The University of the State of New York

The State Education Department
State Review Officer
www.sro.nysed.gov

No. 14-105

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

Appearances:
Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for petitioner, Lisa R. Khandhar, Esq., of counsel

Susan Luger Associates, Inc., Special Education Advocates for respondents, Lawrence D. Weinberg, Esq., of counsel

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the district) appeals from the decision of an impartial hearing officer (IHO) which found that it failed to offer an appropriate educational program to respondents' (the parents') son and ordered it to reimburse the parents for the costs of the student's tuition at the York Preparatory School (York Prep) for the 2013-14 school year. As explained more fully below, the matter must be remanded to the IHO for further administrative proceedings.

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 June 12, 2013, the CSE convened to conduct the student's annual review and to develop an IEP for the 2013-14 school year (see Dist. Ex. 3 at pp. 1, 14). Finding that the student remained eligible for special education and related services as a student with learning disability, the June 2013 CSE recommended integrated co-teaching (ICT) services in a general education setting for instruction in mathematics, English language arts (ELA), social studies, and sciences; and special

education teacher support services (SETSS) in a community school (see id. at pp. 9-10, 13-14).[1] The June 2013 CSE also recommended related services consisting of one 40-minute session per week of counseling in a small group and one 40-minute session per week of individual counseling (see id. at pp. 10, 14). In addition, the June 2013 CSE created annual goals to address the student's needs and recommended testing accommodations (see id. at pp. 4-9, 11-12). The June 2013 CSE also developed a coordinated set of transition activities (id. at pp. 4, 12-13).

By final notice of recommendation (FNR) dated July 31, 2013, the district summarized the special education and related services recommended in the June 2013 IEP, and identified the particular public school site to which the district assigned the student to attend for the 2013-14 school year (see Dist. Ex. 4).

A. Due Process Complaint Notice

By due process complaint notice dated September 16, 2013, the parents alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2013-14 school year (see Parent Ex. A at pp. 1-6). In particular, the parents asserted that the June 2013 CSE ignored concerns expressed at the meeting, which deprived them of the opportunity to meaningfully participate (id. at p. 2). The parents further asserted that the June 2013 CSE was not properly composed due to the absence of a regular education teacher (id.). The parents alleged that the June 2013 CSE failed to conduct adequate and appropriate evaluations of the student, and failed to collect adequate and appropriate information upon which to base its recommendation (id.). The parents asserted that the June 2013 CSE did not provide the parents with reports prior to the meeting and failed to provide those CSE members participating via telephone with any reports during the June 2013 CSE meeting (id.).

With respect to the June 2013 IEP, the parents asserted that the June 2013 CSE did not develop "[m]any" of the annual goals at the meeting, which deprived them of the opportunity to meaningfully participate in the development of the annual goals (see Parent Ex. A at p. 3). In addition, the parents alleged that the June 2013 CSE relied upon a "set of generic pre-written" annual goals, "[m]any" of the annual goals were not measurable, and the annual goals failed to include "baselines and target grade levels of performance" (id.). Finally, the parent contended that the annual goals in the June 2013 IEP used the same "'criteria"" and "'method"" although the annual goals were for "very different deficit areas" (id.).

Next, the parents alleged that the June 2013 IEP failed to sufficiently or adequately identify the student's present levels of functional performance and did not include annual goals to address the student's identified needs (see Parent Ex. A at p. 3). The parents also alleged that the June 2013 IEP—including the statement of annual goals, academic performance, and management needs—did not meet all of the student's unique academic needs (id.). In addition, the parents indicated that the June 2013 IEP—including the statement of annual goals, social/emotional performance, (behavior) and management needs—did not address all of the student's unique social/emotional and behavioral needs (id.).

[1] The student's eligibility for special education programs 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]).

The parents also asserted that the June 2013 CSE failed to recommend an appropriate "program," and the evaluative information relied upon by the June 2013 CSE did not support the "proposed recommendation" (Parent Ex. A at p. 3). In addition, the parents contended that the June 2013 CSE could not provide "information" about the program, the "class size and the student to teacher ratio" were "too large" for the student, and the student would not have sufficient opportunity for "1:1 instruction or attention" (id. at pp. 3-4). The parents also alleged that the recommended "program" did not offer "adequate or appropriate instruction, supports, supervision or services" to meet the student's "unique needs" (id. at p. 3). The parents asserted that the district failed to provide prior written notice in accordance with applicable regulations and did not provide a proper or timely FNR (id. at p. 4).

In addition, the parents asserted that the June 2013 CSE provided the student with a "poor transition plan" (Parent Ex. A at p. 5). The parents alleged that the June 2013 CSE did not prepare the transition plan or the transition goals at the CSE meeting, which denied the parents "input" into the development of the same (id.) The parents also asserted that the June 2013 failed to perform assessments with "more than one method (formal and informal) and with more than one person as per the IDEA" (id.). In addition, the parents indicated that the June 2013 CSE failed to conduct an "ongoing process of collecting data on the student's needs, preferences, and interests as per IDEA" (id.). Next the parents alleged that the June 2013 CSE failed to perform assessments in "environments that resemble actual vocational training, employment, independent living, or community environments" (id. at p. 6). Finally, the parents contended that the transition goals were not "measurable post-secondary goals based on age appropriate transition assessments" and the "short term goals failed to lead toward the postsecondary goals based on more than one assessment" (id.).

With respect to the assigned public school site, the parents alleged that no openings for new students in [tenth] grade" (Parent Ex. A at p. 4). The parents also asserted that they could not "place the student in a program" they had not visited or observed, which deprived them of their right to participate in the "placement" of the student (id.). In addition, the parents alleged "upon information and belief" that the assigned public school site could not implement the student's June 2013 IEP, and the student would not be appropriately functionally grouped in the "proposed classroom" (id. at pp. 4-5). The parents further alleged "upon information and belief" that the "class size and the student to teacher ratio [were] too large for [the student] to benefit educationally," the assigned public school site could not provide sufficient opportunities for 1:1 instruction or attention," and the assigned public school site did not use appropriate "teaching methodologies" proven to be "successful for the student" (id. at p. 5).

With respect to the student's unilateral placement, the parent alleged that York Prep provided the student with "instruction, supports, methodologies, supervision and services" specifically designed to meet the student's unique needs and enabled the student to make progress (Parent Ex. A at p. 5). With regard to equitable considerations, the parents asserted that they cooperated with the CSE, they did not impede the CSE from offering the student a FAPE, and they timely notified the district of their intention to seek reimbursement for the costs of the student's tuition (id.). As relief, the parents requested payment of the costs of the student's tuition at York Prep for the 2013-14 school year (id. at p. 6).

B. Impartial Hearing Officer Decision

On October 10, 2013, the IHO conducted a prehearing conference, and on October 30, 2013, the parties proceeded to an impartial hearing, which concluded on April 3, 2014 after five days of proceedings (see Tr. pp. 1-360; IHO Ex. 1).[2] By decision dated June 12, 2014, the IHO concluded that the district failed to offer the student a FAPE for the 2013-14 school year, the student's unilateral placement at York Prep—together with the Jump Start program—was appropriate, and equitable considerations weighed in favor of the parents' requested relief (see IHO Decision at pp. 15-20).

Initially, the IHO found that the testimonial and documentary evidence established that the student's academic and social/emotional needs required a "small class setting" that would provide the student with the "support" and "individualized attention" he needed (IHO Decision at pp. 17-19). Given the student's needs, the IHO found that the "ICT placement" was not appropriate due to "its class size" and because it lacked "sufficient emotional support and individualized attention to address [the student's] special education needs" (id. at p. 19).

Turning next to the parents' unilateral placement, the IHO found that York Prep, together with the Jump Start program, was an appropriate placement for the 2013-14 school year because it provided the student with a "small class setting sufficient to attend to his emotional and academic needs" (IHO Decision at p. 20). Finally, the IHO found that based upon the evidence in the hearing record, equitable considerations did not preclude relief in this matter and therefore, the IHO directed the district to reimburse the parents for the costs of the student's tuition at York Prep for the 2013-14 school year (id.).

IV. Appeal for State-Level Review

The district appeals, and asserts that the IHO erred in finding that the district failed to offer the student a FAPE for the 2013-14 school year and that equitable considerations weighed in favor of the parents' requested relief. More specifically, the district argues that the IHO erred in finding that the "ICT program" was not appropriate due to the class size and because the student would not receive sufficient "emotional support" or "individualized attention." The district also contends that the IHO erred in finding that the assigned public school site could not implement the June 2013 IEP. Finally, the district alleges that the parents' remaining allegations in the due process complaint not otherwise addressed by the IHO did not result in a failure to offer the student a FAPE for the 2013-14 school year. More specifically, the district asserts that the ICT services with SETSS at a community school constituted the student's LRE; the parents were provided with the opportunity to meaningfully participate at the June 2013 CSE meeting; the annual goals in the June 2013 IEP were specific, measurable, and individualized to the student; the transition plan in the June 2013 IEP was appropriate and prepared with the parents' input; the June 2013 CSE relied

[2] In a letter dated October 11, 2013, the parents indicated that although they did not visit the assigned public school site, but based upon a visit to the same site in 2012 they indicated that the assigned public school site was not appropriate for the student (see Dist. Ex. 5). The parents notified the district of their intentions to continue the student's placement at York Prep for the 2013-14 school year and to seek tuition reimbursement (id.). On November 4, 2013, the IHO issued an order on pendency, which directed the district to continue to fund the student's general tuition at York Prep in addition to the tuition for the Jump Start program during the instant proceedings (see Interim IHO Decision at pp. 2-4).

upon sufficient evaluative information in making its recommendations and to develop the student's June 2013 IEP; and the June 2013 CSE's failure to include a regular education teacher, as a procedural violation, did not rise to the level of a denial of a FAPE.[3] In addition, the district contends that regardless of the IHO's ambiguous findings, the issues raised in the parents' due process complaint notice related to the assigned public school site must be dismissed as speculative. Alternatively, the district asserts that the assigned public school site could implement the student's June 2013 IEP, the student would be functionally grouped, the student-to-teacher ratio was appropriate, the student would have the opportunity for individualized attention, and the district sent a timely FNR. With respect to equitable considerations, the district argues that the parents failed to provide a 10-day notice of unilateral placement. As relief, the district seeks to reverse the IHO's determinations.

In an answer, the parents generally respond to the district's allegations with admissions, denials, or various combinations of the same. With respect to the district's allegations pertaining to issues in the parents' due process complaint notice that the IHO did not address, the parents neither admitted nor denied the particular assertions, or otherwise denied the allegations (compare Pet. ¶¶ 41-62, with Answer ¶¶ 41-62). Additionally, the parents assert that if the matter is not moot or if the district offered the student a FAPE, then the matter should be remanded for findings by the IHO with respect to the unaddressed issues. In addition, the parents affirmatively argue to uphold the IHO's decision that the district failed to offer the student a FAPE for the 2013-14 school year and that equitable considerations weighed in favor of the parents' requested relief. The parents also argue that the assigned public school site could not implement the June 2013 IEP. Finally, the parents argue that the appeal may be moot since the costs of the student's tuition at York Prep was paid by virtue of pendency. As relief, the parents seek to uphold the IHO's decision in its entirety.

V. Applicable Standards

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see generally Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 239 [2009]; Bd. of Educ. v. Rowley, 458 U.S. 176, 206-07 [1982]).

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; R.E. v. New York City Dep't of Educ., 694 F.3d 167, 189-90 [2d Cir. 2012]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 [2d Cir. 2012]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). "'[A]dequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP'" (Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119,

[3] The district affirmatively asserts that it does not appeal the IHO's finding that York Prep was an appropriate placement for the student for the 2013-14 school year, therefore, the IHO's determination is final and binding on the parties and will not be further addressed in this decision (see 34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]).

129 [2d Cir. 1998], quoting Rowley, 458 U.S. at 206; see T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 253 [2d Cir. 2009]). While the Second Circuit has emphasized that school districts must comply with the checklist of procedures for developing a student's IEP and indicated that "[m]ultiple procedural violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not" (R.E., 694 F.3d at 190-91), the Court has also explained that not all procedural errors render an IEP legally inadequate under the IDEA (M.H., 685 F.3d at 245; A.C. v. Bd. of Educ., 553 F.3d 165, 172 [2d Cir. 2009]; Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]; Perricelli v. Carmel Cent. Sch. Dist., 2007 WL 465211, at *10 [S.D.N.Y. Feb. 9, 2007]). Under the IDEA, if procedural violations are alleged, an administrative officer may find that a student did not receive a FAPE only if the procedural inadequacies (a) impeded the student's right to a FAPE, (b) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 [2007]; R.E., 694 F.3d at 190; M.H., 685 F.3d at 245; A.H. v. Dep't of Educ., 394 Fed. App'x 718, 720, 2010 WL 3242234 [2d Cir. Aug. 16, 2010]; E.H. v. Bd. of Educ., 2008 WL 3930028, at *7 [N.D.N.Y. Aug. 21, 2008], aff'd, 361 Fed. App'x 156, 2009 WL 3326627 [2d Cir. Oct. 16, 2009]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007], aff'd, 293 Fed. App'x 20, 2008 WL 3852180 [2d Cir. Aug. 19, 2008]).

The IDEA directs that, in general, an IHO's decision must be made on substantive grounds based on a determination of whether the student received a FAPE (20 U.S.C. § 1415[f][3][E][i]). A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction" (Rowley, 458 U.S. at 203). However, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP" (Walczak, 142 F.3d at 130; see Rowley, 458 U.S. at 189). The statute ensures an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents" (Walczak, 142 F.3d at 132, quoting Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 [2d Cir. 1989] [citations omitted]; see Grim, 346 F.3d at 379). Additionally, school districts are not required to "maximize" the potential of students with disabilities (Rowley, 458 U.S. at 189, 199; Grim, 346 F.3d at 379; Walczak, 142 F.3d at 132). Nonetheless, a school district must provide "an IEP that is 'likely to produce progress, not regression,' and . . . affords the student with an opportunity greater than mere 'trivial advancement'" (Cerra, 427 F.3d at 195, quoting Walczak, 142 F.3d at 130 [citations omitted]; see T.P., 554 F.3d at 254; P. v. Newington Bd. of Educ., 546 F.3d 111, 118-19 [2d Cir. 2008]; Perricelli, 2007 WL 465211, at *15). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]; see Rowley, 458 U.S. at 192). The student's recommended program must also be provided in the least restrictive environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 CFR 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see Newington, 546 F.3d at 114; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132; G.B. v. Tuxedo Union Free Sch. Dist., 751 F. Supp. 2d 552, 573-80 [S.D.N.Y. 2010], aff'd, 486 Fed. App'x 954, 2012 WL 4946429 [2d Cir. Oct. 18, 2012]; E.G. v. City Sch. Dist. of New Rochelle, 606 F. Supp. 2d 384, 388 [S.D.N.Y. 2009]; Patskin v. Bd. of Educ., 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]).

An appropriate educational program begins with an IEP that includes a statement of the student's present levels of academic achievement and functional performance (see 34 CFR

300.320[a][1]; 8 NYCRR 200.4[d][2][i]; Tarlowe v. New York City Bd. of Educ., 2008 WL 2736027, at *6 [S.D.N.Y. July 3, 2008] [noting that a CSE must consider, among other things, the "results of the initial evaluation or most recent evaluation" of the student, as well as the "'academic, developmental, and functional needs'" of the student]), establishes annual goals designed to meet the student's needs resulting from the student's disability and enable him or her to make progress in the general education curriculum (see 34 CFR 300.320[a][2][i], [2][i][A]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (see 34 CFR 300.320[a][4]; 8 NYCRR 200.4[d][2][v]; 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).

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. Unaddressed Issues

The district contends that particular issues alleged by the parents in the due process complaint notice but not addressed by the IHO would not alternatively result in a finding that the district failed to offer the student a FAPE for the 2013-14 school year. As indicated above, the parents generally responded to the allegations by neither admitting nor denying, or otherwise denying, them in the answer. Additionally, the parents requested that if appropriate, the matter should be remanded to the IHO for findings on these unaddressed issues. A review of the IHO's decision in conjunction with the evidence in the hearing record reveals that the IHO failed to address numerous issues alleged by the parents in the September 16, 2013 due process complaint notice (compare IHO Decision at pp. 15-20, with Parent Ex. A at pp. 1-7).

Accordingly, and notwithstanding the district's appeal of the IHO's decision, the matter should be remanded to the IHO for a determination on the merits of the remaining issues set forth in the parents' due process complaint notice—and as set forth above in section III.A.—which have yet to be addressed by the IHO (see Educ. Law § 4404[2]; F.B. v. New York City Dep't of Educ., 923 F. Supp. 2d 570, 589 [S.D.N.Y. 2013] [indicating that the SRO may remand matters to the IHO to address claims set forth in the due process complaint notice that were unaddressed by the IHO], citing J.F. v. New York City Dep't of Educ., 2012 WL 5984915, at *9 n.4 [S.D.N.Y. Nov. 27, 2012]; see also D.N. v. New York City Dep't of Educ., 2013 WL 245780, at *3 [S.D.N.Y. Jan. 22, 2013]. It is left to the sound discretion of the IHO to determine whether additional evidence is required in order to make the necessary findings of fact and of law relative to each of the unaddressed issues. Furthermore, the IHO may find it appropriate to schedule a prehearing conference with the parties to, among other things, simplify and clarify the remaining issues (see 8 NYCRR 200.5[j][3][xi][a]). Based on the foregoing, I decline to review the merits of the IHO's decision at this time. However, if either of the parties chooses to appeal the IHO's decision after

remand, the merits of all claims contested on appeal will be addressed at that time (cf., D.N. v. New York City Dep't of Educ., 905 F. Supp. 2d 582, 589 [S.D.N.Y. 2012] [remanding unaddressed claims to the SRO and, as a consequence, declining to reach the merits of the issues reviewed by the IHO and the SRO]).

VII. Conclusion

For the reasons set forth above, the matter is remanded to the IHO for a determination on the merits of the remaining claims set forth in the parents' September 16, 2013 due process complaint notice and identified herein, which have yet to be addressed. At this time, it is therefore unnecessary to address the parties' remaining contentions in light of the determinations above.

IT IS FURTHER ORDERED that the matter be remanded to the same IHO who issued the June 12, 2014 decision to determine the merits of the unaddressed issues set forth in the parents' September 16, 2013 due process complaint notice; and,

IT IS FURTHER ORDERED that, if the IHO who issued the June 12, 2014 decision is not available, another IHO shall be appointed in accordance with the district's rotational selection procedures and State regulations.

Dated: **Albany, New York**
August 22, 2014

CAROL H. HAUGE
STATE REVIEW OFFICER