep't of Educ., 2011 WL 5130101, at *12 [Oct. 28, 2011]; C.D. v. Bedford Cent. Sch. Dist., 2011 WL 4914722, at *13 [S.D.N.Y. Sept. 22, 2011]; R.B. v. Dep't of Educ., 2011 WL 4375694, at *6-*7 [S.D.N.Y. Sept. 16, 2011]; M.P.G., 2010 WL 3398256, at *8). Moreover, it is essential that the IHO disclose his or her intention to reach an issue which the parties have not raised as a matter of basic fairness and due process of law (Application of a Child with a Handicapping Condition, Appeal No. 91-40; see John M. v. Bd. of Educ., 502 F.3d 708 [7th Cir. 2007]). Although an IHO has the authority to ask questions of counsel or witnesses for the purposes of clarification or completeness of the hearing record (8 NYCRR 200.5[j][3][vii]), or even inquire as to whether the parties agree that an issue should be addressed, it is impermissible for the IHO to simply expand the scope of the issues raised without the express consent of the parties and then base his or her determination on the issues raised sua sponte (see Dep't of Educ. v. C.B., 2012 WL 220517, at *7-*8 [D.Haw., Jan. 24, 2012] [finding that the administrative hearing officer improperly considered an issue beyond the scope of the parents' due process complaint notice]).

Upon review, I find that the parents' due process complaint notice cannot be reasonably read to include challenges to the January 2012 reevaluation of the student or any of the issues raised for the first time on appeal in the parents' petition as a basis upon which to now conclude

[5] As part of its obligation to reevaluate a student at least once every three years, neither federal nor State regulations require a district to conduct a classroom observation or to complete an updated social history as part of the reevaluation process (see 34 CFR 300.303[b][2]; 8 NYCRR 200.4[b][4]).

that the district failed to offer the student a FAPE for the 2012-13 school year (see Parent Ex. A at pp. 1-2). The hearing record demonstrates that the issues for resolution before the IHO generally included challenges to the appropriateness of the 15:1 special class placement, the composition of the March 2012 CSE, the March 2012 CSE's compliance with procedures, whether the March 2012 CSE adequately considered a 2009 evaluation report, and whether the annual goals and short-term objectives in the March 2012 IEP were sufficient, as well as challenging specific aspects of the assigned school and the district's ability to implement the student's March 2012 IEP at the assigned public school site (see id.). Moreover, a further review of the hearing record shows that the district did not agree to an expansion of the issues in this case, nor did the parents attempt to amend their due process complaint notice (see Tr. pp. 1-208; Dist. Exs. 1-3; Parent Exs. A-L; IHO Exs. I-V).

Where, as here, the parents did not seek the district's agreement to expand the scope of the impartial hearing to include these issues or seek to include these issues in an amended due process complaint notice, I decline to review these issues. To hold otherwise inhibits the development of the hearing record for the IHO's consideration, and renders the IDEA's statutory and regulatory provisions meaningless (see 20 U.S.C. § 1415[f][3][B]; 34 CFR 300.511[d], 300.508[d][3][i]; 8 NYCRR 200.5[j][1][ii]; see also B.P., 2012 WL 33984, at *4-*5 [explaining that "[t]he scope of the inquiry of the IHO, and therefore the SRO . . . , is limited to matters either raised in the . . . impartial hearing request or agreed to by [the opposing party]]"); M.R., 2011 WL 6307563, at *13). "By requiring parties to raise all issues at the lowest administrative level, IDEA 'affords full exploration of technical educational issues, furthers development of a complete factual record and promotes judicial efficiency by giving these agencies the first opportunity to correct shortcomings in their educational programs for disabled children.'" (R.B., 2011 WL 4375694, at *6, quoting Hope v. Cortines, 872 F. Supp. 14, 19 [E.D.N.Y. 1995] and Hoeft v. Tucson Unified Sch. Dist., 967 F.2d 1298, 1303 [9th Cir. 1992]; see C.D., 2011 WL 4914722, at *13 [holding that a transportation issue was not properly preserved for review by the review officer because it was not raised in the party's due process complaint notice]).

Accordingly, the IHO exceeded his jurisdiction by raising and addressing in the decision whether the district was obligated to conduct a classroom observation of the student as part of its January 2012 reevaluation and that finding must be annulled. In addition, the allegations in the parents' petition raised for the first time on appeal are outside the scope of my review, and therefore, these allegations will not be considered (see M.P.G., 2010 WL 3398256, at *8; Snyder, 2009 WL 3246579, at *7; see also Application of a Student with a Disability, Appeal No. 11-042; Application of a Student with a Disability, Appeal No. 11-041; Application of the Dep't of Educ., Appeal No. 11-035; Application of a Student with a Disability, Appeal No. 11-008; Application of a Student with a Disability, Appeal No. 11-002; Application of a Student with a Disability, Appeal No. 10-105; Application of a Student with a Disability, Appeal No. 10-074; Application of a Student with a Disability, Appeal No. 09-112).[6]

[6] To the extent that the Second Circuit has held that issues not included in a due process complaint notice may be ruled on by an administrative hearing officer when the district "opens the door" to such issues with the purpose of defeating a claim that was raised in the due process complaint notice (M.H., 685 F.3d 217, at 250-51; see D.B. v. New York City Dep't of Educ., 2013 WL 4437247, at *6-*7 [S.D.N.Y. Aug. 19, 2013]; N.K. v. New York City Dep't of Educ., 2013 WL 4436528, at *5-*7 [S.D.N.Y. Aug. 13, 2013]; A.M. v. New York City Dep't of Educ., 2013 WL 4056216, at *9-*10 [S.D.N.Y. Aug. 9, 2013]; J.C.S. v. Blind Brook-Rye Union Free Sch. Dist., 2013 WL 3975942, *9 [Aug. 5, 2013]; B.M. v. New York City Dep't of Educ., 2013 WL 1972144, at *5-*6 [S.D.N.Y.

B. Consideration of Evaluative Information

Turning to the issues properly before me in this review, the parents assert that, contrary to the IHO's finding, they did not argue that the March 2012 CSE committed reversible error by failing to adopt a recommendation for the student to attend a small class in a full-time special education program contained within the 2009 evaluation report. Instead, the parents contend that they had argued that the March 2012 CSE failed to properly consider all evaluative material in the development of the student's March 2012 IEP because it did not adequately consider the 2009 evaluation report, which detailed the student's need for a "full time special education school." As a result, the parents allege that the failure to consider the 2009 evaluation report compromised the development of the March 2012 IEP and rose to the level of a denial of a FAPE. However, regardless of the argument asserted by the parents, even if the March 2012 CSE failed to adequately consider the 2009 evaluation report, it did not constitute a violation that rose to the level of a denial of a FAPE.

In developing the recommendations for a student's IEP, a CSE must consider the results of the initial or most recent evaluation; the student's strengths; the concerns of the parents for enhancing the education of their child; the academic, developmental and functional needs of the student, including, as appropriate, the student's performance on any general State or district-wide assessments as well as any special factors as set forth in federal and State regulations (34 CFR 300.324[a]; 8 NYCRR 200.4[d][2]). However, neither the IDEA nor State law requires a CSE to "'consider all potentially relevant evaluations'" of a student in the development of an IEP or to consider "'every single item of data available'" about the student in the development of an IEP (T.G. v. New York City Dep't of Educ., 2013 WL 5178300, at * 18-*19 [S.D.N.Y. Sept. 16, 2013], citing M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *8 [S.D.N.Y. Mar. 21, 2013]; see F.B. v. New York City Dep't of Educ., 2013 WL 592664, at *8 [S.D.N.Y. Feb. 14, 2013]).

In this case, the district school psychologist who attended the March 2012 CSE meeting testified that she did not specifically recall reviewing the 2009 evaluation report at the meeting, but the parents testified that the March 2012 CSE did not discuss it (see Tr. pp. 37-40, 196). However, the district school psychologist further testified that the results of the student's January 2012 reevaluation—as well as information provided by the parents and by the student's then-current biology teacher at Bay Ridge (biology teacher)—formed the basis upon which the March 2012 CSE developed the student's IEP (see Tr. pp. 21, 23-28, 169-70; Dist. Ex. 1 at p. 11; Dist. Ex. 2 at pp. 1-4). According to the parents' testimony, they were familiar with the results of the January 2012 reevaluation, and they admitted that the March 2012 CSE discussed the reevaluation and that they—along with the biology teacher—had the opportunity to express their opinions and concerns at the meeting (see Tr. pp. 169-71).[7] In addition, the district school psychologist testified

May 14, 2013]), the issues raised and addressed sua sponte by the IHO in the decision and the allegations raised in the parents' petition for the first time on appeal were initially raised—if at all during the impartial hearing—by the parents or by counsel for the parents on cross-examination of a district witness or during closing statements (see, e.g., Tr. pp. 31-33, 100-02, 142, 149-51, 200). Here, the district did not initially elicit testimony regarding these issues, and therefore, I find that the district did not "open the door" to these issues under the holding of M.H.

[7] The parents also testified that the March 2012 CSE meeting lasted approximately 1.5 hours (Tr. p. 171).

that the March 2012 CSE directly incorporated the results of the January 2012 reevaluation on the first page of the student's IEP (see Tr. pp. 23-24).

Therefore, while it appears from the hearing record that the March 2012 CSE did not review or consider the 2009 evaluation report at the meeting, the hearing record supports a finding that the district met its obligation to consider the results of the student's most recent evaluation and the parents' concerns expressed at the meeting in the development of the student's March 2012 IEP (compare Dist. Ex. 1 at pp. 1-2, 12, with Dist. Ex. 2 at pp. 2-3). Moreover, the hearing record does not contain sufficient evidence to determine how the failure March 2012 CSE's failure to consider the 2009 evaluation report compromised the development of the student's IEP.[8]

C. 15:1 Special Class Placement

The parents allege that the IHO erred in concluding that the March 2012 CSE's recommendation of a 15:1 special class placement with school health services was appropriate and would allow the student to receive "personalized instruction with sufficient support services," and receive education benefit from that instruction (IHO Decision at pp. 16-17). The district disagrees, and asserts that the IHO properly concluded that the 15:1 special class placement was appropriate to meet the student's needs. An independent review of the hearing record supports the IHO's conclusion.

Initially, a review of the hearing record demonstrates that in formulating the student's IEP, the March 2012 CSE incorporated the results of the January 2012 reevaluation—which included an administration of both the Wechsler Intelligence Scale for Children—Fourth Edition (WISC-IV) and the Woodcock-Johnson III Tests of Achievement (WJ-III ACH) to the student—directly into the March 2012 IEP (compare Dist. Ex. 1 at pp. 1-2, with Dist. Ex. 2 at pp. 1-3). As noted in the March 2012 IEP, the results of the WISC-IV yielded verbal comprehension and working memory standard scores that fell within the average range, and perceptual reasoning and processing speed standard scores that fell within the low average range—indicating to the evaluator that the student's overall cognitive functioning was within the average range (compare Dist. Ex. 1 at p. 1, with Dist. Ex. 2 at pp. 1-2). In addition, the results of the WJ-III ACH—as

[8] Additionally, although a CSE is not required to use its own evaluations in the preparation of an IEP and in the recommendation of an appropriate program for a student, a CSE is not precluded from relying upon privately obtained evaluative information in lieu of conducting its own evaluation (M.H. v. New York City Dept. of Educ., 2011 WL 609880, at *9 [S.D.N.Y. Feb. 16, 2011]; Mackey v. Board of Educ., 373 F. Supp. 2d 292, 299 [S.D.N.Y. 2005]; Application of the Dep't of Educ., Appeal No. 12-165). As part of a CSE's review of a student, a CSE must consider any private evaluation report submitted to it by a parent provided the private evaluation meets the school district's criteria (34 CFR 300.502[c][1]; 8 NYCRR 200.5[g][1][vi][a]). Although a CSE is required to consider reports from privately retained experts, it is not required to adopt their recommendations (see, e.g., G.W. v. Rye City Sch. Dist., 2013 WL 1286154, at *19 [S.D.N.Y. Mar. 29, 2013]; C.H., 2013 WL 1285387, at *15; T.B. v. Haverstraw-Stony Point Cent. Sch. Dist., 2013 WL 1187479, at *15 [S.D.N.Y. Mar. 21, 2013]; Watson v. Kingston City Sch. Dist., 325 F. Supp. 2d 141, 145 [N.D.N.Y. 2004], aff'd, 2005 WL 1791533 [2d Cir. July 25, 2005]; see also Pascoe v. Washingtonville Cent. Sch. Dist., 1998 WL 684583 at *6 [S.D.N.Y. Sept. 29, 1998]; Tucker, 873 F.2d at 567; Application of the Dep't of Educ., Appeal No. 12-165). Thus, even if the March 2012 CSE was required to consider the 2009 evaluation report, the March 2012 CSE's failure to adopt a recommendation contained within the report—regarding either the student's need for a small class or for a full-time special education school—would not, under the circumstances of this case, result in a finding that the district failed to offer the student a FAPE for the 2012-13 school year.

noted in the March 2012 IEP—produced a broad math standard score and a broad reading standard score both within the average range (compare Dist. Ex. 1 at p. 1, with Dist. Ex. 2 at pp. 2-3). Notably, the student's performance on seven out of eight WJ-III subtests fell within the average range: letter-word identification, reading fluency, calculation, math fluency, writing fluency, passage comprehension, and applied problems, and the March 2012 IEP reflected these scores (id.). However, the student performed in the low average range on the WJ-III spelling subtest (compare Dist. Ex. 1 at p. 1, with Dist. Ex. 2 at p. 2). The March 2012 IEP indicated that the student performed within the average range of academic functioning, noting "some delays" in spelling, writing fluency, and reading comprehension skills (Dist. Ex. 1 at p. 1). In addition, the March 2012 IEP further noted that the student's graphomotor skills "fell within age expectancy" (id.).

In addition, the hearing record reveals that in formulating the student's IEP, the March 2012 CSE also obtained and relied upon information about the student from his biology teacher at Bay Ridge, who participated in the meeting (see Tr. pp. 21, 23-28, 169-70; compare Dist. Ex. 1 at p. 1, with Dist. Ex. 1 at pp. 10-12). As noted in the March 2012 IEP, the biology teacher reported the student's performance in class as "inconsistent," and while "lovely to have in class" and doing very well with some topics, the biology teacher also reported that the student "ha[d] trouble picking out important information and details" (Dist. Ex. 1 at p. 1). The March 2012 IEP also reflected, per teacher report, that the student "generally tried very hard," and demonstrated "very good" homework abilities and attendance (id. at p. 2). Additionally, the March 2012 IEP noted that the student's attention span was "average" and that he could become distracted by his peers (id.). In addition, the March 2012 CSE indicated in the IEP that the student "require[d] the benefits of a small classroom environment to obtain the best academic obtainment" (id. at p. 2).

Therefore, given March 2012 CSE's awareness of the student's generally average cognitive and academic skills and his need for a small classroom environment, the hearing record supports the March 2012 CSE's recommendation of a 15:1 special class placement in a community school, as well as the IHO's conclusion that the district offered the student a FAPE (id. at pp. 5, 10). State regulations provide that a 15:1 special class placement is designed to address students "whose special education needs consist primarily of the need for specialized instruction which can best be accomplished in a self-contained setting" (8 NYCRR 200.6[h][4]). In addition, State and federal law "'require that a disabled child be educated in the [LRE]—i.e., with nondisabled peers—to the extent feasible'" (M.R. v. New York City Bd. of Educ., 2013 WL 4834856, at *5 [S.D.N.Y. Aug. 14, 2013], citing B.R. v. New York City Dep't of Educ., 910 F. Supp. 2d 670, 672 [S.D.N.Y. 2012]). In making its placement determination, the March 2012 CSE considered, but ultimately rejected, a general education setting with special education teacher support services (SETSS) and a 12:1+1 special class placement (see Dist. Ex. 1 at p. 10). According to the IEP, the March 2012 CSE rejected a general education setting with SETSS as not sufficiently supportive enough to address the student's academic delays (see id.). Similarly, the March 2012 CSE also considered and rejected a 12:1+1 special class placement in a specialized school as too restrictive given the student's needs (see id.).

Moreover, to address the student's identified areas of academic needs, the March 2012 IEP included annual goals to improve the student's reading comprehension and writing skills (Dist. Ex.

1 at pp. 3-5; see Tr. pp. 44-45).[9] To further support the student within the 15:1 special class placement, the March 2012 IEP also included the following management needs: extended time, refocusing, paraphrasing of information, and the presentation of information in various modalities (see Dist. Ex. 1 at p. 2). Additionally, the testing accommodations provided in the March 2012 IEP included double time for all local and State tests longer than 40 minutes and a separate location or room containing 12 or less students for all local and State exams (see Dist. Ex. 1 at p. 6).[10]

Based upon the evidence in the hearing record, the March 2012 CSE's recommendation of a 15:1 special class placement in a community school, together with the school health services, annual goals, management needs, and testing accommodations, sufficiently address the student's identified needs and would enable the student to receive educational benefits in the LRE.[11]

D. Challenges to the Assigned Public School Site

Finally, the parents contend that the district failed to sustain its burden to establish that the student would have been appropriately placed at the assigned public school site, or that the recommended site would not have provided the student with an opportunity to make progress. The parents also contend that the assigned school was not appropriate because the school and its classrooms were too large, and the students in the observed classroom appeared to have cognitive abilities below the student's own cognitive abilities. The district argues that the IHO properly dismissed the parents' challenges to the assigned public school site as speculative, especially since the student never attended the assigned school. As discussed more fully below, the parents' arguments must be dismissed.

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

[9] Although the IEP does not contain annual goals directly addressing the student's spelling skills, it does contain annual goals related to the student's ability to produce a one-page composition (see Tr. pp. 44-45; Dist. Ex. 1 at pp. 3-5). In this case, the failure to include this single component in the student's IEP does not result in a failure to offer the student a FAPE where, as a whole, the IEP was reasonably calculated to enable the student to receive educational benefits (see Karl v. Bd. of Educ., 736 F.2d 873, 877 [2d Cir. 1984] [finding that although a single component of an IEP may be so deficient as to deny a FAPE, the educational benefits flowing from an IEP must be determined from the combination of offerings rather than the single components viewed apart from the whole]).

[10] The management needs and testing accommodations included in the student's March 2012 IEP reflected similar recommendations contained within the 2009 evaluation report (compare Dist. Ex. 1 at pp. 1, 6, with Parent Ex. E at pp. 25, 27, 29).

[11] To the extent that the parents argue on appeal that the 15:1 special class placement would not provide the student with sufficiently individualized attention or that the class size was too large, these arguments are unavailing, especially since the hearing record indicates that at the time of the impartial hearing, the student attended classes at Bay Ridge with as many as 15 students (see Tr. pp. 100, 109, 119). Furthermore, at the time of the January 2012 reevaluation, the student attended at least one class at Bay Ridge with 25 students (see Dist. Ex. 2 at p. 1).

York City Dep't of Educ., 2012 WL 4891748, at *14-*16 [S.D.N.Y. Oct. 16, 2012]; Ganje v. Depew Union Free Sch. Dist., 2012 WL 5473491, at *15 [W.D.N.Y. Sept. 26, 2012] [finding the parents' pre-implementation arguments that the district would fail to adhere to the IEP were speculative and therefore misplaced], adopted, 2012 WL 5473485 [W.D.N.Y. Nov. 9, 2012]; see also K.L. v. New York City Dep't of Educ., 2013 WL 3814669, at *6 [2d Cir. July 12, 2013]; Reyes v. New York City Dep't of Educ., 2012 WL 6136493, at *7 [S.D.N.Y. Dec. 11, 2012]; R.C. v. Byram Hills Sch. Dist., 906 F. Supp. 2d 256, 273 [S.D.N.Y. 2012] [explaining that "[g]iven the Second Circuit's recent pronouncement that a school district may not rely on evidence that a child would have had a specific teacher or specific aide to support an otherwise deficient IEP, it would be inconsistent to require evidence of the actual classroom in which a student would be placed where the parent rejected an IEP before the student's classroom arrangements were even made]; Peter G. v. Chicago Pub. Sch. Dist. No. 299 Bd. of Educ., 2003 WL 121932, at *19 [N.D. Ill. Jan. 13, 2003] [noting that the court would not speculate regarding the success of the student's services where the parent removed student from the public school before the IEP services were implemented]).

While several district courts have, since R.E. was decided, continued to wrestle with this difficult issue regarding challenges to the implementation of an IEP made before the student begins attending the school and taking services under the IEP (see D.C. v. New York City Dep't of Educ., 2013 WL 1234864, at *11-*16 [S.D.N.Y. Mar. 26, 2013] [holding that the district must establish that it can implement the student's IEP at the assigned school at the time the parent is required to determine whether to accept the IEP or unilaterally place the student]; B.R. v. New York City Dep't of Educ., 910 F.Supp.2d 670, 676-78 [S.D.N.Y. 2012] [same]; E.A.M. v. New York City Dep't of Educ., 2012 WL 4571794, at *11 [S.D.N.Y. Sept. 29, 2012] [holding that parents may prospectively challenge the adequacy of a "placement classroom" when a child has not enrolled in the school because districts are not permitted to assign a child to a public school that cannot satisfy the requirements of an IEP]), I now find it necessary to depart from those cases. Since these prospective implementation cases were decided in the district courts, the Second Circuit has also clarified that, under factual circumstances similar to those in this case, in which the parents have rejected and unilaterally placed the student prior to IEP implementation, "[p]arents are entitled to rely on the IEP for a description of the services that will be provided to their child" (P.K. v. New York City Dep't of Educ. 2013 WL 2158587, at *4 [2d Cir. May 21, 2013]), and, even more clearly that "'[t]he appropriate inquiry is into the nature of the program actually offered in the written plan,' not a retrospective assessment of how that plan would have been executed" (K.L., 2013 WL 3814669, at *6 [rejecting as improper the parents claims related to how the proposed IEP would have been implemented]). Thus, the analysis of the adequacy of an IEP in accordance with R.E. is prospective in nature, but the analysis of the IEP's implementation is retrospective. Therefore, if it becomes clear that the student will not be educated under the proposed IEP, there can be no denial of a FAPE due to the failure to implement the IEP (R.E., 694 F.3d at 186-88; see also Grim, 346 F.3d at 381-82 [holding that the district was not liable for a denial of a FAPE where the challenged IEP was determined to be appropriate, but the parents chose not to avail themselves of the public school program]).[12]

[12] The Second Circuit has also made clear that just because a district is not required to place implementation details such as the particular school site or classroom location on a student's IEP, the district is not permitted to choose any school and provide services that deviate from the provisions set forth in the IEP (see T.Y. v. New

As explained more recently, "[t]he Second Circuit has been clear, however, that where a parent enrolls the child in a private placement before the time that the district would have been obligated to implement the IEP placement, the validity of proposed placement is to be judged on the face of the IEP, rather than from evidence introduced later concerning how the IEP might have been, or allegedly would have been, implemented" (A.M., 2013 WL 4056216, at *13 [S.D.N.Y. Aug. 9, 2013]; see R.B. v. New York City Dep't of Educ., 2013 WL 5438605, at *17 [S.D.N.Y. Sept. 27, 2013]; E.F. v New York City Dept. of Educ., 2013 WL 4495676, at *26 [E.D.N.Y. Aug. 19, 2013]; M.R. v New York City Bd. of Educ., 2013 WL 4834856, at *5 [S.D.N.Y. Aug. 14, 2013] [finding that the argument that the assigned school would not have been able to implement the IEP is "entirely speculative"]; N.K., 2013 WL 4436528, at *9 [citing R.E. and rejecting challenges to placement in a specific classroom because '[t]he appropriate inquiry is into the nature of the program actually offered in the written plan']). In view of the forgoing, the parents cannot prevail on their claims that the district would have failed to implement the IEP at the public school site because a retrospective analysis of how the district would have executed the student's March 2012 IEP at the assigned school is not an appropriate inquiry under the circumstances of this case (R.E., 694 F3d at 186; K.L., 2013 WL 3814669 at *6; R.C., 906 F. Supp. 2d at 273).

In this case, the district timely developed the student's 2012-13 IEP and offered it to the student.[13] It is undisputed that the parents enrolled the student at Bay Ridge prior to the time that the district became obligated to implement the March 2012 IEP (see Parent Exs. C at p. 1; D at p. 1 L) and rejected the IEP before visiting the assigned school (Parent Ex. C at p. 1). As the time for implementation of the student's IEP at the assigned public school site had not yet occurred when the parents rejected the district's offer, the parent's various challenges relating to the assigned school, including the size of the school, as well as the size of the classroom and the functional grouping of the students within the observed classroom, were speculative claims. These were claims regarding the execution of the student's program and the district was not obligated present retrospective evidence to refute them (R.E., 694 F.3d at 186; K.L., 2013 WL 3814669 at *6; R.C., F. Supp. 2d at 273).

York City Dep't of Educ., 584 F.3d 412, 420 [2d Cir. 2009] [district does not have carte blanche to provide services to a child at a school that cannot satisfy the IEP's requirements]). The district has no option but to implement the written IEP and parents are well within their rights to compel a non-compliant district to adhere to the terms of the written plan.

[13] The district offered the student a placement on June 8, 2012 (Dist. Ex. 3). This date was prior to the start of the 10-month school year, and therefore in conformity with State and federal regulations (34 CFR 300.323[a]; 8 NYCRR 200.4[e][1][ii]).

VII. Conclusion

Having determined that the evidence in the hearing record demonstrates that the district sustained its burden to establish that it offered the student a FAPE in the LRE for the 2012-13 school year, the necessary inquiry is at an end and there is no need to reach the issue of whether the student's unilateral placement at Bay Ridge was an appropriate placement (Burlington, 471 U.S. at 370).

THE APPEAL IS DISMISSED.

Dated: Albany, New York
October 10, 2013

JUSTYN P. BATES
STATE REVIEW OFFICER