The University of the State of New York

The State Education Department
State Review Officer
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No. 14-173

**Application of a STUDENT WITH A DISABILITY, by his parents, for review of a determination of a hearing officer relating to the provision of educational services by the Byram Hills Central School District**

**Appearances:**
Law Office of Peter D. Hoffman, PC, attorneys for petitioners, Peter D. Hoffman, Esq., of counsel

Bond, Schoeneck & King, PLLC, attorneys for respondent, Sara M. Richmond, Esq., of counsel

## DECISION

### I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioners (the parents) appeal from the decision of an impartial hearing officer (IHO) which denied their request to be reimbursed for their son's tuition costs at the Gow School (Gow) for the 2011-12 and 2012-13 school years. Respondent (the district) cross-appeals from the IHO's determination that it failed to demonstrate that it provided an appropriate educational program to the student for the 2010-11 school year. The appeal must be dismissed. The cross-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 parties' familiarity with the detailed facts and procedural history of the case and the IHO's decision is presumed and they will not be recited in detail here. Briefly, the student received special education services as a student with a learning disability beginning in kindergarten (Tr. pp. 1143, 1147). He has received diagnoses of an anxiety disorder, an attention deficit hyperactivity disorder, an endocrine disorder, food allergies, and learning disabilities in reading, spelling, and math, and has been described as "prone to depression" (Tr. pp. 1143-44; 1147; Dist. Ex. 25 at p. 13).

On May 12, 2010, the CSE convened to conduct an annual review of the student's program and to develop the student's IEP for the 2010-11 school year (Dist. Ex. 4 at p. 1). Having determined that the student remained eligible for special education and related services as a student

with a learning disability for the 2010-11 school year, the May 2010 CSE recommended a 15:1 special class placement for academic subjects, resource room services in a 5:1 ratio for 45 minutes daily, and individual counseling once per week for 30 minutes (id.).[1] To further support the student's academic, social/emotional and behavioral needs, the May 2010 IEP included management strategies, program modifications and accommodations, and testing accommodations (id. at pp. 1-2). The student attended a district public school pursuant to the May 2010 IEP for the 2010-11 school year (Tr. pp. 57-58, 1142-43).

On March 23, 2011, the CSE convened to conduct an annual review of the student's program, to develop the student's IEP for the 2011-12 school year, and to modify the May 2010 IEP (Tr. pp. 81-82, 88-89; Dist. Exs. 12 at pp. 1-2; 13 at p. 1). The amended IEP, to be implemented for the remainder of the 2010-11 school year, added multisensory reading support for 45 minutes per day to begin in April 2011 (Tr. pp. 87-89; Dist. Ex. 12 at p. 3). Having determined that the student remained eligible for special education and related services as a student with a learning disability for the 2011-12 school year, the March 2011 CSE recommended a 15:1 special class placement for academic subjects, resource room services, and related services consisting of multisensory reading support in a small group for 45 minutes daily and individual counseling once per week for 30 minutes (Dist. Ex. 13 at pp. 1, 12). Additionally, the March 2011 IEP for the 2011-12 school year identified that the student needed strategies, including a behavioral intervention plan (BIP), to address behaviors that impeded the student's learning, and to increase behaviors such as completion of assignments and homework, coming to class prepared, and being respectful to others (id. at p. 8). To further support the student's academic, social/emotional, and behavioral needs, the IEP included management strategies, program modifications and accommodations, and testing accommodations (id. at pp. 8, 13). Although the parents contest this, according to the district's director of special services, the March 2011 CSE discussed completion of a functional behavioral assessment (FBA) and development of a BIP during the 2011-12 school year (Tr. pp. 90-92, 96, 236-38, 1287; Dist. Ex. 13 at p. 8).

During summer 2011 the student attended a program at the Eagle Hill School (Eagle Hill), an out-of-State nonpublic school (Tr. pp. 1173-75, 1193-96; Parent Ex. V).

By letter dated August 17, 2011, the parents indicated that they believed the March 2011 IEP developed for the 2011-12 school year was not appropriate to meet the student's educational needs (Dist. Ex. 23). Furthermore, the parents indicated that the student would attend Gow for the 2011-12 school year and, if he made progress, they would be seeking reimbursement for the costs of his tuition and related expenses (id.).[2] The student began attending Gow in September 2011 and continued to attend Gow during the course of the impartial hearing (Tr. pp. 1142-43; Parent Exs. CC; DD; KK).[3]

[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]).

[2] The Commissioner of Education has not approved Gow as a school with which school districts may contract for the instruction of students with disabilities (see 8 NYCRR 200.1[d]; 200.7).

[3] Gow has not been approved by the Commissioner of Education as a school with which school districts may contract for the instruction of students with disabilities (see 8 NYCCR 200.1[d], 200.7).

By email dated September 12, 2011, the parents sent the district the report from a private psychological evaluation that was conducted in July 2011 (Dist. Ex. 25).

On June 7, 2012, the CSE convened to conduct an annual review of the student's program and to develop the student's IEP for the 2012-13 school year (Dist. Exs. 27; 40 at p. 2). According to the hearing record, the June 2012 CSE determined that more information was needed in order to develop the student's IEP for the 2012-13 school year; and therefore the meeting was adjourned until more information could be obtained from Gow regarding the student's current program and present levels of performance (Tr. pp. 891-92, Dist. Exs. 40 at p. 2; see Parent Ex. NN [June 2012 Meeting]; Dist. Ex. 55).[4] The CSE reconvened on August 15, 2012 to review information obtained from Gow and to complete the student's IEP (Dist. Exs. 38 pp. 2; 40; see Parent Ex. NN [August 2012 Meeting]; Dist. Ex. 55). Having determined that the student remained eligible for special education and related services as a student with a learning disability, the August 2012 CSE recommended placement in a general education class for science and social studies with direct consultant teacher services, a 15:1 special class placement for language arts and math, resource room services daily in the "flexible support program" (FSP), daily multisensory reading support, and individual counseling once per week (Dist. Ex. 40 at pp. 13-14).[5]

By letter dated August 9, 2012, the parents informed the district that they felt the August 2012 IEP was inappropriate and the student would attend Gow for the 2012-13 school year (Dist. Ex. 39). The parents also informed the district that they would be seeking tuition reimbursement (id.). In a due process complaint notice, dated October 5, 2012, the parents alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2010-11, 2011-12 and 2012-13 school years (see IHO Ex. I).[6]

An impartial hearing convened on January 7, 2013 and concluded on June 4, 2013 after 10 days of proceedings (Tr. pp. 1-1603). In a decision dated October 15, 2014, the IHO determined that the district failed to provide the student a FAPE for the 2010-11 school year and ordered

[4] Included in the hearing record are audio files from the June 7, 2012, and August 15, 2012, CSE meetings, one set submitted by the parents and another by the district (Tr. pp. 988-89, 1003-04, 1559-60, 1570-72; see Parent Ex. NN; Dist. Ex. 55). The content of the files in Exhibits 55 and NN is essentially identical, although the sound quality and comprehensibility of the version submitted by the district is generally better. For purposes of this decision, both exhibits will be cited here, with the date of the relevant CSE meeting in brackets. In addition, the versions of the audio files for the June 2012 CSE meeting entered into evidence by the parents were submitted in four parts: "Part 1" and "Part 2" do not appear to contain any information; "Part 4" is the beginning of the CSE meeting; and "Part 3" contains the conclusion of the meeting.

[5] The hearing record indicates that the flexible support program was a new program developed by the district for the 2012-13 school year for students who were emotionally disregulated and were having difficulty meeting academic and social demands in the school setting (Tr. pp. 116-17). According to the district's director of special programs, the program consisted of a dedicated team including a school psychologist, special education teacher, and an education aide, as well as a part time guidance counselor (Tr. p. 117). The district's assistant special education director, who chaired the June and August 2012 CSE meetings, described the flexible support program as a program designed for students who needed additional social/emotional, behavioral, or academic support (Tr. pp. 908-09).

[6] The first two hearing officer exhibits admitted were labeled IHO Exhibits A and B (Tr. p. 25); the next was admitted as IHO Exhibit I (Tr. p. 68). Subsequently, IHO Exhibits 2 through 17 were entered into the record.

compensatory education (IHO Decision at pp. 23-25).[7] The IHO also determined that the district offered the student a FAPE for the 2011-12 and 2012-13 school years (id. at pp. 25-29). As relief, the IHO ordered the district to reimburse the parents for the cost of tutoring services they procured for the student during the 2010-11 school year and for the cost of the student's attendance at Eagle Hill during summer 2011 (id. at pp. 25, 29).

## IV. Appeal for State-Level Review

The parties' familiarity with the particular issues raised for review on appeal in the parents' petition for review and the district's answer and cross-appeal thereto is also presumed and will not be recited here. The essence of the parties' dispute on appeal is whether the IHO correctly determined that the district failed to provide the student a FAPE during the 2010-11 school year, correctly determined that the district offered the student a FAPE during the 2011-12 and 2012-13 school years, and ordered appropriate compensatory education.[8]

## 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

[7] A different IHO presided over the entirety of the impartial hearing but failed to timely render a decision, after which two additional IHOs were appointed and recused themselves, prior to the fourth assigned IHO issuing the final decision in this matter (IHO Decision at pp. 5-6).

[8] There was a dispute regarding the completeness of the impartial hearing record provided to the Office of State Review in this matter (see generally Letter from Peter D. Hoffman, Esq. to Office of State Review [Dec. 22, 2014]). The missing material (an exhibit attached to the parents' reply memorandum of law in support of a motion made to the IHO) has been received by this office. Both the first and third IHOs appointed to hear this matter declined to admit the material into evidence (IHO Ex. 12 at pp. 8-11). However, as noted by the third IHO, the material is properly part of the impartial hearing record (id. at pp. 10-11). Furthermore, as noted by the first IHO, the material does not appear to be relevant to any issues to be determined in this decision (id. at pp. 8-9). Nonetheless, the information contained in the submission was before the IHO and properly constitutes a part of the hearing record, and I remind the district of its obligation to maintain "a true and complete copy of the hearing record" before the IHO and for submission to the Office of State Review (8 NYCRR 200.5[j][3][v], [5][vi]; 279.9]).

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 [2d Cir. 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 [2d Cir. 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 [2d Cir. 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 [2d Cir. 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]).

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

Upon careful review, the hearing record reflects that the IHO, in a well-reasoned and well-supported decision, correctly determined that the district failed to provide the student with a FAPE during the 2010-11 school year and offered the student a FAPE for the 2011-12 and 2012-13 school years (see IHO Decision at pp. 20-29). The IHO accurately recounted the facts of the case, addressed the specific issues identified in the parents' due process complaint notice, set forth the proper legal standard to determine whether the district offered the student a FAPE, and applied that standard to the facts at hand (id. at pp. 6-29). The decision shows that the IHO carefully considered the testimonial and documentary evidence presented by both parties, and further, that she weighed the evidence and properly supported her conclusions (id.). Furthermore, an independent review of the entire hearing record reveals that the impartial hearing was conducted in a manner consistent with the requirements of due process and that there is no reason appearing in the hearing record to modify the determinations of the IHO (see 20 U.S.C. § 1415[g][2]; 34 CFR 300.514[b][2]). Thus, the conclusions of the IHO are hereby adopted.

### A. Preliminary Matters—Form Requirements for Pleadings

Before reaching the merits in this case, a determination must be made regarding the parents'

compliance with the pleading requirements in State regulations.[9] In its answer, the district challenges the parents' petition as noncompliant with the form requirements set forth in the practice regulations applicable to proceedings before the Office of State Review. The district alleges that the parents' petition and memorandum of law both exceed the 20-page limitation set for each and impermissibly incorporate by reference the procedural and factual history of this case (see 8 NYCRR 279.8[a][5] [providing that "the petition, answer, or memorandum of law shall not exceed 20 pages in length" and that "[a] party shall not circumvent page limitations through incorporation by reference"]). Here, the district is correct that the parents' 21-page petition for review and 21-page memorandum of law fail on their face to comply with the applicable 20-page limitation.

State regulations provide that documents that do not comply with the pleading requirements "may be rejected in the sole discretion of the State Review Officer" (8 NYCRR 279.8[a]). Despite the foregoing violations of State regulations applicable to the form requirements for pleadings submitted to the Office of State Review, I exercise my discretion and decline to reject the parents' pleadings in this case. I again remind parents' counsel of the pleading requirements expressly prescribed by State regulations and of the potential consequences for failing to comply with the form requirements set forth in State regulations.

**B. 2010-11 School Year**

In its cross-appeal, the district contends that the IHO erred because the student's 2010-11 program included positive behavior reinforcement, study-skill goals and other management supports, and because the student's special education teachers used multisensory techniques that met the student's needs. The parents respond that the IHO's determination that the district failed to provide the student with a FAPE during the 2010-11 school year was correct because the lack of a formal behavior plan interfered with the student's instruction and the district failed to address the student's needs related to his reading difficulties.

**1. Special Factors—Interfering Behaviors**

Under the IDEA, a CSE may be required to consider special factors in the development of a student's IEP. Among the special factors in the case of a student whose behavior impedes his or her learning or that of others, the CSE shall consider positive behavioral interventions and supports, and other strategies, to address that behavior (20 U.S.C. § 1414[d][3][B][i]; 34 CFR 300.324[a][2][i]; see 8 NYCRR 200.4[d][3][i]; see also E.H. v. Bd. of Educ., 361 Fed. App'x 156 [2d Cir. 2009]; A.C., 553 F.3d at 172). In New York State, policy guidance explains that "the IEP must include a statement (under the applicable sections of the IEP) if the student needs a particular device or service (including an intervention, accommodation or other program modification) to address [behavioral] needs in order for the student to receive a [FAPE]" ("Guide to Quality

[9] In their petition the parents contend that the IHO's decision should be deemed a "nullity" because the IHO "was to issue a decision by October 5, 2014 [but] did not issue her decision until October 15, 2014." However, any delay in the IHO's decision did not impact the merits of the decision, and in any event the parents point to no authority that a delay in the IHO's decision would render it a nullity (cf. E.E. v. New York City Dep't of Educ., 2014 WL 4332092, at *6 [S.D.N.Y. Aug. 21, 2014]; M.L. v. New York City Dep't of Educ., 2014 WL 1301957, at *13 [S.D.N.Y. Mar. 31, 2014]). Further, in light of the fact that several other IHOs had been unable to render a decision in this matter for a variety of reasons, and the IHO who successfully rendered the underlying decision was faced with the daunting task of taking on a complex case with a large record, I decline to deem the IHO's decision a nullity as the parents request (see IHO Decision at pp. 5-6).

Individualized Education Program [IEP] Development and Implementation," at pp. 25-26, Office of Special Educ. [Dec. 2010], available at http://www.p12.nysed.gov/specialed/publications/iepguidance/IEPguideDec2010.pdf). "The behavioral interventions and/or supports should be indicated under the applicable section of the IEP," and if necessary, "[a] student's need for a [BIP] must be documented in the IEP" (id. at p. 25). State procedures for considering the special factor of a student's behavior that impedes his or her learning or that of others may also require that the CSE consider having an FBA conducted and a BIP developed for a student (8 NYCRR 200.4[d][3][i], 200.22[a]-[b]). State regulations define an FBA as "the process of determining why a student engages in behaviors that impede learning and how the student's behavior relates to the environment" and which

> include[s], but is not limited to, the identification of the problem behavior, the definition of the behavior in concrete terms, the identification of the contextual factors that contribute to the behavior (including cognitive and affective factors) and the formulation of a hypothesis regarding the general conditions under which a behavior usually occurs and probable consequences that serve to maintain it

(8 NYCRR 200.1[r]). According to State regulations, an FBA shall be based on multiple sources of data and must be based on more than the student's history of presenting problem behaviors (8 NYCRR 200.22[a][2]). An FBA must also include a baseline setting forth the "frequency, duration, intensity and/or latency across activities, settings, people and times of the day," so that a BIP (if required) may be developed "that addresses antecedent behaviors, reinforcing consequences of the behavior, recommendations for teaching alternative skills or behaviors and an assessment of student preferences for reinforcement" (8 NYCRR 200.22[a][3]).

With regard to a BIP, the special factor procedures set forth in State regulations further note that the CSE or CPSE "shall consider the development of a [BIP] for a student with a disability when: (i) the student exhibits persistent behaviors that impede his or her learning or that of others, despite consistently implemented general school-wide or classroom-wide interventions; (ii) the student's behavior places the student or others at risk of harm or injury; (iii) the CSE or CPSE is considering more restrictive programs or placements as a result of the student's behavior; and/or (iv) as required pursuant to" 8 NYCRR 201.3 (8 NYCRR 200.22[b][1]). If the CSE determines that a BIP is necessary for a student "the [BIP] shall identify: (i) the baseline measure of the problem behavior, including the frequency, duration, intensity and/or latency of the targeted behaviors . . .; (ii) the intervention strategies to be used to alter antecedent events to prevent the occurrence of the behavior, teach individual alternative and adaptive behaviors to the student, and provide consequences for the targeted inappropriate behavior(s) and alternative acceptable behavior(s); and (iii) a schedule to measure the effectiveness of the interventions, including the frequency, duration and intensity of the targeted behaviors at scheduled intervals" (8 NYCRR 200.22[b][4]). Furthermore, "[t]he implementation of a student's [BIP] shall include regular progress monitoring of the frequency, duration and intensity of the behavioral interventions at scheduled intervals, as specified in the [BIP] and on the student's IEP. The results of the progress monitoring shall be documented and reported to the student's parents and to the CSE or CPSE and shall be considered in any determination to revise a student's [BIP] or IEP" (8 NYCRR 200.22[b][5]).

The parents contend that the informal BIP implemented during the 2010-11 school year was ineffective and the district should have conducted an FBA to develop a formal BIP. The parents further aver that the lack of the FBA and BIP interfered with the effectiveness of the student's reading instruction. The IHO found that the district should have conducted an FBA "with the aim of creating a formal, effective behavioral plan to reduce [the student's] interfering behaviors" (IHO Decision at pp. 23-25). A review of the hearing record supports the IHO's decision that the district was required to complete an FBA and to develop a BIP.

Specifically, the hearing record indicates that the student exhibited behaviors that impeded his learning as well as that of other students (Tr. pp. 50, 293-94, 305-08, 340, 351-52, 366-68, 432-33, 435-36, 664, 718-19, 747-48, 794, 823-24; Dist. Exs. 8; 10; 14 at p. 2; 15; 21). The student's interfering behaviors are described as not completing homework and classroom assignments; not being engaged in class; not being prepared for class; exhibiting severe apathy for school; being uncooperative approximately 50 percent of the time; being disorganized; resistance to being helped; and needing to be refocused and redirected frequently (Tr. pp. 293, 306-08, 340-42, 351-52, 366-68, 432-36, 488, 664; Dist. Exs. 8, 10, 15). The student's teachers and counselor implemented a class-wide positive behavioral system in which the students earned checkmarks during each class for appropriate behaviors such as being on task, copying homework, and exhibiting positive behaviors; earning checkmarks resulted in the students receiving rewards at the end of the day (Tr. pp. 48-49, 62-63, 301-02, 421, 665). According to the hearing record, the positive behavior plan was implemented this way so the student did not feel singled out; however, the class-wide positive behavior plan was not effective for the student (Tr. pp. 49, 141-42, 235, 301-02, 368, 664-65; Dist. Ex. 10). The student's teachers testified that they provided the student with additional accommodations and modifications throughout the school year; however these were not effective in improving the student's behaviors or increasing his interest and engagement in school (Tr. pp. 305-8, 317, 347, 351-53, 368, 664-65; Parent Ex. H). Notably the student's teachers and his counselor described the student's behaviors as inconsistent, and two of his special education teachers both testified that they felt there were times when they were "forcing him" to participate in class (Tr. pp. 340, 365-66, 389-90, 433, 751, 758, 774; Dist. Ex. 10).

Finally, according to the school psychologist, an FBA was not completed because district staff was aware of the student's history of behaviors and his work avoidance going back to kindergarten, as well as his history of having difficulty completing homework and classroom assignments (Tr. pp. 751-52). Additionally, one of the student's special education teachers testified that she had been unable to determine the causes of the student's behaviors during the 2010-11 school year (Tr. p. 462).

As set forth in detail above, an FBA is defined in State regulations as, "the process of determining why a student engages in behaviors that impede learning and how the student's behavior relates to the environment." Based on the severity and frequency of the student's interfering behaviors and the ineffectiveness of the informal behavior plan during the 2010-11 school year—and consistent with the findings of the IHO—the district's failure to conduct an FBA and develop a BIP constituted a violation of State regulations.

**2. Specialized Reading Instruction**

The parents contend that the student's lack of progress indicated the need for a multisensory reading program and that the district adding multisensory reading support to the May 2010 IEP in

March 2011 was too late in the school year to offer the student a FAPE. The IHO determined that not providing the student with a multisensory reading program to "remedy his substantial reading deficits prevented him from making meaningful progress" (IHO Decision at pp. 24-25). A review of the hearing record supports the IHO's determination that the district should have provided the student with appropriate reading services prior to April 2011.

The hearing record shows that the student had received a diagnosis with a learning disability in reading and had a history of reading difficulties, especially with decoding and fluency (Tr. pp. 1143-48; Dist. Exs. 4 at p. 2-5; 25 at pp. 3, 11-13). Additionally, the May 2010 IEP indicates that while the student made some progress in his reading skills, he continued to have difficulties in decoding, which impacted his reading comprehension; he had difficulty completing reading assignments due in part to his decoding difficulties and perceptual deficits; and he "require[d] further decoding practice to build fluency and improve spelling" (Dist. Ex. 4 at pp. 4-5). Furthermore, the May 2010 IEP recommended that the student be exempt from the language other than English requirement due to his difficulty with reading and provided test accommodations including test directions read aloud and tests other than those measuring reading comprehension to be read aloud (id. at p. 2; Tr. p. 66). The hearing record indicates that the student's teachers were aware of his reading difficulties and that his reading comprehension was stronger than his decoding or fluency; however, the student's reading instruction focused on reading comprehension skills and provided indirect decoding instruction largely focusing on understanding and using syllables to identify unfamiliar words (Tr. pp. 152-54, 157, 273, 410-12, 461-62, 649-50, 662, 675-77, 686).

In consideration of the aforementioned, the evidence in the hearing record demonstrates that the district was aware of the student's reading needs and should have provided direct reading instruction prior to the addition of multisensory reading services in April 2011.

**3. Compensatory Education—Additional Services**

Having found that the district failed to adequately address the student's behavioral and reading needs for the 2010-11 school year, it is necessary to determine what relief will remedy the district's failure to provide the student with an appropriate program. Compensatory education is an equitable remedy that is tailored to meet the unique circumstances of each case (Wenger v. Canastota, 979 F. Supp. 147, 151 [N.D.N.Y. 1997]). Within the Second Circuit, compensatory education has been awarded to students who are no longer eligible for services under the IDEA if there has been a gross violation of the IDEA resulting in the denial of, or exclusion from, educational services for a substantial period of time (see Somoza v. New York City Dep't of Educ., 538 F.3d 106, 109 n.2, 113 n.6 [2d Cir. 2008]; Mrs. C. v. Wheaton, 916 F.2d 69 [2d Cir. 1990]; Cosgrove v. Bd. of Educ., 175 F. Supp. 2d 375, 387 [N.D.N.Y. 2001]). Additionally, compensatory relief in the form of supplemental special education or related services has been awarded to students with disabilities who remain eligible for instruction under the IDEA if there has been a denial of a FAPE (see Newington, 546 F.3d at 123 [stating that "[t]he IDEA allows a hearing officer to fashion an appropriate remedy, and . . . compensatory education is an available option under the Act to make up for denial of a [FAPE]"]; Student X. v. New York City Dep't of Educ., 2008 WL 4890440, at *23 [E.D.N.Y. Oct. 30, 2008]). Likewise, SROs have awarded compensatory "additional services" to students who remain eligible to attend school and have been denied appropriate services, if such deprivation of instruction could be remedied through the provision of additional services before the student becomes ineligible for instruction by reason of

age or graduation (Bd. of Educ. v. Munoz, 16 A.D.3d 1142 [4th Dep't 2005] [finding it proper for an SRO to order a school district to provide "make-up services" to a student upon the school district's failure to provide those educational services to the student during home instruction]; Application of a Student with a Disability, Appeal No. 14-172; Application of the Bd. of Educ., Appeal No. 13-056; Application of the Dep't of Educ., Appeal No. 13-048; Application of the Dep't of Educ., Appeal No. 12-135).

Here, to compensate the student for the deficiencies in the program provided to him during the 2010-11 school year, the IHO ordered the district to reimburse the parents for the cost of privately-obtained tutoring services they procured for the student during the school year and for the cost of attending a specialized reading program at Eagle Hill during summer 2011 (IHO Decision at pp. 25, 29). Because the hearing record does not contain information regarding the amount of tutoring the student received, or proof of the parents' payment for tutoring services, the IHO ordered the parents to provide the district with proof of payment and attendance for the tutoring services obtained for the student during the 2010-11 school year (id.; see Tr. pp. 1164-65, 1215, 1277). On appeal, the parents have not offered any additional detail regarding the tutoring services they obtained for the student during the 2010-11 school year, nor have they requested any modification of the IHO's award of reimbursement as compensatory relief. Furthermore, while the district cross-appeals the IHO's determination that it failed to offer the student a FAPE for the 2010-11 school year, it raises no other challenges to the IHO's determinations regarding the amount or structure of the compensatory relief awarded to the parents or the manner in which the IHO made such findings. In light of my determination that the IHO was correct and that the district failed to provide the student with an appropriate program for the 2010-11 school year, and with no further challenge to the remainder of the IHO's determinations regarding compensatory services awarded for the 2010-11 school year by either party on appeal, the case presents no basis for disturbing the IHO's award of relief (see IHO Decision at pp. 25, 29).

**C. 2011-12 School Year**

With regard to the parents' contention that the March 2011 IEP developed for the 2011-12 school year was inappropriate because it offered the same services and methods as the prior year, a review of the hearing record supports the IHO's determination that the IEP was reasonably calculated to provide educational benefits to the student. Specifically, the IEP recommended a 15:1 special class placement for academic subjects, resource room for 45 minutes daily, and individual counseling by a psychologist for 30 minutes once per week (Dist. Ex. 13 at p. 12). Furthermore, to support the student's management needs, the IEP included more details than the prior IEP on how to provide the program modifications and accommodations, and added the use of a calculator during math class and on tests (compare Dist. Ex. 12 at pp. 3-4, with Dist. 13 at pp. 13-14). In finding that the IEP was appropriate, the IHO noted that the IEP recommended multisensory reading support for 45 minutes daily, a service which she described as "long sought" by the parents (IHO Decision at p. 26; Dist. Ex. 13 at p. 1).

To support the student's behavioral management needs, the IEP indicated that the student needed strategies, including positive behavioral interventions, supports and other strategies to address his interfering behaviors including the need for a BIP (Dist. Ex.13 at p. 8). According to the director of special services, the March 2011 CSE determined that the student needed an FBA to develop a BIP in order to increase appropriate behaviors, and he also indicated that the CSE discussed how this would be implemented the following school year (2011-12) (Tr. pp. 91, 96,

163-64, 236-38). He further testified that the FBA and BIP were to be developed during the 2011-12 school year because it would be a "different environment in a different year with different grade level expectations" (Tr. pp. 237-38).[10]

Based on the foregoing and consistent with the findings of the IHO (see IHO Decision at pp. 11-13, 26), the March 2011 CSE developed an IEP for the 2011-12 school year that adequately addressed the student's special education needs and was reasonably calculated to address his social/emotional and behavioral needs.

**D. 2012-13 School Year**

With regard to the development of the student's IEP for the 2012-13 school year, the parents assert that the IHO erred in finding that they had "a full opportunity to participate" therein, contending specifically that they "felt attacked" by allegedly retaliatory actions taken by the district which "thus affect[ed] the extent to which they felt they could participate." Upon review, the IHO's determination is supported by the hearing record.

The IDEA sets forth procedural safeguards that include providing parents an opportunity "to participate in meetings with respect to the identification, evaluation, and educational placement of the child" (20 U.S.C. § 1415[b][1]). Federal and State regulations governing parental participation require that school districts take steps to ensure that parents are present at their child's IEP meetings or are afforded the opportunity to participate (34 CFR 300.322; 8 NYCRR 200.5[d]). Although school districts must provide an opportunity for parents to participate in the development of their child's IEP, mere parental disagreement with a school district's proposed IEP and placement recommendation does not amount to a denial of meaningful participation (see E.F. v. New York City Dep't of Educ., 2013 WL 4495676, at *17 [E.D.N.Y. Aug. 19, 2013] ["Under the law parents must be given the opportunity to meaningfully participate in the IEP development process. However, as long as the parents are listened to, this burden is met even if the [district] ultimately decides not to follow the parents' suggestions"] [citations omitted]; P.K. v. Bedford Cent. Sch. Dist., 569 F. Supp. 2d 371, 383 [S.D.N.Y. 2008] ["A professional disagreement is not an IDEA violation"]; Sch. for Language & Commc'n Dev. v. New York State Dep't of Educ., 2006 WL 2792754, at *7 [E.D.N.Y. Sept. 26, 2006] ["Meaningful participation does not require deferral to parent choice"]).

Initially, counsel for the parents was in attendance at and witnessed events at the meeting in question and, even assuming that the parents felt discomfort with the notion of participating as a result of actions taken by the district, it is unclear why counsel's attendance was insufficient to ensure that their views were represented. Furthermore, although the meeting was at times contentious, none of the district members of the CSE impeded the parents' ability to participate in

[10] The IHO specifically credited the district's director of special services' account of the March 2011 CSE meeting as it pertained to conducting an FBA and developing a BIP over that of the student's mother (IHO Decision at pp. 11-12). An SRO gives due deference to the credibility findings of an IHO, unless non-testimonial evidence in the hearing record justifies a contrary conclusion or the hearing record, read in its entirety, compels a contrary conclusion (see Carlisle Area School v. Scott P., 62 F.3d 520, 524, 528-29 [3d Cir. 1995]; M.W. v. New York City Dep't of Educ., 869 F. Supp. 2d 320, 330 [E.D.N.Y. 2012]; Bd. of Educ. v. Schaefer, 84 A.D.3d 795, 796 [2d Dep't 2011]; Application of a Student with a Disability, Appeal No. 12-076). Upon review of the hearing record, the IHO's credibility determination is well supported and a contrary conclusion is neither justified nor compelled by the record.

the meeting (Parent Ex. NN [August 2012 Meeting]; Dist. Ex. 55). Their counsel was provided multiple opportunities to speak and, in addition to presenting the parents' views relevant to the development of an IEP for the student for the 2012-13 school year, presented their positions with regard to unrelated matters and objected to the manner in which the meeting was conducted (id.). In addition, the student's mother was provided the opportunity to relay her concerns with regard to the student's needs, and she spoke out regarding the adequacy of evaluative information and the student's need for assistive technology (id.). The student's mother also expressed doubt regarding the district's ability to provide services on par with those provided by Gow, regardless of the program recommended by the CSE, and the manner in which she felt Gow provided both the services required to offer the student an appropriate program and a superior grouping of students with similar needs (id.). The CSE also obtained the participation of the student's headmaster at Gow by telephone, to obtain input reflective of the student's then-current functioning, which was reflected on the August 2012 IEP (id.; Dist. Ex. 40). Accordingly, the argument raised on appeal—which provides no citation to any record evidence—is entirely unsupported by the hearing record.

The parents also contend that the August 2012 IEP was inappropriate because, with the exception of a few added services, it was essentially the same as the IEP developed for the 2011-12 school year, and the proposed program was not reasonably calculated to provide the student with educational benefits. However, the hearing record supports the IHO's determination that the services and program recommended in the August 2012 IEP were reasonably calculated to provide meaningful benefit to the student (IHO Decision at p. 28).

The August 2012 IEP recommended a 15:1 special class placement for math and language arts, a general education placement for science and social studies with direct consultant teacher support in each class daily, resource room services in the flexible support program room for 45 minutes daily, multisensory reading support for 45 minutes daily, and individual counseling by a psychologist for 30 minutes once per week (Dist. Ex. 40 at pp. 13-14). To further support the student's social/emotional and behavioral needs, the August 2012 IEP indicated that the student could request to work in the flexible support program room when he felt unable to handle the demands of the classroom, and that he could request to speak to a special education teacher or psychologist on an as needed basis (id. at pp. 14-15). The August 2012 IEP also recommended the use of a laptop computer for word processing and access to programs to such as speech-to-text, scanning written material and audio books (id. at p. 15). Furthermore, the August 2012 IEP recommended support for school personnel in the form of an assistive technology consultation for 45 minutes twice monthly, monthly team meetings with school personnel and the parents for 30 minutes, and as needed counseling consultation in which a psychologist would be available throughout the school day as part of the flexible support program (id.). Finally, the August 2012 IEP indicated that the student continued to demonstrate behaviors that impeded his learning or that of others and that he required a BIP (id. at p. 10).

The parents also contend that the August 2012 CSE should have recommended a residential placement based upon a recommendation contained in the July 2011 private evaluation report (Dist. Ex. 25 at pp. 13-17). The parents contend that the student required a residential placement in order to address his social/emotional needs as well as his reading disability; however, other than the parent's preference that the student attend Gow—a nonpublic residential school—and the recommendation in the July 2011 private psychological evaluation report, the evidence in the hearing record does not support that the August 2012 CSE should have recommended that the student be provided services in a residential placement in order to receive educational benefits. A

residential placement is one of the most restrictive educational placements available for a student and it is well settled that a residential placement is not appropriate unless it is required for a student to benefit from his or her educational program (Walczak, 142 F.3d at 122; Mrs. B., 103 F.3d at 1121-22).[11] While the district was required to consider the recommendation in the private psychological evaluation report, it was not required to adopt the private evaluator's recommendations or provide everything that loving parents might desire (Walczak, 142 F.3d at 132, quoting Tucker, 873 F.2d at 567; see J.C.S. v. Blind Brook-Rye Union Free Sch. Dist., 2013 WL 3975942, at *11 [E.D.N.Y. Aug. 5, 2013] [upholding an SRO's conclusion that the CSE reasonably departed from a private evaluator's recommendation that a student required residential placement and holding that "the law does not require an IEP to adopt the particular recommendation of an expert; it only requires that that recommendation be considered in developing the IEP"]; Watson v. Kingston City Sch. Dist., 325 F. Supp. 2d 141, 145 [N.D.N.Y. 2004] ["The mere fact that a separately hired expert has recommended different programming does nothing to change" a determination than the IEP was appropriate]).

Here, there is no indication in the hearing record that the student's special education needs were so severe that they could only be appropriately addressed in a residential placement. Rather, the evidence reveals that the August 2012 CSE believed that the student could be satisfactorily educated in the district public schools (see Tr. pp. 769-71, 912-13; Parent Ex. NN [August 2012 Meeting]; Dist. Ex. 55). However, even assuming that the student would have made greater progress in a residential setting if he was removed from the public school and placed in a nonpublic residential setting, that is insufficient to overcome the district's obligation under the IDEA to offer the least restrictive environment within the public school system reasonably calculated to enable the student to receive educational benefits (see A.D. v. New York City Dep't of Educ., 2013 WL 1155570, at *7-*8 [S.D.N.Y. Mar. 19, 2013]). Therefore, as the IHO correctly determined, the parents' assertion that the student required a residential program is unsupported by the record (IHO Decision at pp. 28-29).

Based on the foregoing, and consistent with the findings of the IHO, the August 2012 IEP was reasonably calculated to address the student's social/emotional, behavioral, and academic needs (see IHO Decision at p. 28-29).

**E. Retaliation Claim**

The parents appeal the failure of the IHO to address their claim for retaliation on the basis of disability, arising out of section 504 of the Rehabilitation Act of 1973 (section 504) (Pub. L. No. 93-112, 87 Stat. 394 [codified as amended at 29 U.S.C. § 794(a)]). The Education Law makes no provision for state-level administrative review of hearing officer decisions in section 504 hearings and an SRO does not review section 504 claims (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"], citing 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

[11] The Second Circuit has stated that "[w]hile some children's disabilities may indeed be so acute as to require that they be educated in residential facilities, it is appropriate to proceed cautiously whenever considering such highly restrictive placements. . . . The norm in American public education is for children to be educated in day programs while they reside at home and receive the support of their families" (Walczak, 142 F.3d at 132).

education program or service and the failure to provide such program"]; see also D.C. v. New York City Dep't of Educ., 950 F. Supp. 2d 494, 507 [S.D.N.Y. 2013]). 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, relative to those claims in this case, and their appeal in this regard is dismissed.[12]

**VII. Conclusion**

Having determined that the evidence in the hearing record supports the IHO's determinations, the necessary inquiry is at an end and there is no need to reach the issues of whether Gow was an appropriate unilateral placement for the 2011-12 and 2012-13 school years or whether equitable considerations weighed in favor of the parents' request for relief.

I have considered the remaining contentions and find it is unnecessary to address them in light of my determinations above.

**THE APPEAL IS DISMISSED.**

**THE CROSS-APPEAL IS DISMISSED.**

**Dated:** **Albany, New York**
**January 30, 2015**

**JUSTYN P. BATES**
**STATE REVIEW OFFICER**

[12] The parents seem to acknowledge that an SRO does not have jurisdiction over this claim, referencing their intention "to seek redress if necessary on this issue from either the SRO or a court of competent jurisdiction."