The University of the State of New York

The State Education Department
State Review Officer
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No. 14-112

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, Neha Dewan, Esq., of counsel

New York Legal Assistance Group, attorneys for respondent, Phyllis Brochstein, 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 respondent's (the parent's) son and ordered it to reimburse the parent for her son's tuition costs at the Rebecca School for the 2012-13 school year. The appeal must be sustained in part.

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

With regard to the student's educational history, the hearing record shows that the student attended the Rebecca School since October 2008 (Tr. pp. 111, 223).[1]

On February 28, 2012 the CSE convened to conduct the student's annual review and to develop an IEP for the 2012-13 school year (Dist. Ex. 3 at pp. 1, 16). Finding the student eligible for special education as a student with autism, the CSE recommended a 12-month school year program in a 6:1+1 special class placement in a specialized school (id. at pp. 1, 12, 13, 15). In

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

addition, the February 2012 CSE recommended weekly related services consisting of two 40-minute sessions of individual counseling, one 40-minute session of small group (2:1) counseling, one 40-minute session of individual speech-language therapy, one 40-minute session of small group (3:1) speech-language therapy, and two 40-minute sessions of individual occupational therapy (OT) (id. at p. 12). The February 2012 CSE also recommended supports for the student's management needs (visual and verbal prompts and cues, redirection, visual representations, manipulatives, repetition and review, positive reinforcement, adult models, and daily schedules), 15 annual goals with corresponding short-term objectives, testing accommodations (double time, breaks, separate location/room, and directions read and re-read aloud), and modified promotion criteria (id. at pp. 3, 4-11, 13-14, 17).

On June 20, 2012, the parent signed an enrollment contract with the Rebecca School for the student's attendance during the 2012-2013 school year (Parent Ex. E at pp. 1-4).

By final notice of recommendation (FNR) dated June 13, 2012, the district summarized the 6:1+1 special class and related services recommended in the February 2012 IEP and identified the particular public school site to which the district assigned the student to attend for the 2012-13 school year (see Dist. Ex. 4).

By letter, dated June 18, 2012, the parent rejected the February 2012 IEP and contended that the district "failed to offer [the student] an appropriate program for the 2012-13 school year" (Parent Ex. K). The parent protested that "[the student] require[d] a[] 12-month program in order to avoid a regression" and that "[a] 10-month program w[ould] not address his needs to enable him to receive educational benefit" (id.). The parent complained that, as of the date of the letter, she had not received an FNR (id.). The parent then advised the district of her intent to enroll the student in the Rebecca School and seek the cost of the student's tuition from the district (id.).

A. Due Process Complaint Notice

By due process complaint notice dated July 22, 2013, the parent alleged that the district failed to offer the student a FAPE for the 2012-13 school year (Parent Ex. A at p. 1). Specifically, the parent asserted that the 6:1+1 special class placement recommended in the February 2012 IEP would not have provided "the type or level of support and individualized attention that [the student] required" (id. at p. 3). Furthermore, the parent asserted that the IEP did not specify use of the Developmental, Individual-difference, Relationship-based (DIR) methodology, which the Rebecca School utilized (id. at p. 3).

As to the assigned public school site, the parent contended that, during a visit, she observed two 6:1+1 classrooms, neither of which included peers at a similar functional level as the student (Parent Ex. A at p. 3). Moreover, the parent asserted that the assigned school did not follow the DIR methodology and offered no sensory gym, suspended equipment, sensory corners in the classrooms, or quiet room or similar area (id.). The parent also objected that the assigned public school site offered only one psychologist and one social worker for the six schools house in the single building and offered no parent counseling and training (id.)

In addition, the parent alleged that the student's unilateral placement at the Rebecca School was appropriate and that equitable considerations weighed in favor of her request for relief (Parent

Ex. A. at pp. 3-4). As relief, the parent requested that the IHO order the district to pay for the costs of the student's tuition at the Rebecca School for the 2012-13 school year (id. at p. 4).

B. Impartial Hearing Officer Decision

On November 26, 2013, an impartial hearing convened and concluded on January 29, 2014, after four days of proceedings (see Tr. pp. 1-301). In a decision dated June 19, 2014, the IHO found that the district failed to offer the student a FAPE for the 2012-13 school year, that the Rebecca School was an appropriate unilateral placement for the student, and that equitable considerations weighed in favor of the parent's request for relief (IHO Decision at pp. 10-20).

The IHO first addressed the preliminary question of whether the parent could raise claims relating to the February 2012 IEP's annual goals and the sufficiency of the evaluative information considered by the CSE (IHO Decision at p. 3-4). Finding that the parent did not raise these issues in the due process complaint notice, the IHO declined to consider them (id. at p. 4).

The IHO then determined that the 6:1+1 special class placement was inappropriate because it did not address the student's special needs in the least restrictive environment (LRE) (IHO Decision at p. 16). Specifically, the IHO determined that the district failed to offer any "real evidence" that the February 2012 CSE considered a larger classroom or whether the student "required classroom peers with similar management needs to make meaningful educational progress" (id.). Further, the IHO found that the CSE selected the 6:1+1 special class "impermissibly based upon availability of special education services and configuration of the service-delivery system," rather than the "specialized needs of the student" (id.).

With respect to the assigned public school site, initially, the IHO determined that, contrary to the district's arguments, the details of the proposed classroom (and, in particular, the functional grouping thereof) were relevant and not overly speculative or retrospective in nature (IHO Decision at pp. 12-15). Thus, since the district did not present any evidence relating to the school, the IHO determined that the district failed to refute the parent's claim that the assigned public school site could not have offered proper functional grouping (id. at p. 15).

With respect to the parent's unilateral placement, the IHO determined that the Rebecca School was appropriate because the student made academic and social progress and received the related services set forth in the February 2012 IEP (IHO Decision at pp. 17-18). The IHO further found that the equitable considerations weighed in favor of the parent's requested relief (id. at p. 19). Finding sufficient evidence in the hearing record to conclude that the parent was unable to afford the student's tuition at the Rebecca School for the 2012-13 school year, the IHO ordered the district to directly fund the amount owed (id. at pp. 19-20).

IV. Appeal for State-Level Review

The district appeals seeking to overturn the IHO's determinations that the district failed to offer the student a FAPE for the 2012-2013 school year and that the Rebecca School was an appropriate unilateral placement. The district also appeals the IHO's award of direct payment of tuition to the Rebecca School.

The district contends that, contrary to the IHO's decision, it offered the appropriate placement of a 6:1+1 special class based on the student's specialized needs. Further, the district asserts that the IHO erred in determining that the CSE recommended a 6:1+1 special class based on a lack of options in the district's continuum, citing testimonial and documentary evidence that other placement options were considered. The district also alleges that the recommended educational placement was in the student's LRE. The district further argues that it need not set forth any specific methodology in the IEP. The district argues that the IHO also erred in finding that the assigned public school site was inappropriate and that the student would not have been functionally group in a classroom in such school. The district contends it was not required to prove that the assigned public school site was appropriate given that the parent rejected the placement and unilaterally placed the student in a private school prior to the time that the district was obligated to implement the IEP.

The district further argues that the unilateral placement at the Rebecca School was inappropriate. Specifically, the district contends that the parent failed to demonstrate that the Rebecca School's curriculum or services were individually selected for the student. The district alleges that there was no objective evidence of the student's progress at the Rebecca School. Moreover, the district argues that the Rebecca School did not provide all the services "mandated" on the student's IEP.

Finally, the district argues that the parent did not adequately demonstrate her entitlement to direct funding because she did not present evidence as to the financial status of the student's father.

By answer, the parent responds to the district's petition by denying the district's substantive allegations and arguing that the IHO correctly found that the district failed to offer the student a FAPE for the 2012-13 school year, that the Rebecca School was an appropriate unilateral placement for the student, and that direct funding was an appropriate form of 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., 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. February 2012 IEP—6:1+1 Special Class

The crux of the parties' dispute relates to the February 2012 CSE's recommendation for a 6:1+1 special class placement in a specialized school. Briefly, as to the student's needs, the evidence in the hearing record indicates that the student has received diagnoses of Asperger's syndrome and an attention deficit hyperactivity disorder (ADHD) (see Tr. p. 223; Dist. Ex. 3 at p. 2; Parent Ex. P at p. 1). The student was functioning in the average range intellectually, but below average in the areas of reading, mathematics, and written language (Tr. p. 224; Dist. Ex. 3 at p. 1; Parent Ex. P at pp. 4, 6, 7). Socially, he was described as friendly, compassionate, and interested in his peers; however, it was also noted that he required adult support to stay on task and properly elaborate on his feelings (Tr. pp. 227-28, 233-34; Dist. Ex. 3 at p. 2; Parent Ex. P at p. 9).

According to State regulation, a 6:1+1 special class placement is designed for those students "whose management needs are determined to be highly intensive, and requiring a high degree of individualized attention and intervention" (8 NYCRR 200.6 [h][4][ii][a]). Management needs, in turn, are defined as "the nature of and degree to which environmental modifications and

human or material resources are required to enable the student to benefit from instruction" (8 NYCRR 200.1[ww][3][i][d]).

In addition to the 6:1+1 special class placement and the related services outlined above, the February 2012 CSE recommended the following supports for the student's management needs were included to address the student's needs: visual and verbal prompts and cues, redirection, visual representations, manipulatives, repetition and review, positive reinforcement, adult models, and daily schedules (Dist. Ex. 3 at p. 3). The February 2012 IEP also included 15 annual goals to address the student's needs in the areas of social/emotional development, reasoning skills, academic skills, daily living skills, motor planning, visual spatial processing, speech-language skills, and social skills (id. at pp. 4-11). In addition, the February 2012 IEP also included testing accommodations of extended time, breaks, separate location with minimal distractions, and revised test directions (id. at p. 14). Based solely on this unchallenged depiction of the student's needs, the hearing record is not inconsistent with a conclusion that the student's academic management needs were such that he would benefit from the level of support available in a 6:1+1 special class; albeit, the placement likely offered more support than necessary to ensure the student received educational benefit (see 8 NYCRR 200.6[h][4][ii][a]).[2] However, the hearing record bears out additional information regarding the appropriateness of the CSE's recommendation.

According to the district school psychologist, the February 2012 CSE recommended a 6:1+1 special class based on the totality of information about the student shared at the meeting and to address the student's need for consistent adult attention, both academically and socially, throughout the school day on a 12-month basis (Tr. pp. 33-34, 67-68). The school psychologist testified that the 6:1+1 special class program was "supportive of students in terms of developing their cognitive, academic, language/communication, and social skills" (Tr. p. 34).

However, the parents raise the question of why the February 2012 CSE declined to continue the recommendation for a 12:1+1 special class placement in a community school, which was included in the student's IEP for the 2010-11 school year and found appropriate by an SRO in a prior administrative proceeding (see Application of the Dep't of Educ., Appeal No. 12-115).[3] The February 2012 IEP explained the CSE's determination not to recommend a community school exclusively by indicating that such a placement "would not offer [the student] the support he require[d] on a twelve month basis" (Dist. Ex. 3 at p. 17). To the extent that this rationale implies that a 12-month school year program was not available in a community school, this constitutes a placement decision impermissibly based on the availability of services in the district, rather than the student's unique needs as reflected in the IEP (34 CFR 300.116[b][2]; 8 NYCRR 200.6[a][2]; see T.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 163 [2d Cir. 2014] [finding that the IDEA's LRE requirement is not limited, in the extended school year (ESY) context, by what programs the

[2] The placement also appears consistent with recommendations in the Rebecca School May 2010 psychoeducational report that the student be placed in a developmentally focused and academically enriched program with a low student-teacher ratio that would support his language, motor, and cognitive development and improve his socialization and coping skills (Parent Ex. P at p. 12). The report further noted that the student required a highly individualized program that could support his need for additional time on academic activities (id. at p. 12).

[3] Appeal of the SRO's decision in Application of the Dep't of Educ., Appeal No. 12-115 is currently pending before the District Court for the Southern District of New York (see M.T. v. New York City Dep't of Educ., 13-CV-04363 [S.D.N.Y.]).

school district already offers, but rather must be based on the student's needs]; Adams v. State, 195 F.3d 1141, 1151 [9th Cir. 1999]; Reusch v. Fountain, 872 F. Supp. 1421, 1425-26 [D. Md. 1994]; Placements, 71 Fed. Reg. 46588 [Aug. 14, 2006] ["Although the Act does not require that each school building in [a district] be able to provide all the special education and related services for all types and severities of disabilities[, i]n all cases, placement decisions must be individually determined on the basis of each child's abilities and needs and each child's IEP, and not solely on factors such as . . . availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience"]; see also Letter to Clarke, 48 IDELR 77 [OSEP 2007] [stating that service delivery determinations must be made by the CSE "based on a child's individual and unique needs, and cannot be made as a matter of general policy by administrators, teachers or others apart from the IEP Team process"]).

Notably, in the prior administrative proceeding involving this student, the SRO upheld a 10-month school year program in a 12:1+1 special class placement in a community school with related services and the additional support of a 1:1 transitional paraprofessional for a period of four months (see Application of the Dep't of Educ., Appeal No. 12-115). In this case, although the district provided an explanation for the 6:1+1 special class ratio (see Tr. pp. 67-68), it provided no reasonable explanation in the record as to why the student could not be educated in a community school environment, affording him access to his nondisabled peers (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 v. Bd. of Educ., 995 F.2d 1204, 1215 [3d Cir. 1993]; 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. Sobol, 839 F. Supp. 968, 982 [N.D.N.Y. 1993]). The CSE is required to properly balance the IDEA's requirement of placing the student in the LRE with the importance of providing an appropriate educational program that addressed the student's needs (see M.W. v. New York City Dep't of Educ., 725 F.3d 131, 143 [2d Cir. 2013]). Given the student's full scale IQ of 95 and recommendations that the student and improve his socialization and coping skills, in addition to the strong preference under the IDEA to educate disabled student alongside their non-disabled peers (see Parent Ex. P at p. 10-12; see also M M.W., 725 F.3d at 143), the evidence in the hearing record shows that the district failed to offer the student a FAPE for the 2012-13 school year.

B. Assigned Public School Site

With respect to the parent's challenges and the IHO's findings as the assigned public school site and, in particular, questions regarding the functional grouping in the proposed classroom, challenges to an assigned public school site 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 York City Dep't of Educ., 553 Fed. App'x 2, 9, 2014 WL 53264 [2d Cir. Jan. 8, 2014]; see also K.L. v. New York City Dep't of Educ., 530 Fed. App'x 81, 87, 2013 WL 3814669 [2d Cir. July 24, 2013]; 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 a student would be placed

in where the parent rejected an IEP before the student's classroom arrangements were even made"]).

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., 526 Fed. App'x 135, 141, 2013 WL 2158587 [2d Cir. May 21, 2014]) 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., 530 Fed. App'x at 87, quoting R.E., 694 F.3d at 187; see C.F. v. New York City Dep't of Educ., 746 F.3d 68, 79 [2d Cir. 2013]). 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]).[4] When the Second Circuit spoke recently with regard to the topic of assessing the district's offer of an IEP versus later acquired school site information obtained and rejected by the parent as inappropriate, the Court disallowed a challenge to a recommended public school site, reasoning that "the appropriate forum for such a claim is 'a later proceeding' to show that the child was denied a free and appropriate public education 'because necessary services included in the IEP were not provided in practice'" (F.L., 553 Fed. App'x at 9, quoting R.E., 694 F.3d at 187 n.3).

In view of the foregoing, the parent cannot prevail on claims regarding implementation of the February 2012 IEP because a retrospective analysis of how the district would have implemented the student's February 2012 IEP at the assigned public school site is not an appropriate inquiry under the circumstances of this case (K.L., 530 Fed. App'x at 87; R.E., 694 F.3d at 186; R.C., 906 F. Supp. 2d at 273). Here, it is undisputed that the parent rejected the assigned public school site that the student would have attended and instead chose to enroll the

[4] While the IDEA and State regulations provide parents with the opportunity to offer input in the development of a student's IEP, the assignment of a particular school is an administrative decision that must be made in conformance with the CSE's educational placement recommendation (T.Y. v. New York City Dep't of Educ., 584 F.3d 412, 420 [2d Cir. 2009]; see K.L.A. v. Windham Southeast Supervisory Union, 371 Fed. App'x 151, 154 [2d Cir. Mar. 30, 2010]). A school district "may have two or more equally appropriate locations that meet the child's special education and related services needs and school administrators should have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group determining placement" (Placements, 71 Fed. Reg. 46588 [Aug. 14, 2006]). Once a parent consents to a district's provision of special education services, such services must be provided by the district in conformity with the student's IEP (20 U.S.C. § 1401[9][D]; 34 CFR 300.17[d]; see 20 U.S.C. § 1414[d]; 34 CFR 300.320). The Second Circuit recently reiterated that while parents are entitled to participate in the determination of the type of placement their child will attend, the IDEA confers no rights on parents with regard to school site selection (C.F., 746 F.3d at 79 [2d Cir. Mar. 4, 2013]). However, the Second Circuit has also made clear that just because a district is not required to place implementation details such as the particular public 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 R.E., 694 F.3d at 191-92; T.Y., 584 F.3d at 420 [the 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.

student in a nonpublic school of her choosing prior to the time the district became obligated to implement the February 2012 IEP (see Parent Ex. B). Therefore, the district is correct that the issues raised and the arguments asserted by the parent with respect to the assigned public school site are speculative. Furthermore, in a case in which a student has been unilaterally placed prior to the implementation of an IEP, it would be inequitable to allow a parent to acquire and rely on information that post-dates the relevant CSE meeting and IEP and then use such information against a district in an impartial hearing while at the same time confining a school district's case to describing a snapshot of the special education services set forth in an IEP (C.L.K. v. Arlington Sch. Dist., 2013 WL 6818376, at *13 [S.D.N.Y. Dec. 23, 2013] [stating that in addition to districts not being permitted to rehabilitate a defective IEP through retrospective testimony, "[t]he converse is also true; a substantively appropriate IEP may not be rendered inadequate through testimony and exhibits that were not before the CSE about subsequent events and evaluations that seek to alter the information available to the CSE"]). Based on the foregoing, the district was not obligated to present retrospective evidence at the impartial hearing regarding the execution of the student's program or to refute the parent's claims (K.L., 530 Fed. App'x at 87; R.E., 694 F.3d at 186; R.C., 906 F. Supp. 2d at 273). Accordingly, the parent cannot prevail on claims that the assigned public school site would not have properly implemented the February 2012 IEP or that the student would not have been functionally grouped in the proposed classroom and the IHO's findings on this issue must be reversed.[5]

C. Unilateral Placement

Having found that the district failed to offer the student a FAPE for the 2012-13 school year, the next question is whether the parent met her burden to establish that the Rebecca School was an appropriate unilateral placement. A private school placement must be "proper under the Act" (Carter, 510 U.S. at 12, 15; Burlington, 471 U.S. at 370), i.e., the private school must provide an educational program which meets the student's special education needs (see Gagliardo, 489

[5] While some district courts have found that parents have a right to assess the adequacy of a particular school site to meet their children's needs, the weight of the relevant authority supports the approach taken here (see B.K. v. New York City Dep't of Educ., 2014 WL 1330891, at *20-*22 [E.D.N.Y. Mar. 31, 2014]; M.L. v. New York City Dep't of Educ., 2014 WL 1301957 [S.D.N.Y. Mar. 31, 2014]; M.O. v. New York City Dept. of Educ., 996 F. Supp. 2d 269, 271 [S.D.N.Y. 2014]; E.H. v. New York City Dep't of Educ., 2014 WL 1224417, at *7 [S.D.N.Y. Mar. 21, 2014]; 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 Dep't 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]; A.M. v. New York City Dep't of Educ., 964 F. Supp. 2d 270, 286 [S.D.N.Y. 2013]; N.K.. v. New York City Dep't of Educ., 961 F. Supp. 2d 577, 588-90 [S.D.N.Y. 2013]; Luo v. Baldwin Union Free Sch. Dist., 2013 WL 1182232, at *5 [E.D.N.Y. Mar. 21, 2013], aff'd, 556 Fed. App'x 1 [2d Cir Dec. 23, 2013]; A.D. v. New York City Dep't of Educ., 2013 WL 1155570, at *13 [S.D.N.Y. Mar. 19, 2013]; J.L. v. City Sch. Dist. of New York, 2013 WL 625064, at *10 [S.D.N.Y. Feb. 20, 2013]; Reyes v. New York City Dep't of Educ., 2012 WL 6136493, at *7 [S.D.N.Y. Dec. 11, 2012]; Ganje v. Depew Union Free Sch. Dist., 2012 WL 5473491, at *15 [W.D.N.Y. Sept. 26, 2012], adopted, 2012 WL 5473485 [W.D.N.Y. Nov. 9, 2012]; see also N.S. v. New York City Dep't of Educ., 2014 WL 2722967, at *12-*14 [S.D.N.Y. June 16, 2014] [holding that "[a]bsent non-speculative evidence to the contrary, it is presumed that the placement school will fulfill its obligations under the IEP"]; but see V.S. v. New York City Dep't of Educ., 2014 WL 2600313, at *4 [E.D.N.Y. June 10, 2014]; C.U. v. New York City Dep't of Educ., 2014 WL 2207997, at *14-*16 [S.D.N.Y. May 27, 2014]; Scott v. New York City Dep't of Educ., 2014 WL 1225529, at *19 [S.D.N.Y. Mar. 25, 2014]; D.C. v. New York City Dep't of Educ., 950 F. Supp. 2d 494, 508-13 [S.D.N.Y. 2013]; B.R. v. New York City Dep't of Educ., 910 F.Supp.2d 670, 676-78 [S.D.N.Y. 2012]; E.A.M. v. New York City Dep't of Educ., 2012 WL 4571794, at *11 [S.D.N.Y. Sept. 29, 2012]).

F.3d at 112, 115; Walczak, 142 F.3d at 129; Matrejek, 471 F. Supp. 2d at 419). A parent's failure to select a program approved by the State in favor of an unapproved option is not itself a bar to reimbursement (Carter, 510 U.S. at 14). The private school need not employ certified special education teachers or have its own IEP for the student (id. at 14). Parents seeking reimbursement "bear the burden of demonstrating that their private placement was appropriate, even if the IEP was inappropriate" (Gagliardo, 489 F.3d at 112; see M.S. v. Bd. of Educ., 231 F.3d 96, 104 [2d Cir. 2000]). "Subject to certain limited exceptions, 'the same considerations and criteria that apply in determining whether the [s]chool [d]istrict's placement is appropriate should be considered in determining the appropriateness of the parents' placement…'" (Gagliardo, 489 F.3d at 112, quoting Frank G. v. Bd. of Educ., 459 F.3d 356, 364 [2d Cir. 2006]; see Rowley, 458 U.S. at 207). Parents need not show that the placement provides every special service necessary to maximize the student's potential (Frank G., 459 F.3d at 364-65). When determining whether the parents' unilateral placement is appropriate, "[u]ltimately, the issue turns on" whether that placement is "reasonably calculated to enable the child to receive educational benefits" (Frank G., 459 F.3d at 364; see Gagliardo, 489 F.3d at 115; Berger v. Medina City Sch. Dist., 348 F.3d 513, 522 [6th Cir. 2003] [stating "evidence of academic progress at a private school does not itself establish that the private placement offers adequate and appropriate education under the IDEA"]). A private placement is only appropriate if it provides education instruction specially designed to meet the unique needs of a student (20 U.S.C. § 1401[29]; 34 CFR 300.39[a][1]; Educ. Law § 4401[1]; 8 NYCRR 200.1[ww]; Rowley, 458 U.S. at 188-89; Gagliardo, 489 F.3d at 114-15 [noting that even though the unilateral placement provided special education, the evidence did not show that it provided special education services specifically needed by the student]; Frank G., 459 F.3d at 365; Stevens v. New York City Dep't of Educ., 2010 WL 1005165, at *9 [S.D.N.Y. Mar. 18, 2010]).

The Second Circuit has set forth the standard for determining whether parents have carried their burden of demonstrating the appropriateness of their unilateral placement.

> No one factor is necessarily dispositive in determining whether parents' unilateral placement is reasonably calculated to enable the child to receive educational benefits. Grades, test scores, and regular advancement may constitute evidence that a child is receiving educational benefit, but courts assessing the propriety of a unilateral placement consider the totality of the circumstances in determining whether that placement reasonably serves a child's individual needs. To qualify for reimbursement under the IDEA, parents need not show that a private placement furnishes every special service necessary to maximize their child's potential. They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction.

(Gagliardo, 489 F.3d at 112, quoting Frank G., 459 F.3d at 364-65).

The program director of the Rebecca School testified that the school specialized in working with children who had received diagnoses of autism spectrum disorders and students were grouped based on developmental levels with a 2:1 student-to-teacher ratio (Tr. pp. 98-99, 104-05). The program employed a DIR model in order to achieve progress in the areas of social/emotional and

academic development (Tr. p. 128; Parent Ex. B at p. 1). During the 2012-13 school year the student was placed in a classroom with nine students, one teacher, and four teacher assistants "with a more challenging group of peers," most of whom were highly verbal (Tr. pp. 122-23). The student received the recommended related services of speech-language therapy, OT, and counseling (Tr. pp. 126, 128; Parent Exs. B at pp. 1-9; J).

The hearing record shows that during the 2012-13 school year, Rebecca School staff addressed the student's identified needs in social and academic areas, including literacy, mathematics, science, and social studies (Tr. p. 128; Parent Exs. B; C). Although the district asserts that witness testimony failed to provide evidence that the student's program was "individually selected or adequately differentiated," the educational supervisor from the Rebecca School testified that the student was placed in a classroom that was academically challenging during the 2012-13 school year and the focus was to get him to generalize some of his skills in a larger group setting, such as by comparing and contrasting what he had read in book club with peers and advocating for himself appropriately (Tr. pp. 229-30, 232).

With respect to the student's progress at the Rebecca School, a finding of progress is not required for a determination that a student's unilateral placement is adequate (Scarsdale Union Free Sch. Dist. v. R.C. 2013 WL 563377, at 9-10 [S.D.N.Y. Feb. 4, 2013] [noting that evidence of academic progress is not dispositive in determining whether a unilateral placement is appropriate]; see M.B. v. Minisink Valley Cent. Sch. Dist., 523 Fed. App'x 76, 78, 2013 WL 1277308 [2d Cir. Mar. 29, 2013]; D.D-S. v. Southold Union Free Sch. Dist., 506 Fed. App'x 80, 81, 2012 WL 6684585, [2d Cir. Dec. 26, 2012]; L.K. v. Ne. Sch. Dist., 932 F. Supp. 2d 467, 486-87 [S.D.N.Y. 2013]; C.L. v. Scarsdale Union Free Sch. Dist., 913 F. Supp. 2d 26, 34, 39 [S.D.N.Y. 2012]; G.R. v. New York City Dep't of Educ., 2009 WL 2432369, at *3 [S.D.N.Y. Aug. 7, 2009]; Omidian v. Bd. of Educ., 2009 WL 904077, at *22-*23 [N.D.N.Y. Mar. 31, 2009]; see also Frank G., 459 F.3d at 364). However, a finding of progress is, nevertheless, a relevant factor to be considered (Gagliardo, 489 F.3d at 115, citing Berger, 348 F.3d at 522 and Rafferty v. Cranston Pub. Sch. Comm., 315 F.3d 21, 26-27 [1st Cir. 2002]). But in an any event, in this instance, the 2012-13 Rebecca School progress reports entered into the hearing record provide evidence that the student's program was specially designed to meet his unique needs and established that he made progress during the 2012-13 school year (Parent Exs. B; C).

Based on the foregoing, the evidence in the hearing record supports the IHO's finding that the parent met her burden to establish that the Rebecca School provided the student with instruction and services specially designed to meet his unique needs.

D. Relief

As neither party has appealed the IHO's determination that equitable considerations weighed in favor of the parent's request for relief, I now turn to the district's argument that the IHO erred in ordering the district to directly fund the costs of the student's tuition at the Rebecca School. Specifically, the district argues that the parent provided no evidence regarding the financial status of the student's father or his ability or inability to pay the tuition. The parent, on the other hand, claims that she was entitled to direct funding because she as contractually obligated to pay tuition to Rebecca and was without the financial means to do so.

With regard to fashioning equitable relief, one court has addressed whether it is appropriate under the IDEA to order a school district to make retroactive tuition payment directly to a private school where: (1) a student with disabilities has been denied a FAPE; (2) the student has been enrolled in an appropriate private school; and (3) the equities favor an award of the costs of private school tuition; but (4) the parents, due to a lack of financial resources, have not made tuition payments but are legally obligated to do so (Mr. and Mrs. A. v. New York City Dep't of Educ., 769 F. Supp. 2d 403, 406 [S.D.N.Y. 2011]). The court held that "[w]here . . . parents lack the financial resources to 'front' the costs of private school tuition, and in the rare instance where a private school is willing to enroll the student and take the risk that the parents will not be able to pay tuition costs—or will take years to do so—parents who satisfy the Burlington factors have a right to retroactive direct tuition payment relief" (Mr. and Mrs. A., 769 F. Supp. 2d at 428; see also A.R. v. New York City Dep't of Educ., 2013 WL 5312537, at *11 [S.D.N.Y. Sept. 23, 2013]). The Mr. and Mrs. A. Court relied in part on dicta from earlier cases in which similar claims seeking direct retroactive payment to a private non-approved school were asserted (see Connors v. Mills, 34 F. Supp. 2d 795, 805-06 [N.D.N.Y. 1998] [opining that such financial disputes should be resolved within the administrative hearing process]; see also S.W. v. New York City Dep't of Educ., 646 F. Supp. 2d 346, 358-60 [S.D.N.Y. 2009]). The Mr. and Mrs. A. Court held that in fashioning such relief, administrative hearing officers retain the discretion to reduce or deny tuition funding or payment requests where there is collusion between parents and private schools or where there is evidence that the private school has artificially inflated its costs (Mr. and Mrs. A., 769 F. Supp.2d at 430). Since the parent selected Rebecca as the unilateral placement, and her financial status is at issue, the parent bears the burden of production and persuasion with respect to whether the parent has the financial resources to "front" the costs of Rebecca and whether she is legally obligated for the student's tuition payments (Application of a Student with a Disability, Appeal No. 12-036; Application of a Student with a Disability, Appeal No. 12-004; Application of the Dep't of Educ., Appeal No. 11-130; Application of the Dep't of Educ., Appeal No. 11-106; Application of a Student with a Disability, Appeal No. 11-041).

In this case, it is undisputed that the parent entered into an enrollment agreement with the Rebecca School for the student's attendance during the 2012-13 school year (see Parent Ex. E). Under the terms of the enrollment contract and by signing the agreement, the parent acknowledged her financial obligation for payment of the student's tuition (see Tr. pp. 290, 292; Parent Ex. E at p. 2). In addition, the parent testified that she would be responsible for the tuition in the event she was unsuccessful at the impartial hearing (Tr. p. 290). The parent also testified that she paid a $1000 deposit to the school and was on a payment plan, whereby she paid the Rebecca School $25 per month towards the tuition owed (Tr. pp. 289-90). Based upon the foregoing, the evidence sufficiently supports the conclusion that the parent was "legally obligated" to pay the student's tuition at Rebecca (Mr. and Mrs. A., 769 F. Supp. at 406).

Next, however, a review of the hearing record indicates that the parent did not provide sufficient evidence regarding whether, due to a lack of financial resources, she was financially unable to front the costs of the tuition at Rebecca for the 2012-13 school year. The parent submitted letters from the Social Security Administration showing her receipt of three separate Supplemental Security Income (SSI) payments on behalf of herself and her two children in the amounts of $669.90, $713, and $744 per month (Parent Ex. R at pp. 1-3). However, these three letters are dated in the range of October 18, 2013 to December 1, 2013, which was after the school year at issue (see id.). Further, and more importantly, the hearing record does not offer any

information regarding the father's income, financial resources, or whether the father is responsible for and is supporting the student in this case. In short, when a single parent seeks direct funding due to a lack of financial resources, there should be at least some minimal testimonial or other evidence showing why the other parent's financial resources, or lack thereof, should or should not be considered before determining that the student's placement should be directly funded at public expense due to the parents' financial circumstances. Under these circumstances, the district is correct that the parent has not met her burden to establish that there were insufficient financial resources to "front" the student's tuition costs for the 2012-13 school year (Mr. and Mrs. A., 769 F. Supp. at 428). Accordingly, the parent is awarded relief in the form of reimbursement of the costs of the student's tuition at the Rebecca School upon proof of payment. However, in view of the fact that the parent and the student are on SSI, should it become apparent to district that resources from the student's father are in fact unavailable through no fault of the parent (i.e. deceased, incarcerated, whereabouts unknown), I would strongly encourage the district to reconsider its position and reach an agreement with the parent to directly fund the student's tuition costs.

VII. Conclusion

After a complete and careful review of the record, the IHO's finding that the district did not offer student a FAPE for the 2012-13 school year is sustained, although for different reasons, as set forth above. A further review of the hearing record reveals that Rebecca School was an appropriate unilateral placement for the student. However, the parent has not established her entitlement to direct funding of the costs of the student's tuition by the district.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

IT IS ORDERED that the IHO's decision dated June 20, 2014 is modified by reversing those portions ordering direct funding of the tuition balance for the 2012-2013 school year; and

IT IS FURTHER ORDERED that, unless the parties otherwise agree, the district shall reimburse the parent for the costs of the student's tuition at Rebecca for the 2012-13 school year upon the submission of proof of payment to the district.

Dated: **Albany, New York**
October 20, 2014

JUSTYN P. BATES
STATE REVIEW OFFICER