The University of the State of New York

The State Education Department
State Review Officer
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No. 14-006

Application of a STUDENT WITH A DISABILITY, by her parents, for review of a determination of a hearing officer relating to the provision of educational services by the Manhasset Union Free School District

Appearances:
The Law Office of Steven A. Morelli, PC, attorneys for petitioners, Steven A. Morelli, Esq., of counsel

Frazer & Feldman, LLP, attorneys for respondent, Laura A. Ferrugiari, Esq., of counsel

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner(the parents) appeal from the decision of an impartial hearing officer (IHO) which denied their request to be reimbursed for the cost of private tutoring services for the 2012-13 and 2013-14 school years. 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

The parents referred the student to the district for special education programs and services on January 10, 2012 (Dist. Ex. 44). A CSE meeting convened on March 5, 2012 (Dist. Ex. 38). The March 2012 CSE found the student eligible for special education programs and services as a student with an other health-impairment (id. at p. 3). Pursuant to a letter from the student's doctor, the student was placed on home instruction for the remainder of the 2011-12 school year due to high pollen counts (Tr. pp. 87-88; Dist. Ex. 36). The CSE reconvened on April 18, 2012 to develop an IEP for the remainder of the 2011-12 school year, as well as an IEP for the 2012-13 school year (Tr. pp. 88-89; Dist. Exs. 35; 54). For the 2012-13 school year, the April 2012 CSE recommended placement in a 15:1 special class for one period per day (Dist. Ex. 35 at p. 8). The CSE also recommended a number of program accommodations, including: preferential seating; breaks as needed; additional time to complete assignments; copies of class notes; access to water; being

allowed to chew gum in class; and unrestricted use of the bathroom (id. at pp. 8-9). The April 2012 IEP indicated that the student had a health plan (id. at p. 9). It also provided that missed class time would be made up and indicated that the student's learning lab teacher would coordinate missed instruction (id. at pp. 8, 10).

At the beginning of the 2012-13 school year the student was unable to attend classes (Tr. pp. 115, 122-23, 1498). The CSE convened on September 28, 2012 to discuss the addition of home instruction to the student's IEP (Tr. pp. 147-148; Dist. Ex. 25). The CSE continued to recommend placement in a 15:1 special class for one period per day and added 14 hours per week of 1:1 home instruction as well as four hours per day of individual skilled nursing services (Dist. Ex. 25 at pp. 7-8). The student did not physically attend school for the remainder of the 2012-13 school year, though she did participate in extracurricular activities (Tr. pp. 187-88, 503-08, 853). In addition, in December 2012, the district installed a telepresence at the school so that the student could access her classes from a remote location (Tr. pp. 222-23; Dist. Ex. 19).

The CSE met on May 31, 2013 to develop the student's IEP for the 2013-14 school year (Dist. Ex. 59). The May 2013 CSE continued to find the student eligible for special education programs and services as a student with an other health-impairment, continued the prior recommendations for a 15:1 special class, supplemental home instruction, and skilled nursing services, and added one 42-minute session of individual counseling per week (Dist. Ex. 59 at p. 4, 9). The May 2013 IEP also provided for assistive technology in order to allow the student to attend her classes remotely (id. at pp. 12-13). The May 2013 CSE further recommended that the student receive extended school year services in order to make up for course work and exams missed during the 2012-13 school year and provided for 14 hours per week of 1:1 instruction at the student's home (id. at p. 14).

A. Due Process Complaint Notice

In a due process complaint notice dated March 21, 2013, the parents alleged that the district failed to offer the student a FAPE for the 2012-13 school year (Dist. Ex. 2). The parents alleged that the annual goals included in the September 2012 IEP were "inappropriate, insufficient, and miscalculated," that the IEP did not provide for sufficient social/emotional support, and that the parents were denied an opportunity to participate in the development of the IEP (id. at p. 8). The parents also alleged that the district denied the student access to school, by failing to provide her with "a healthy environment in which she can learn and participate" (id. at pp. 5, 8). They alleged that placement in home instruction isolated the student from her peers, was not in the student's least restrictive environment, and resulted in social/emotional harm to the student (id. at pp. 5-7). The parents further objected to the implementation of home instruction, asserting that the district denied the student access to appropriate instruction and "unreasonably delayed the appointment of home instructors," that the instructors were not competent, and that the student's instruction at home did not follow the same curriculum followed in school (id. at pp. 5, 8-9). The parents also alleged that the district did not employ technology, such as Skype, to allow the student remote access to her classroom and failed to institute and enforce a fragrance free policy at the school (id. at p. 6). Additionally, the parents contended that the district failed to address an incidence of bullying, which resulted in the student being denied participation in one of her after-school activities (id. at pp. 6-7). The parents alleged that the district denied the student access to school facilities and extracurricular activities and failed to provide her with the accommodations stated on her IEP (id. at p. 9). The parents also alleged that the district failed to provide them with a

progress report for the first marking period and fabricated progress reports for the first and second marking periods (id.). The parents alleged that due to the district's failures, they had to hire instructors and fund home instruction for the student (Dist. Ex. 2 at p. 5).

As relief, the parents requested an order: (1) declaring that the student was denied a FAPE; (2) declaring that the parents' arrangement for private home instruction was appropriate; (3) directing that the district reimburse the parents for the cost of private tutoring; (4) directing the district to perform additional mold and HVAC testing and provide a "healthy learning environment"; (5) directing the district to implement and enforce "a no perfume/no cologne/no body sprays/no aerosols/no air fresheners policy"; (6) directing the district to install an air purification system at the school; (7) directing the district to provide technology so the student can have remote access to her classes; and (8) in the event the district cannot provide the student with access to the school, directing the district to locate and fund an appropriate school (Dist. Ex. 2 at pp. 9-10). The parents also requested monetary damages under Section 504 of the Rehabilitation Act of 1973 (Section 504), reimbursement for the cost of psychological therapy, and reimbursement for attorneys' fees and costs of the proceeding (id. at p. 10).

The parents filed a second due process complaint notice dated June 17, 2013, in which the parents alleged that the district failed to offer the student a FAPE for the 2013-14 school year (Dist. Ex. 57). The second due process complaint notice challenged the appropriateness of the May 2013 IEP developed for the 2013-14 school year and repeated the same allegations as those contained in the first due process complaint notice regarding the 2012-13 school year (compare Dist. Ex. 2 at pp. 4-9, with Dist. Ex. 57 at pp. 4-9). A comparison of the two reveals that the only substantive difference was that the parents did not assert a bullying claim with respect to the 2013-14 school year (id.). As relief, the parents requested that the district reimburse them for expenses to be paid for the cost of home instruction for the 2013-14 school year and repeated their other requests from the March 2013 due process complaint notice (Dist. Ex. 57 at pp. 9-10). The IHO consolidated the March 2013 and June 2013 due process complaint notices (Tr. pp. 4-8).

B. Impartial Hearing Officer Decision

The parties proceeded to an impartial hearing on June 27, 2013, which concluded on September 19, 2013, after nine days of proceedings (see Tr. pp. 1-1906). In a decision dated December 4, 2013, the IHO, after making detailed findings of fact, determined that the district offered the student a FAPE for the 2012-13 and 2013-14 school years (IHO Decision).

The IHO identified four issues as the parents' main complaints: (1) that the district did not make it possible for the student to physically access the school, (2) that the district did not provide appropriate technology to allow the student remote access to her classes; (3) that the home instructors provided by the district were not competent; and (4) that the district did not address harassment and bullying (IHO Decision at p. 20). The IHO determined that the district took steps to help the student return to school, including environmental testing and banning certain chemicals identified as irritants by the student's parents (id. at p. 22). The IHO also noted that although the student's diagnosis and physical responses while attending the school are documented, the hearing record contained little information regarding what specific environmental factors triggered the student's response or sufficient evidence that an environmental factor actually caused the student's problems at school (id. at pp. 22-23). The IHO also found "the District made good faith, even extraordinary, efforts to accommodate [the student] through the use of technology" (id. at p. 24).

The IHO determined that the district purchased, installed, and serviced a system for the student's exclusive use so that she could remotely access her classes from home (id. at pp. 23-24). The IHO further determined that the district went out of its way to provide the student with supplemental home instruction when she was unable to attend school (id. at pp. 24-25). The IHO concluded that the student's schedule and the parent's demands were the reasons the student missed some home instruction (id. at p. 25). The IHO also found that the district offered appropriate accommodations and modifications for the student to complete her classes for the 2012-13 school year (id. at pp. 25-26). Regarding the parents' claim that the student was bullied during an after school activity, the IHO found that the school followed its procedures and policies in response to the parents' complaint and did not find sufficient evidence that the incident complained of had occurred (id. at pp. 26-27).[1]

IV. Appeal for State-Level Review

The parents appeal, arguing that the IHO erred in finding that the district offered the student a FAPE for the 2012-13 and 2013-14 school years. Initially, the parents assert that the IHO erred in failing to consider certain facts, including: the effect of construction projects on the school's air quality, the lack of asbestos testing, testimony indicating additional environmental testing should have been performed, conflicting testimony regarding the district's consideration of the parents' request for a fragrance free policy at the school, the student's pediatrician's testimony that a fragrance free environment was medically required for the student, conflicting testimony regarding the difficulties with the technology employed by the district to allow the student to access her classes remotely, the parents requests for a specific technological solution, and evidence that the district failed to provide the student with appropriate home instruction. The parents also allege that the hearing officer did not consider the district's failures in implementing the April 2012 IEP.[2]

Additionally, the parents allege that the district failed to place the student in her least restrictive environment by denying her access to her classes. The parents' assert that the district failed to afford the student reasonable accommodations for the student to physically attend school. Specifically, the parents contend that proper air quality tests and the implementation and enforcement of a fragrance free policy would have allowed the student to attend classes. The parents further allege that the IHO erred in finding that the remote access technology selected by the district was an appropriate system to allow the student remote access to her classroom and contend that it was "rife with glitches and problems." The parents assert that the district did not provide adequate home instruction by providing instructors who were not certified in the

[1] The parents do not appeal from the IHO's determination regarding their claim that the student was the subject of bullying or harassment. Accordingly, the IHO's determination has 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]).

[2] Aside from the allegations that the IHO did not consider specific evidence, which are addressed within the applicable sections below, the parents also contend that the IHO made several procedural and evidentiary rulings, such as disallowing certain evidence and limiting the parents' witnesses testimony, that were prejudicial to the parents; however, the parents do not request any specific relief regarding those allegations (Pet. ¶56). State regulations require that an IHO "exclude evidence that he or she determines to be irrelevant, immaterial, unreliable, or unduly repetitious," and moreover, empower an IHO with the discretion to "limit examination of a witness by either party whose testimony the [IHO] determines to be irrelevant, immaterial or unduly repetitious" (8 NYCRR 200.5[j][3][xii][c]-[d]). There is nothing to suggest that the IHO overstepped her discretion in the exclusion of evidence or testimony or in the conduct of the hearing.

appropriate areas and by failing to provide instructors for portions of the school year. Lastly, the parents allege that they were denied the opportunity to participate in the development of the student's May 2013 IEP and that the CSE's recommendation for home instruction was inappropriate. As relief, the parents request reimbursement for the cost of private tutors and other educational expenses for the 2012-13 and 2013-14 school years, along with additional environmental testing, cleaning of the school building, a fragrance-free school environment, and video conferencing technology for the student to access her classes remotely.[3]

The district answers, denying the parents' material assertions and arguing that the IHO correctly concluded that the district offered the student a FAPE for the 2012-13 and 2013-14 school years. The district further contends that the parents impeded the district's efforts to provide the student with home instruction and to repair the problems with V-Go, and based on the parents' actions, equitable considerations should weigh against granting the parents any relief.

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.,

[3] Although the parents did not make any specific allegations related to their claims under Section 504 in their petition, they continue to seek monetary damages from the district based on their Section 504 claims. However, the State Education Law makes no provision for State-level administrative review by an SRO of IHO decisions with regard to section 504 (Educ. Law § 4404[2] [providing that SROs review IHO determinations "relating to the determination of the nature of a child's handicapping condition, selection of an appropriate special education program or service and the failure to provide such program"]). Therefore, an SRO has no jurisdiction to review any portion of the parents' claims regarding section 504 or the IHO's findings, or lack thereof (see A.M. v. New York City Dep't of Educ., 840 F. Supp. 2d 660, 672 n.17 [E.D.N.Y. 2012] ["Under New York State education law, the SRO's jurisdiction is limited to matters arising under the IDEA or its state counterpart"]; see also D.C. v. New York City Dep't of Educ., 950 F. Supp. 2d 494, 507 [S.D.N.Y. 2013]).

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]; 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. 2012-13 School Year

1. Implementation of the April 2012 IEP

The parents allege that the district failed to implement the April 2012 IEP and contend that the district: (1) failed to provide a nurse during the school day; (2) failed to provide a nurse who was familiar with the administration of oxygen; (3) failed to provide the student's teachers with a copy of the student's IEP prior to the beginning of the school year; (4) improperly disciplined the student for leaving the classroom to receive oxygen; (5) failed to provide the student with preferential seating; (6) failed to provide the student with missed instruction;[4] and (7) failed to provide the student with copies of her class notes.

Initially, the parents' arguments related to the implementation of the nursing services recommended in the student's IEP are outside the permissible scope of review as they are raised for the first time on appeal and 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 or the original due process complaint is amended prior to the impartial hearing per

[4] The parent's main concern was the amount of instruction time the student was missing at the beginning of the school year (Tr. pp. 794; see Parent Ex. 46); however, as the student was unable to attend school and as home instruction was added to the student's IEP in September 2012 (Dist. Ex. 25 at pp. 2, 7), this claim is related to the parents' contention that the district did not provide appropriate home instruction and is addressed along with the parents other claims regarding the provision of home instruction.

permission given by the IHO at least five days prior to the impartial hearing (20 U.S.C. § 1415[c][2][E][i][II], [f][3][B]; 34 CFR 300.508[d][3][i], [ii]; 300.511[d]; 8 NYCRR 200.5[i][7][b], [j][1][ii]; see B.M. v New York City Dep't of Educ., 569 Fed. App'x 57, 59 [2d Cir. 2014]; N.K. v. New York City Dep't of Educ., 961 F. Supp. 2d 577, 584-586 [S.D.N.Y. 2013]; C.H. v. Goshen Cent. Sch. Dist., 2013 WL 1285387, at *9 [S.D.N.Y. Mar. 28, 2013]). Even if these claims were properly before me, the evidence does not support the parents' claims as the hearing record reflects that the student received nursing services when she was at school and at all school based extracurricular activities in accordance with her IEP (Tr. pp. 115-122, 1633-1634).

Additionally, the hearing record does not support the parents' other contentions. The parents solely rely on e-mail correspondence between the parents and district staff regarding the first five days of the 2012-13 school year (Dist. Ex. 46); however, those e-mails do not establish that the district deviated from substantial or significant provisions of the April 2012 IEP in a material way (see A.P. v. Woodstock Bd. of Educ., 370 Fed. App'x 202, 205 [2d Cir. 2010]; V.M. v. North Colonic Cent. Sch. Dist., 954 F. Supp. 2d 102, 118-19 [N.D.N.Y. 2013]; D.D-S. v. Southold Union Free Sch. Dist., 2011 WL 3919040, at *13 [E.D.N.Y. Sept. 2, 2011], aff'd, 506 Fed. App'x 80 [2d Cir. 2012]). While the parents alleged that the district failed to provide the student's teachers with a copy of the student's IEP, the e-mail correspondence indicates that the district's director of special education responded to the parents' allegation and informed the student's mother that all of the student's teachers had access to the student's IEP, were each handed a hard copy of the IEP, and that the district school psychologist reviewed the student's IEP with each of her teachers (Parent Ex. 46 at p. 5). Additionally, although the parents alleged that the district improperly disciplined the student for leaving the classroom to receive oxygen, there is no indication that the student was disciplined and when questioned about the alleged incident the student's teacher testified that he merely asked the student where she had went when she left the classroom (Tr. p. 1676). Further, regarding the allegation that the student did not receive copies of her class notes, the hearing record indicates that the student's teachers provided her with copies of class notes throughout the school year and that the director of special education promptly responded to the parent's complaints to ensure that the student received copies of class notes as recommended in the April 2012 IEP (Tr. pp. 801, 804-05, 1146-1147; Parent Ex. 46 at p. 9).[5]

2. Least Restrictive Environment

The parents assert that the district did not take reasonable steps to provide the student with instruction in her LRE. Specifically, the parents allege that the district did not conduct proper air testing or adopt a fragrance free policy, which they contend would have allowed the student to access her classes rather than having to spend the majority of the school year receiving home instruction.

[5] The student's learning lab teacher emailed the student's teachers on a daily basis, collected notes and handouts, and left class notes for the parents to collect (Tr. pp. 1148, 1434-1435, 1437-1439, 1459-1460, 1678-1679). Although the student's English teacher did not provide class notes, he sent the parents an e-mail explaining that he did not typically provide instruction for which the students were expected to take notes and that he provided the student with all reading assignments, question sheets, and vocabulary sheets required for his class (Tr. pp. 1462-1463; Parent Ex. 31 at p. 2). Additionally, the teaching assistant assigned to the student took supplemental notes for the student when the student was unable to attend class physically or via telepresence (Tr. pp. 1146-1147).

The IDEA requires that a student's recommended program must be provided in the 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 111; Gagliardo, 489 F.3d at 105; Walczak, 142 F.3d at 132; Patskin, 583 F. Supp. 2d at 428). In determining an appropriate placement in the LRE, the IDEA requires that students with disabilities be educated to the maximum extent appropriate with students who are not disabled and that special classes, separate schooling or other removal of students with disabilities from the general educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (20 U.S.C. § 1412[a][5][A]; see 34 CFR 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.6[a][1]; Newington, 546 F.3d at 112, 120-21; Oberti, 995 F.2d at 1215; J.S. v. North Colonie Cent. Sch. Dist., 586 F. Supp. 2d 74, 82 [N.D.N.Y. 2008]; Patskin, 583 F. Supp. 2d at 430; Watson v. Kingston City Sch. Dist., 325 F. Supp. 2d 141, 144 [N.D.N.Y. 2004]; Mavis v. Sobel, 839 F. Supp. 968, 982 [N.D.N.Y. 1993]).

In this instance, the April 2012 CSE recommended that the student be placed in her home public school and attend general education classes, except for one period per day the district recommended that the student attend a 15:1 special class for learning lab (Dist. Exs. 35 at pp. 8, 13; 54 at pp. 8, 13). After the student missed significant time during the first week of school, the district arranged for home instruction to make up for missed class time (Tr. pp. 142-45). The CSE met on September 28, 2012 to discuss the addition of home instruction to the student's IEP (Tr. pp. 147-148; Dist. Ex. 25). The September 2012 CSE recommended 14 hours per week of 1:1 home instruction, but expected that the student would continue to attend classes (Dist. Ex. 25 at pp. 2, 7). The CSE also discussed the possibility of adding assistive technology to allow the student access to her classes remotely (id. at p. 2). Although the CSE never recommended home instruction exclusively (see Dist. Exs. 25; 35), during the 2012-13 school year, with the exception of a few days in September 2012, the student did not attend classes and primarily received home instruction (Tr. p. 853).

At the core of the parents' LRE claim is whether the district took reasonable steps to ensure that the student was able to attend general education classes—particularly whether the district should have conducted further environmental testing or provided the student with a fragrance free environment. While one of the factors to consider in determining if a district has met its LRE obligations is "whether the school district has made reasonable efforts to accommodate the child in a regular classroom" (Oberti, 995 F.2d at 1215), it is unclear whether these efforts must extend to district policies and procedures, or if the reasonableness of a district's efforts are to be evaluated with respect to any supplementary aids and services provided by the district within the general education environment to afford the student access thereto (see 20 U.S.C. § 1412[a][5][A]; see also T.M. ex rel. A.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 161 [2d Cir. 2014]). Nevertheless, in this instance, the district made reasonable efforts to provide the student with the opportunity to attend and participate in general education classes.

Initially, as noted by the IHO, the precise nature of the student's disability and her related needs is in question, as there is little information in the hearing record indicating what, if any, environmental factors triggered the student's episodes while at school (IHO Decision at p. 22). Although the student's pediatrician sent a letter to the district indicating specific brands of fragrances as problematic for the student (Dist. Ex. 23 at p. 16), the pediatrician testified that her information regarding triggers for the student's condition was based on information reported by the student and her mother and not on any medical testing or evaluation (Tr. pp. 1315-17, 1327-

28, 1345-46, 1349-50).[6] Additionally, the hearing record does not indicate that all fragrances were a trigger for the student. For example, the district provided the student with a self-contained room in the school building that was air conditioned, fully cleaned, and equipped with the same air filter the student used at home (Tr. pp. 211-212, 218, 722-723, 752-753); however, the student still experienced problems (Tr. 1193-1194). Additionally, although the student did not attend classes, the student participated in activities and events without incident at a variety of different locations which were not fragrance free environments (Tr. pp. 921-23, 930-31, 939-41,946-48, 969, 1357-58, 1534, 1538, 1555).

The parents testified that it was not plausible for them to have the student tested for specific triggers (Tr. pp. 821, 906), but nonetheless requested that the district conduct environmental testing of the school and implement a "fragrance free" policy (Dist. Exs. 26-27). In response to the parents' request, the district conducted environmental testing and implemented a limited "fragrance free" policy (Dist. Exs. 23-24).

a. Environmental Testing

The parent hand-delivered a letter to the September 2012 CSE requesting that the district conduct environmental testing at the student's school and install an air purification system throughout the school (Tr. pp. 181, 197; Dist. Ex. 26). In response, the district had an independent contractor perform environmental testing in October 2012 (Tr. pp. 197-98; Dist. Ex. 24).

The IHO found that based on the October 2012 air quality report, there was no indication that unacceptable levels of mold or any other toxins existed at the school (IHO Decision at pp. 10-11, 22). On appeal, the parents contend that the IHO overlooked that the school underwent construction during the 2012 summer; however, the IHO expressly found that the construction work at the school was checked for environmental concerns (id. at p. 11). Additionally, as noted by the IHO, the parents' own environmental expert testified that in her experience if the school had a demonstrable mold condition, it is likely that other students would have reported problems (Tr. pp. 1243-44). In addition, given that the parents testified that testing the student for all possible triggers was implausible (Tr. pp. 821, 906), it is unclear how additional or further environmental testing, not focused on identified triggers, would afford the student access to the school. Accordingly, a review of the hearing record supports the IHO's determinations that the environmental testing that was conducted by the district constituted a reasonable effort to provide the student with access to general education in the LRE.

b. Fragrance Policy

The parents also assert that the district was unreasonable in its efforts to provide the student with access to general education in the LRE because it did not enact a complete ban on fragrances and did not effectively enforce its limited ban on fragrances. However, the hearing record does not support the parents' contentions, as the district banned those products specifically identified by the student's pediatrician as problematic for the student and the district took significant steps to ensure compliance with the limited ban.

[6] While the parents testified that the student was treated by a medical specialist, only the student's pediatrician testified at the hearing (Tr. pp. 821-22).

At the request of the parents, the district prohibited students and school staff from using two brands of fragrances on school property (see Dist. Ex. 23). The student's pediatrician identified the banned brands as being problematic for the student in a letter to the district dated July 2, 2012 (Dist. Ex. 23 at p. 16). The district adopted a formal policy in October 2012 (Dist. Ex. 23 pp. 3-6); however, the ban was announced in the beginning of the 2012-13 academic school year prior to the adoption of the formal policy (Tr. pp. 559-60, 589; Dist. Ex. 23 at p. 9). In order to ensure compliance with the policy, the district announced the policy to the school during school assemblies, placed notices of the policy throughout the school, and sent a letter home explaining the policy to the parents of all of the students (Tr. pp. 560, 564-66, 589-90; Dist. Ex. 23 at p. 7)

The district did not consider a total fragrance free policy to be necessary based on the pediatrician's letter, which indicated that "it would be in [the student's] best interests if the school district would consider a no fragrance/no cologne policy" (Tr. pp. 1259-61, 1264-77, 1280, 1287; Dist. Ex. 23 at p. 16). The parents assert that the IHO omitted the pediatrician's opinion that the student required a fragrance free environment from her decision (Tr. p. 1328-29); however, upon review, the IHO analyzed the pediatrician's testimony and the lack of other evidence regarding specific triggers for the student's episodes in determining that there was insufficient evidence to find that the student required a fragrance free environment (IHO Decision at pp. 21-23). Considering the pediatrician's testimony that she was not an expert in the student's condition, never had any other patients with it, had not done independent research into it in a long time, and did not know what the student's triggers were other than as they were reported to her by the student's parents (1315-17, 1330, 1335-36, 1339, 1347-48), the IHO was justified in not accepting the pediatrician's opinion as to the student requiring a fragrance free environment.

c. Assistive Technology

In addition to the environmental testing and the limited fragrance free policy designed to make the school more accessible for the student, the district provided the student with remote access to her classes via an assistive technology device as an alternative to having the student physically attend classes (Tr. pp. 978-81). However, the parents allege that the technology employed by the district was not suitable due to problems with sound, picture, and connectivity. The district contends, and the IHO found, that the district promptly responded to all of the student's complaints regarding the technology and that the issues with the technology were due in part to the student using the equipment improperly (IHO Decision at pp. 23-24).

According to the hearing record, the district investigated technological solutions; the parent, student, and district staff viewed multiple demonstrations of the technology investigated by the district; and the district purchased and had the technology installed for the student's use by the beginning of December 2012 (Tr. pp. 208, 222-23, 471, 484-85, 994-95; Dist. Ex. 19).[7] The district initially provided the student with a self-contained, air-conditioned office, equipped with an air purifier, for the use of the technology (Tr. pp. 207-208, 211). The student testified that the

[7] The parents requested a specific technology to allow the student remote access to her classes via teleconference (Tr. pp. 100-03, 151, 179-80, 926; Parent Ex. 47) and assert that the IHO erred in not referencing the parents' requests. However, as noted by the IHO, "a school district does not fail to provide a child with a FAPE simply because it employs one assistive technology over another, so long as the technology employed is reasonably calculated to permit the child to receive educational benefits" (H.C. v. Katonah-Lewisboro Union Free Sch. Dist., 528 F. App'x 64, 67 [2d Cir. 2013]).

technology was moved from the self-contained room at the school to her home because she continued to have to go to the nurse's office due to the school environment (Tr. p. 1509). The district set up the technology at the student's home so that the student could virtually attend classes from home (Tr. pp. 231-232, 1076-1077, 1193-1194). The district also hired a teaching assistant, whose main function was to transport the remote access technology from classroom to classroom and to assist the student by reporting issues with the technology to staff and by providing the student with class handouts and other materials so the student could follow along in her classes (Tr. pp. 1140, 1146, 1149).

Although the remote access technology presented technical problems, district staff promptly responded to and addressed those issues as they came up (Tr. pp. 267-68, 1143-44, 1527; see Dist. Ex. 10). District staff also set up a direct line so the student could communicate her problems quickly and receive immediate technical support and developed a best practices guide for the use of the technology (Tr. pp. 1001-03, 1041-42, 1052-53). Additionally, the district attempted to send its coordinator of technology to the parents' home to observe the technology in use in order to identify the issues the student was having with the technology, but the parents did not allow the district to observe the technology in use (Tr. pp. 1095-96; Parent Ex. 48 at pp. 10-12).[8] Under these circumstances, although the technology employed by the school district continued to experience problems and was certainly not perfect, the district continued to work towards addressing the issues and the technology was suitable for its intended purpose in that it was reasonably calculated to provide the student with remote access to her classes (see H.C. v. v. Katonah-Lewisboro Union Free Sch. Dist., 528 F. App'x 64, 67 [2d Cir. 2013]; E.F. v. New York City Dep't of Educ., 2013 WL 4495676, at *20 [E.D.N.Y. August 19, 2013] [failure to provide assistive technology is only a denial of FAPE if the student could not obtain a meaningful benefit without such technology]).

3. Home Instruction

The parents claim that the district failed to provide appropriate home instruction and ask for reimbursement for the costs of private tutors and other related education expenses. However, upon review of the hearing record, the services provided by the district were appropriate under the circumstances.

Initially, it should be noted that home instruction was recommended in addition to having the student physically attend classes and was intended to supplement classroom instruction (Tr. pp. 147-148; Dist. Ex. 25 at p. 2). Although the student was absent from school from March 2012 through the end of the 2011-12 school year, the student's absences were mostly attributable to spring pollen (Tr. pp. 87-88, 783-84, 1479; Dist. Ex. 36). As of September 2012, the student had not previously been absent for extended periods in the beginning of the school year and the district had expected the student to be able to physically attend classes (Tr. pp. 122-23, 125-26, 453, 457-58; Dist. Ex. 25 at p. 2).[9] After the district director of special education learned that the student

[8] The parents explained in an e-mail that their interpretation of a confidentiality agreement regarding the use of the technology prohibited district staff from observing the technology while the student was receiving instruction (Parent Ex. 48 at p. 10-12). A copy of the confidentiality agreement is not included in the hearing record.

[9] According to the student's parents, the student has not physically attended school for a full year going back to the 2008-09 school year (Tr. p. 967); however, the time missed was generally due to seasonal allergies in the spring (Tr. pp. 58-59).

missed significant class time, she began arranging for home instruction (Tr. pp. 122-23, 361-65, 458-59). The district set up a schedule for home instruction as of September 11, 2012 and communicated with the parents to arrange for instructors (see Dist. Ex. 28). The parent testified that the district did not set up home instruction for the student until the end of September or beginning of October (Tr. p. 804; Parent Ex. 4 at pp. 1-2). However, the hearing record indicates that the district provided instructors in all subject areas except for physical education by September 24, 2012, but the parents rejected the instructors for Spanish, English, and science (Dist. Ex. 28 at pp. 1-2; Parent Ex. 42 at pp. 1-2).[10]

The parents contend that the IHO did not consider all of the evidence presented regarding the qualifications of the instructors provided by the district. However, the IHO made extensive findings of fact regarding the provision of home instruction to the student, which are supported by the hearing record. The parents testified that most of the student's tutors were certified, but some were not certified in the subject area in which they were providing instruction (Tr. pp. 873-74). For example, on appeal the parents assert that the IHO erred in not considering that one of the student's English instructors was only certified in special education (Pet. ¶ 19); however, the IHO noted (IHO Decision at p. 15) that in hiring this instructor the district was acquiescing to the parents request to have the prior instructor removed and replaced with this one (Tr. pp. 1780-82).[11] During the 2012-13 school year, the student received home instruction from at least 15 different instructors, some of whom taught multiple subject areas (Parent Ex. 4 at pp. 1-2). The parents found fault with most of the instructors provided by the district for various reasons (Tr. pp. 277-78, 289-92, 315-16, 1207-08; Dist. Ex. 28 at p. 1). Under these circumstances, the hearing record supports the IHO's determination that the district worked with the parents to provide adequate home instruction, but it was "next to impossible to satisfy [the student's] schedule and her mother's demands" (IHO Decision at pp. 24-25). In implementing a student's IEP, school districts have discretion to assign qualified staff to students and need not acquiesce to a parent's request for a particular teacher (Slama v. Independent Sch. Dist. No. 2580, 259 F. Supp. 2d 880, 884-85 [D. Minn. 2003]). In this instance, the district provided multiple qualified personnel in each of the student's subject areas; while the parents were free to reject those instructors, they cannot expect the district to provide multiple replacements on a continual basis without any limitation.

B. 2013-14 School Year

The parents' due process complaint notice regarding the 2013-14 school year primarily challenges the implementation of the student's May 2013 IEP; specifically, the expectation that the student would continue receiving home instruction (Dist. Ex. 57 at pp. 7-9). The May 2013 IEP continued to recommend placement in a 15:1 special class for one period per day in the student's home public school along with 14 hours per week of 1:1 home instruction to make up for missed

[10] The student received home instruction in physical education beginning November 28, 2012 and was provided additional time to make up for time lost at the beginning of the year (Tr. pp. 1134-37).

[11] It should also be noted that during the period in time the student was receiving home instruction in English from this home instructor, the student was also attending her general education English class via remote access and the parents communicated via e-mail with the student's English teacher regarding the student's work and assignments (see Dist. Ex. 16). Accordingly, based on the instructor's certification in special education she had the appropriate qualifications to implement home instruction as a supplement to the student attending general education classes as was recommended in the student's IEP (see Ganje v. Depew Union Free Sch. Dist., 2012 WL 5473491, at *11 [W.D.N.Y. Sept. 26, 2012] [the appropriate inquiry is "whether the staff is able to implement the IEP"]).

class time (Dist. Ex. 59 at pp. 2, 9, 17). To the extent that the parents assert claims regarding the implementation of the May 2013 IEP, those claims were speculative as the parents filed their due process complaint notice prior to the start of the 2013-14 school year and the district had not yet had the opportunity to implement the May 2013 IEP (see Dist. Exs. 57; 59).[12] Accordingly, as determined by the IHO, those issues are outside of the scope of the impartial hearing and would more properly be the subject of a later proceeding (Tr. pp. 1814-15; see F.L. v. New York City Dep't of Educ., 553 F. App'x 2, 9 [2d Cir. 2014]).

The parents' due process complaint notice also included allegations regarding the parents' participation in the development of the May 2013 IEP, the annual goals contained in the IEP, and the level of social/emotional support available (Dist. Ex. 57 at pp. 8-9); however, on appeal, the parents have limited the aforesaid claims to those regarding parental participation (Pet. ¶¶49-54).[13] Upon review of the hearing record, the parents were afforded the opportunity to participate in the development of the May 2013 IEP.

Participants at the May 2013 CSE meeting included the student, the parents, the parents attorneys, the school district attorney, the district director of special education, a district school psychologist, a district school counselor, the student's special education teacher, a general education teacher, the technician who worked with the student's remote access technology, and a school nurse (Dist. Ex. R 59 p. 1). The parents and the district tape recorded the CSE meeting (Tr. p. 1804; Dist, Ex, 59 at p. 1). The CSE discussed the student's annual goals for the 2013-14 school year, including the student's social/emotional status and goals to address the student's self-esteem (Tr. pp. 1736-44; Dist. Ex. 59 at p. 2). The CSE also discussed alternative placement options, including a virtual online school offered by a board of cooperative educational services (Tr. p. 1758, 1760-66). The CSE discussed a summer program for the student so the student could make up work she had missed during the 2012-13 school year (Tr. pp. 1748-55).

The parents concede that the CSE discussed counseling services and goals during the May 2013 CSE meeting, but allege that the parents were denied an opportunity to participate in the development of the May 2013 IEP because the goals were not drafted until after the meeting and the parents did not have an opportunity to review them until they received the May 2013 IEP in the mail (Tr. p. 1869, 1872-73).[14] With regard to the parents claim that the district deprived them of an opportunity to participate in the development of the annual goals based on when they were drafted, the parents' claim is without merit as "there is no 'requirement in the IDEA or case law that the IEP's statement of goals be typed up at the CSE meeting itself, or that parents or teachers have the opportunity to actually draft the goals by hand or on the computer themselves, or that the goals be seen on paper by any of the CSE members at the meeting'" (E.A.M. v. New York City Dep't of Educ., 2012 WL 4571794, at *8 [S.D.N.Y Sept. 29, 2012], quoting S.F. v. New York City

[12] The district director of special education testified that she expected the student would physically attend school in September 2013, but that the district needed to have contingencies in place in case the student was not able to do so (Tr. p. 1756-57, 1768).

[13] In order to address the student's social/emotional needs, the May 2013 CSE recommended one 42-minute session of counseling per week (Dist. Ex. 59 at p. 9). The parent testified that she agreed with the CSE's recommendation for counseling (Tr. p. 1892-93).

[14] The district sent the parents prior written notice along with a copy of the finalized May 2013 IEP in June 2013, prior to the start of the 2013-14 school year (Tr. p. 1869-70; Dist. Exs. 58; 59).

Dep't of Educ., 2011 WL 5419847, at *11 [S.D.N.Y. Nov. 9, 2011]). Additionally, the parents' objections to the social/emotional annual goals relate to the extent to which the student would have been afforded the opportunity to socialize with her peers; however, the parents concede that the CSE discussed group counseling and determined it was not appropriate (Tr. pp. 1872-73). Under these circumstances, the hearing record indicates that the parents fully participated in the May 2013 CSE meeting. The parents' disagreement with the CSE's ultimate decisions does not mean that the parents were denied participation in the development of the May 2013 (see DiRocco v. Bd. of Educ., 2013 WL 25959, at *18-*20 [S.D.N.Y. Jan. 2, 2013]; P.K. v. Bedford Cent. Sch. Dist., 569 F. Supp. 2d 371, 383 [S.D.N.Y. 2008]; Sch. For Language and Commc'n Development v. New York State Dep't of Educ., 2006 WL 2792754, at *7 [E.D.N.Y. Sept. 26, 2006]).

VII. Conclusion

I find that the hearing record supports the IHO's determinations that the district offered the student a FAPE for the 2012-13 and 2013-14 school years. Having determined that the district offered the student a FAPE, it is not necessary to reach the parents' claim that they should be reimbursed for private tutoring services they obtained for their daughter during those school years (see generally M.C. v. Voluntown, 226 F.3d 60, 66 [2d Cir. 2000]; Walczak, 142 F.3d at 134).[15]

I have considered the parties' remaining contentions and find them to be without merit.

THE APPEAL IS DISMISSED

Dated: **Albany, New York**
April 24, 2015

CAROL H. HAUGE
STATE REVIEW OFFICER

[15] If I were to reach the issue of whether the parent's provision of private tutoring services during the 2012-13 school year were appropriate, there is no basis in the hearing record (nor have the parents' provided any reason in their petition) to depart from the IHO's determination that the parents' did not present sufficient evidence to establish that they obtained appropriate tutoring services for the student or the cost of such services (IHO Decision at p. 19).