The University of the State of New York

The State Education Department
State Review Officer
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No. 17-068

Application of a STUDENT WITH A DISABILITY, by his parent, for review of a determination of a hearing officer relating to the provision of educational services by the Board of Education of the North Syracuse Central School District

Appearances:
Angel Antonio Castro, III, Esq., attorney for petitioner

Bond, Schoeneck & King, PLLC, attorneys for respondent, by Jonathan B. Fellows, Esq.

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 parent) appeals from a decision of an impartial hearing officer (IHO) which determined that the educational program respondent's (the district's) Committee on Special Education (CSE) had recommended for her son for a portion of the 2016-17 school year was appropriate. The district cross-appeals from that portion of the IHO's decision which awarded compensatory educational services. The appeal must be sustained in part. 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 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 student in this appeal was the subject of a recent SRO decision related to the student's placement during the pendency of the impartial hearing proceedings (Application of a Student with a Disability, Appeal No. 17-036). The student's prior educational history, as relevant to this appeal, was set forth in the prior SRO decision and will not be repeated at length here. Briefly, the student is eligible for special education as a student with autism, and that classification is not in dispute (Dist. Ex. 24 at p. 1; see Dist. Ex. 35). The student was educated at a nonpublic school during the 2015-16 school year at district expense per a November 2015 "Resolution Agreement" (see Parent

Exs. P; Q; R; Dist. Ex. 7).[1] In a letter "to whom it may concern," dated September 13, 2016, the dean of students at the nonpublic school related her determination that the nonpublic school was not appropriate for the student, as she opined the student needed "a structured, therapeutic environment" (Parent Ex. U).[2] In a letter dated September 15, 2016, the parent informed the district that the student had been asked not to return to the nonpublic school based on the school's conclusion that the student required more support than it could provide (Parent Ex. V). The parent further indicated that she had been unable to find another school to accept the student, and that she required a recommendation from the district to enroll the student in a therapeutic residential placement (id.). In a letter dated September 29, 2016, the district acknowledged receipt of the parent's correspondence, and advised that, pursuant to the November 2015 resolution agreement, the district would provide a specific amount of funding towards the student's attendance at any in-State nonpublic school that accepted the student (Parent Ex. X). The district also provided the parent with the option of reenrolling the student in the district, in which case the district would convene a CSE and develop an IEP for the student, with consideration of the parent's preference for a residential placement (id.). As relevant to this appeal, the student began the 2016-17 school year without an educational placement but received a number of sessions of "homebound tutoring" between January 2017 and March 2017 (see Tr. pp. 121-23; Dist. Exs. 18; 25 at pp. 51, 57-58; 42 at p. 3).

A. Due Process Complaint Notices and Intervening Events

On December 9, 2016, the parent filed an "amended" due process complaint notice.[3] The parent amended the due process complaint notice on December 16, 2016 in a "second amended" due process complaint notice, asserting additional claims regarding the 2016-17 school year (Dist. Ex. 12). The parent asserted, among other things, that due to the district's failures, the student had not received any instruction or related services during the 2016-17 school year (id. at p. 2).

On February 3, 2017, the district convened a CSE to develop an IEP for the student (Dist. Ex. 24). The resultant IEP recommended an 8:1+1 special class placement in a Board of Cooperative Educational Services (BOCES) program located in a public school, and that he

[1] Prior to the student's nonpublic school placement during the 2015-16 school year, the student was on medical homebound instruction for approximately two years and, prior to that, had been homeschooled for several years, with intermittent attendance in district public schools (Dist. Exs. 2 at pp. 1-2; 24 at p. 4).

[2] By email dated July 5, 2016, counsel for the parent informed counsel for the district that the student would not be returning to the nonpublic school for the 2016-17 school year, but that he would advise the district of the student's enrollment in another school as soon as that information became available (Parent Ex. T).

[3] The December 9, 2016 due process complaint notice was not entered into evidence; however, it was submitted to the Office of State Review as part of the administrative record. The due process complaint notice describes the parent's dissatisfaction with the district's compliance with the November 2015 resolution agreement. The parent also purported to incorporate by reference due process complaint notices dated November 22, 2013, and October 28, 2014. The October 2014 due process complaint notice was entered into evidence at the impartial hearing as parent Exhibit A. However, the October 2014 due process complaint notice was withdrawn by the parent with prejudice pursuant to the November 2015 resolution agreement, and no arguments therein are raised on appeal (Dist. Ex. 5 at pp. 2-3). As the issues contained in the December 9, 2016 due process complaint notice are not relevant to the instant appeal, a recitation of the claims raised therein is not required.

receive the related services of occupational therapy (OT) and speech-language therapy, the services of a full-time 1:1 teaching assistant, as well as a number of supplementary aids and services and program modifications (id. at pp. 1, 19-22, 24). The IEP was scheduled for implementation beginning February 28, 2017 (id. at pp. 1, 13, 19-22).

As referenced in the prior appeal involving this student, by letter dated February 21, 2017, the parent filed a request for pendency and asserted that the student's pendency placement was a nonpublic school of the parent's choice, with related services as set forth in the student's IEP during the 2015-16 school year (Dist. Ex. 29). By letter dated February 28, 2017, the district opposed the parent's request for pendency, asserting that the November 2015 resolution agreement did not establish the student's placement for purposes of pendency (Dist. Ex. 30).

The parent thereafter filed a "third amended" due process complaint notice, dated March 27, 2017 (Dist. Ex. 35). The parent asserted that the student was not receiving any related services and was receiving two hours of homebound tutoring per day (id. at p. 3). The parent further asserted that the homebound tutoring was provided on a sporadic basis, and, as of the filing of the due process complaint, had ceased pursuant to the district's representation that it could not provide tutoring during school hours (id.).

With respect to the development of the February 2017 IEP, the parent asserted that the evaluations used by the February 2017 CSE failed to provide recommendations for frequency, duration, and group size of related services, which rendered the evaluations incomplete (Dist. Ex. 35 at p. 4). The parent also asserted that the CSE ignored the letter provided by the student's prior nonpublic school placement, which showed that the student required a small classroom in a therapeutic environment (id.). The parent further asserted that the CSE impeded the parent's ability to participate in the development of the student's IEP by making "critical decisions" outside of the CSE meeting, predetermining the placement recommendation, and ignoring the parent during the CSE meeting (id. at pp. 5-6).

With respect to the February 2017 IEP, the parent asserted that the IEP: did not address the student's present levels of performance; contained goals that were not measurable; failed to provide activities of daily living (ADL) goals; failed to recommend 1:1 instruction; recommended a reduced amount of speech-language therapy; failed to recommend counseling; failed to provide for a plan to transition the student back to a public school setting; failed to address the extent to which the student would participate in the general education environment; and failed to include promotional criteria (Dist. Ex. 35 at p. 5).

The parent requested, in part, that the IHO order the district to conduct evaluations of the student and develop an IEP for the student which included, among other things, placement in a 6:1+1 special class with a 1:1 aide, resource room services, daily counseling, daily speech-language therapy, assistive technology, and 1:1 instruction in math and English (Dist. Ex. 35 at pp. 8-9). The parent also requested compensatory education services consisting of 800 hours of compensatory educational tutoring, 180 hours each of speech-language therapy, OT, and resource room services, and 220 hours of counseling services (id. at pp. 9-10).

In response to the March 2017 due process complaint notice, the district agreed to amend the student's IEP to provide additional speech-language therapy as requested in the parent’s

complaint, and noted that the IEP included the services of a 1:1 teaching assistant (Dist. Ex. 40). In an interim decision and order dated April 17, 2017, the IHO denied the parent's request for pendency (Apr. 17, 2017 Interim IHO Decision). The IHO found that the resolution agreement did not establish the student's placement for purposes of pendency (id. at p. 5). The IHO also found that the hearing record did not support the parent's request for an order placing the student in a 6:1+1 class with a 1:1 aide (id. at p. 6). The parent appealed the IHO's April 2017 pendency determination to the Office of State Review, and in a decision dated June 22, 2017, an SRO determined that the student's pendency placement was that set forth in a September 2013 IEP, the student's most recently implemented IEP (Application of a Student with a Disability, Appeal No. 17-036).[4]

B. Impartial Hearing Officer Decision

An impartial hearing was held on May 1 and 2, 2017 (Tr. pp. 1-291). In a decision dated July 12, 2017, the IHO found that by not convening a CSE in response to the parent's request for assistance in placing the student, the district failed to offer the student a free appropriate public education (FAPE) from September 2016 through January 2017 (IHO Decision at pp. 15). The IHO also found that the program and placement recommended in the February 2017 IEP offered the student a FAPE (id. at pp. 16-17). The IHO also found that an award of compensatory educational services was warranted to redress the denial of a FAPE (id. at pp. 17-18).

With respect to the parent's request for compensatory educational services, the IHO found that the hearing record contained little evidence to support the parent's request for an award of compensatory educational services (IHO Decision at p. 18). However, as the student was denied a FAPE for approximately 16 school weeks, the IHO ordered the district to provide compensatory services equal to the amount the student would have received during that time period, consisting of 400 hours of tutoring services and 48 30-minute sessions each of OT, speech-language therapy, and counseling services (id. at pp. 18-19). The IHO denied the parent's other requests for relief (id. at p. 18).

IV. Appeal for State-Level Review

The parent appeals, asserting that the IHO erred in not awarding relief for the entire 2016-17 school year. With respect to the February 2017 CSE meeting, the parent asserts that she was impeded from participating because the district refused to "answer her questions or consider her input." Additionally, the parent asserts that the available evaluative information did not reflect the student's needs and that the district agreed that updated evaluative information was necessary to develop an IEP for the student. The parent further asserts that the IHO erred in finding the recommended BOCES program constituted an appropriate therapeutic placement that offered the student a FAPE because the February 2017 IEP did not include counseling services. As a result,

[4] While the parent's appeal was pending, the IHO issued a second interim decision, dated June 12, 2017, adhering to his determination that the resolution agreement did not constitute the student's pendency placement and finding that publicly funded private tutoring services were also not the student's pendency placement (June 12, 2017 Interim IHO Decision at p. 6). The IHO again denied the parent's request for a pendency order "without prejudice" (id.).

the parent contends that the IHO erred in finding that the denial of a FAPE ended in January 2017, and instead, should have found a denial of FAPE for the entire school year. Accordingly, the parent requests additional compensatory education "to make up for all services" the student did not receive during the 2016-17 school year.[5]

In an answer and cross-appeal, the district generally responds to the parent's allegations with admissions and denials, and argues to uphold the IHO's determination that the February 2017 IEP offered the student a FAPE. The district also asserts that the parent failed to serve the notice of request for review required by section 279.3 of the practice regulations, and the request for review must be dismissed. The district cross-appeals the IHO's award of compensatory education services. The district asserts that compensatory education is not warranted because there was not a gross violation of the IDEA resulting in the denial of educational services to the student for a substantial period of time. Rather, the district asserts that it attempted to collaborate with the parent to provide appropriate services to the student.

In a reply, the parent asserts that the district was served with a notice of request for review in relation to Appeal No. 17-036, submits a notice of request for review with respect to this matter, and asserts that the failure to timely serve the notice in this matter did not preclude the district from answering the request for review. In an answer to the cross-appeal, the parent contends that the IHO properly awarded compensatory education services and reiterates her request for additional compensatory services. The parent also asserts, for the first time, that the district did not finalize the IEP developed at the February 2017 CSE meeting. The parent further contends that the February 2017 IEP was superseded by a draft IEP developed in March 2017, and raises claims about the district's failure to evaluate the student after the March 2017 CSE meeting. The parent also reiterates a number of the claims raised in her request for review regarding the district's failure to offer the student a FAPE.

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. of Hendrick Hudson Cent. Sch. Dist. 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; T.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 151, 160 [2d Cir. 2014]; 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.,

[5] The parent also raises assertions regarding various factual findings made by the IHO; however, she does not assert what effect modification of these findings would have on the relief awarded. Accordingly, these claims need not be further addressed.

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. Fla. 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]). The Supreme Court has indicated that "[t]he IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement" (Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 580 U.S. __, 137 S. Ct. 988, 999 [2017]). 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. of the Chappaqua Cent. Sch. Dist., 553 F.3d 165, 172 [2d Cir. 2009]; Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]). 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).

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 adequacy of a given IEP turns on the unique circumstances of the child for whom it was created" (Endrew F., 137 S. Ct. at 1001). 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]). 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 Endrew F., 137 S. Ct. at 1001 [holding that the IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances"]; 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).

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]), 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]).[6]

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).

VI. Discussion

A. Preliminary Matters

1. Notice of Request for Review

The district asserts that the parent failed to serve the notice of request for review required by section 279.3 of the practice regulations, and requests that the SRO dismiss the appeal for lack of conformity to the regulations (see 8 NYCRR 279.3). Each request for review filed with the Office of State Review must contain a "Notice of Request for Review," the content of which is set forth in State regulation and generally notifies a responding party of the requirements with respect to preparing, serving, and filing an answer to the request for review (8 NYCRR 279.3).[7] The parent asserts that the district was provided with the required notice through the prior appeal. A

[6] The Supreme Court has stated that even if it is unreasonable to expect a student to attend a regular education setting and achieve on grade level, the educational program set forth in the student's IEP "must be appropriately ambitious in light of his [or her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives" (Endrew F., 137 S. Ct. at 1000).

[7] To the extent the parent asserts that the district was timely served with a notice of intention to seek review, the notice of request for review is a separate filing required by the practice regulations (compare 8 NYCRR 279.2, with 8 NYCRR 279.3).

review of the regulation shows that the notice must be included in "[e]ach request for review," (8 NYCRR 279.3). The notice of request for review serves the important purpose of providing a respondent with the regulatory directives for properly responding to an appeal. However, in this instance it is unclear why the absence of the notice requires one of the highest forms of sanction—dismissal of the parent's request for review—when the district does not allege how the absence of such notice compromised or prejudiced its ability to timely prepare, serve, or file an answer and the district did, in fact, timely interpose an answer and cross-appeal (8 NYCRR 279.3).[8]

2. Scope of Review

The parent's due process complaint notices contain multiple assertions that were not specifically addressed by the IHO, and the parent does not appeal from the IHO's failure to address those issues or otherwise reassert those claims on appeal (see Dist. Ex. 35 at pp. 3-5). The practice regulations provide that any issue not identified in a party's request for review shall be deemed abandoned and will not be addressed by a State Review Officer (8 NYCRR 279.8[c][4]). As such, the issues raised in the parent's due process complaint notices but not asserted on appeal are deemed abandoned and will not be addressed herein.

Next, the request for review contains a number of claims that are not properly raised on appeal. The scope of an impartial hearing and State-level review are limited to the assertions contained within a due process complaint notice. On appeal, the parent asserts that the February 2017 IEP was superseded by a March 2017 draft IEP. To the extent that the parent is raising claims relating to the March 2017 CSE meeting and the district's subsequent attempts to conduct evaluations of the student, the parent did not assert these allegations in her due process complaint notices and the IHO did not address them in his decision (see IHO Decision; Dist. Exs. 12; 35). The IDEA and its implementing regulations provide that a party requesting an impartial hearing may not raise issues at the impartial hearing that were not raised in its due process complaint notice unless the other party agrees (20 U.S.C. § 1415[f][3][B]; 34 CFR 300.508[d][3][i], 300.511[d]; 8 NYCRR 200.5[i][7][i][a]; [j][1][ii]), or the due process complaint is amended prior to the impartial hearing per permission given by the IHO at least five days prior to the impartial hearing (20 U.S.C. § 1415[c][2][E][i][II]; 34 CFR 300.508[d][3][ii]; 8 NYCRR 200.5[i][7][i][b]). Where, as here, the parent did not seek the district's agreement to expand the scope of the impartial hearing to include these issues or file an amended due process complaint notice, I decline to review these issues for the first time on appeal. Furthermore, as the parent's March 2017 due process complaint notice predated the March 2017 CSE meeting, the parent could not have raised these claims in her due process complaint notices. The parent may assert claims related to the March 2017 CSE meeting and subsequent events in a separate proceeding.

The parent also raises allegations relating to the IHO's determination of the student's pendency placement. As noted above, a determination regarding the student's placement for purposes of pendency was made by another SRO in the prior proceeding involving this student (Application of a Student with a Disability, Appeal No. 17-036). The parent has presented no legal

[8] Aside from the failure to include the required notice of request for review, the parent's reply does not meet the formatting requirements for a pleading and exceeds the permissible scope of a reply (see 8 NYCRR 279.6; 279.8). Counsel is cautioned that further failure to comply with the practice regulations may result in the dismissal of an appeal (8 NYCRR 279.8[a]).

or factual basis not advanced to the SRO in the prior proceeding to disturb that determination, and I decline her invitation to do so. The parent may seek review of that determination in State or federal court (20 U.S.C. § 1415[i][1][B], [2]; 34 CFR 300.516; 8 NYCRR 200.5[k][3]).

After reviewing the issues raised in the parent's due process complaint notices, and comparing them to the issues determined by the IHO and raised in the parties' pleadings, the following issues remain to be adjudicated: the parent's assertion that she was deprived of an opportunity to participate in the development of the student's IEP; whether the evaluative information the February 2017 CSE had available to it reflected the student's needs sufficiently in order to develop an IEP; whether the district's failure to recommend counseling services in the February 2017 IEP denied the student a FAPE; and the parties' assertions that the award for compensatory education was either unwarranted or insufficient.

B. Parent Participation

The parent asserts that she was deprived of the opportunity to participate in the development of the student's IEP during the February 2017 CSE meeting. 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 CSE 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 proposed IEP does not amount to a denial of meaningful participation (see Dervishi v. Stamford Bd. of Educ., 653 Fed. App'x 55, 57 [2d Cir. 2016]; Doe v. E. Lyme Bd. of Educ., 790 F.3d 440, 449 [2d Cir. 2015]; E.H. v. Bd. of Educ. of Shenendehowa Cent. Sch. Dist., 361 Fed. App'x 156, 160 [2d Cir. 2009]; Cerra, 427 F.3d at 193; F.L. v. Bd. of Educ. of Great Neck Union Free Sch. Dist., 2017 WL 3574445, at *11-*13 [E.D.N.Y. Aug. 15, 2017] [finding that the parent's participation was not impeded when the parent was "given the opportunity [to] speak, ask questions, raise concerns, and offer suggestions"]; E.F. v. New York City Dep't of Educ., 2013 WL 4495676, at *17 [E.D.N.Y. Aug. 19, 2013] [holding that "as long as the parents are listened to," the right to participate in the development of the IEP is not impeded, "even if the [district] ultimately decides not to follow the parents' suggestions"]; Sch. for Language and 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"]). A review of the hearing record belies the parent's assertion. The hearing record reflects that the parent participated in the CSE meeting via telephone (see Dist. Ex. 24 at pp. 1-12). The CSE meeting minutes show that the parent was afforded an opportunity to participate in the IEP development process, as she provided input, and asked and answered questions (id.; see 20 U.S.C. § 1415[b][1]; 34 CFR 300.322; 8 NYCRR 200.5[d]). While the relationship between the parties is clearly acrimonious, at no point during the CSE meeting was the parent precluded from asking questions, and the record reflects that the members of the CSE attempted to answer her questions, and sought clarification regarding her preferences and requests (Dist. Ex. 24 at pp. 1-12). Additionally, the parent provided input regarding her son's abilities, explained why she did not agree with the recommendation for an 8:1+1 BOCES special class placement, and asserted her belief that the student required a "smaller" 1:1 classroom placement or a nonpublic school program (id. at pp. 4-9). The CSE also attempted to develop goals with the parent's participation; however, the parent disconnected from

the call before the CSE could complete the process (id. at pp. 10-12). As such, while the parent may have been aggrieved that the CSE did not recommend a program that she considered to be appropriate for her son, the parent's assertion that the district refused to answer her questions or consider her input is without merit.

C. February 2017 IEP

On appeal, the parent asserts two claims related to the February 2017 IEP; that the 2015 evaluation reports utilized by the February 2017 CSE did not reflect the student's needs, and that the February 2017 IEP failed to include appropriate counseling services.

Turning to the issue of evaluative information, the February 2017 CSE considered results from a February 2015 OT evaluation report, a March 2015 psychological evaluation report, an April 2015 speech-language evaluation report, and an August 2015 psychological evaluation report (Dist. Ex. 24 at pp. 13-15; see Parent Ex. B; Dist. Exs. 1-4). According to minutes from the February 2017 CSE meeting, the district had requested records from the nonpublic school the student attended for the 2015-16 school year, but had not received any records by the time of the meeting (Dist. Ex. 24 at pp. 3, 5, 12). The meeting minutes further reflect that the nonpublic school did not respond to the CSE's request to participate in the February 2017 CSE meeting; however, the headmaster of the nonpublic school had spoken to a district representative prior to the meeting and indicated that the student struggled with coping mechanisms, experienced meltdowns, and required a therapeutic program (id. at p. 12).[9] In preparation for the February 2017 CSE meeting, a BOCES school psychologist offered to meet with the parent and observe the student, but the parent declined (Tr. pp. 79-80; Dist. Exs. 19-21; 24 at pp. 6, 12).

With respect to the student's cognitive ability, results of the February 2015 and August 2015 psychological evaluation reports indicated that the student performed better on tasks that involved spatial relations and perceptual reasoning than he did on tasks that required verbal comprehension and working memory, with his overall cognitive functioning in the impaired to low average range (Parent Ex. B at pp. 26-27, 32; Dist. Ex. 2 at pp. 3-4). The February 2015 evaluator noted that the student required "a great deal of wait time" to process novel verbal and nonverbal information (Dist. Ex. 2 at p. 2). Academically, the student exhibited delays in math fluency and problem-solving, grammar, mechanics, spelling, reading, and oral language, and the August 2015 evaluator reported that in conjunction with the diagnosis of an autism spectrum disorder, the student met the criteria for a specific learning disorder with impairment in reading, math, and written expression (Parent Ex. B at pp. 27-31, 33; Dist. Ex. 2 at pp. 3-5).

Regarding the student's speech-language abilities, an April 2015 speech-language evaluation report revealed delays in the student's expressive language and auditory processing skills (Dist. Ex. 3 at pp. 1-3). The evaluator noted that the student had difficulty retrieving

[9] The meeting minutes indicate that in response to the CSE chairperson stating that the CSE had not received information from the nonpublic school, the parent expressed that the CSE "could have called" the school; however, shortly thereafter the CSE chairperson indicated that she had spoken to the headmaster of the school and "he would not provide information," to which the parent responded, "I don't know how you're having conversations without my consent" (Dist. Ex. 24 at pp. 7, 9, 12).

information in order to provide a verbal answer, required a long time to process information, and exhibited low frustration tolerance (id. at p. 3).

Results of the February 2015 OT evaluation report revealed that the student exhibited difficulties with visual perceptual skills, visual motor integration skills, and sensory processing skills (Dist. Ex. 1 at p. 5).

With respect to the student's social/emotional needs, according to parental reporting on a February 2015 Sensory Profile, the student seemed anxious and may have had low self-esteem, was sensitive to criticism, displayed poor frustration tolerance and "excessive emotional outbursts when unsuccessful at a task," expressed feelings of failure, was "stubborn and uncooperative," had temper tantrums, and had difficulty making friends and expressing emotions (Dist. Ex. 1 at p. 5). Based on a review of records included in the February 2015 psychological evaluation report, the evaluator noted that the student experienced "a very difficult transition" from the home school setting to the public school in his fifth-grade year, which included aggressive behavior toward peers and adults and necessitated a removal from less structured settings; however, the evaluator did not indicate in her report that the student exhibited behavioral problems during the evaluation (Dist. Ex. 2 at p. 2). The speech-language pathologist opined in her April 2015 report that social skills development may be an area of need because the student had not been around peers due to medical homebound instruction (Dist. Ex. 3 at pp. 1, 3).

As discussed above, the February 2017 CSE had available to it evaluative information about the student's cognitive, academic, speech-language, visual motor and visual perceptual, sensory processing, and social/emotional skills (see Parent Ex. B; Dist. Exs. 1-4). Absent a specific claim made by the parent about how the above information failed to reflect the student's needs, it appears the district had sufficient evaluative information upon which to base the February 2017 IEP (see 8 NYCRR 200.4[b][1], [5]). Furthermore, based on a review of the hearing record, information regarding the student's academic achievement, functional performance and learning characteristics, visual perceptual, visual motor integration, fine motor, speech-language, and social/emotional skills and needs contained in the February 2017 IEP is consistent with the evaluative information available to the February 2017 CSE (compare Dist. Ex. 24 at pp. 15-17, with Dist. Exs. 1 at pp. 3, 5; 2 at pp. 4-5; 3 at p. 3; 4 at pp. 1-2), and the parent does not dispute the sufficiency or the accuracy of the present levels of performance contained in the February 2017 IEP on appeal.[10]

Turning to the parent's allegation that the February 2017 IEP was not appropriate because it failed to provide counseling services, review of the IEP shows that the February 2017 CSE recommended a BOCES 8:1+1 special class placement for the student. State regulations provide that an 8:1+1 special class placement is intended to address the needs of students "whose management needs are determined to be intensive, and requiring a significant degree of individualized attention and intervention" (8 NYCRR 200.6[h][4][ii][b]). As previously stated,

[10] Although the chairperson of the February 2017 CSE indicated that it was a "challenge" to determine the student's present levels of performance and develop annual goals because it had been unable to get records from the nonpublic school the student attended for the 2015-16 school year, as described above the district had multiple sources of relatively recent evaluative information about the student. In addition, the CSE indicated that the nonpublic school did not respond to requests that school staff participate in the CSE meeting.

the student exhibited difficulties with frustration tolerance, emotional regulation, and social skills. While it is true that the February 2017 IEP did not include counseling as a specific related service, a BOCES administrator at the CSE meeting indicated that the recommended 8:1+1 special class placement had "social workers that build into the programs" (Dist. Ex. 24 at pp. 1, 5; see Tr. pp. 95-96). The CSE chairperson testified that the BOCES program set forth on the student's IEP was a "therapeutic setting," in that it included social work and psychological services embedded within the program (Tr. p. 130; see Dist. Ex. 24 at p. 1). A BOCES school psychologist testified that the therapeutic setting offered more than just educational programming, as it had social workers as part of the program to provide students with individual or group therapy (Tr. pp. 81-82). The BOCES school psychologist also testified that the social workers in the program provided support to students with anger management, social skills, and transitioning into school, as well as serving as a liaison between the family and school district (Tr. pp. 82-83). She further testified that the "particular" 8:1+1 special class "contemplated for [the student]" had a social worker assigned to it full time (Tr. p. 84).

In addition to recommending an 8:1+1 special class, the February 2017 CSE recommended a 1:1 teaching assistant for five hours per day to assist the student in transitioning back to school (Tr. pp. 86-87, 134; Dist. Ex. 24 at p. 21). The February 2017 IEP also included a social/emotional goal that addressed the student's need to demonstrate positive self-control behaviors, a recommendation to create a behavior plan for the student when he started school, and several accommodations and supports to assist the student in feeling safe and calming down when he was anxious or frustrated (Dist. Ex. 24 at pp. 17, 19-21).

In conjunction with the BOCES 8:1+1 special class and 1:1 teaching assistant services, the February 2017 CSE recommended two weekly 30-minute small group sessions of speech-language therapy, two weekly 30-minute small group sessions of OT, and one monthly one-hour individual session of parent counseling and training to address the student's needs (Dist. Ex. 24 at pp. 1, 19, 21, 24).[11] In addition, the February 2017 IEP included several supplemental aids and services/program modifications/accommodations, including: refocusing and redirection, special seating close to an adult and where the student felt safe, checks for understanding, visual aid for focusing, positive reinforcement plan, additional wait time to respond, sensory integration strategies including breaks in a calming location when frustrated, use of a math fact chart, use of graphic organizers, a familiar person to check in with and provide support when upset or anxious, tasks broken down, modified classwork, organizational supports, use of a word processor, and a copy of class notes to supplement the student's notes (Dist. Ex. 24 at pp. 19-22). The February 2017 IEP provided six annual goals to address the student's needs in the areas of reading, writing, speech-language, social/emotional/behavioral, and motor skills (id. at pp. 18-19). The February 2017 IEP noted that the student's social skill development should be monitored, as this may be an area where the student may struggle, and that a behavior intervention plan was needed and would be developed upon the student's return to school (id. at pp. 13, 15, 17).

Based on the above, the February 2017 CSE's recommendation of an 8:1+1 special class and 1:1 teaching assistant, in conjunction with the recommended related services and program accommodations described above, was designed with sufficient individualized support to meet the

[11] As noted above, in response to the March 2017 due process complaint notice, the district agreed to provide three sessions per week of speech-language therapy (Dist. Ex. 40).

student's needs—including addressing his social/emotional deficits—such that the February 2017 IEP was reasonably calculated to enable the student to receive educational benefits for the remainder of the 2016-17 school year (Endrew F., 137 S. Ct. at 999-1001; Rowley, 458 U.S. at 207; T.M., 752 F.3d at 151, 160; R.E., 694 F.3d at 189-90).

D. Relief—Compensatory Education

The district appeals from the IHO's award of compensatory educational services, asserting that it did not commit a gross violation of the IDEA. The parent asserts that the award was insufficient, as the IHO should have extended the award for the full 2016-17 school year, rather than for the period of September 2016 through January 2017.

Compensatory education is an equitable remedy that is tailored to meet the unique circumstances of each case (Wenger v. Canastota, 979 F. Supp. 147 [N.D.N.Y. 1997]). The Second Circuit has held that compensatory education may be awarded to students who are ineligible for services under the IDEA by reason of age or graduation only if the district committed a gross violation of the IDEA which resulted in the denial of, or exclusion from, educational services for a substantial period of time (see E. Lyme, 790 F.3d at 456 n.15; French v. New York State Dep't of Educ., 476 Fed. App'x 468, 471 [2d Cir. 2011]; 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, 75-76 [2d Cir. 1990]; Burr v. Ambach, 863 F.2d 1071, 1078-79 [2d Cir. 1988], aff'd on recon. sub nom. Burr v. Sobol, 888 F.2d 258 [2d Cir. 1989]). However, compensatory education relief may also be awarded to a student with a disability who remains eligible for instruction under the IDEA (see 20 U.S.C. §§ 1401[3], 1412[a][1][B]; Educ. Law §§ 3202[1]; 4401[1]; 4402[5]). The purpose of such an award of compensatory education is to provide an appropriate remedy for a denial of a FAPE (see E.M. v. New York City Dep't of Educ., 758 F.3d 442, 451 [2d Cir. 2014] [holding that compensatory education is a remedy designed to "make up for" a denial of a FAPE]; Newington, 546 F.3d at 123; see also E. Lyme, 790 F.3d at 456; Reid v. Dist. of Columbia, 401 F.3d 516, 524 [D.C. Cir. 2005] [holding that, in fashioning an appropriate compensatory education remedy, "the inquiry must be fact-specific, and to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place"]; Parents of Student W. v. Puyallup Sch. Dist., 31 F.3d 1489, 1497 [9th Cir. 1994]). Accordingly, an award of compensatory education should aim to place the student in the position he or she would have been in had the district complied with its obligations under the IDEA (see Newington, 546 F.3d at 123; see also Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1289 [11th Cir. 2008] [holding that "[c]ompensatory awards should place children in the position they would have been in but for the violation of the Act"]; Bd. of Educ. of Fayette County v. L.M., 478 F.3d 307, 316 [6th Cir. 2007] [holding that "a flexible approach, rather than a rote hour-by-hour compensation award, is more likely to address [the student's] educational problems successfully"]; Reid, 401 F.3d at 518 [holding that compensatory education is a "replacement of educational services the child should have received in the first place" and that compensatory education awards "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA"]).

The district does not appeal the IHO's finding that it denied the student a FAPE for the period from September 2016 through January 2017, and as such that determination has become

final and binding on the parties (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]).[12] Further, the district does not argue that the award of compensatory services was excessive, only that it was unwarranted due to the lack of a finding of a gross violation of a FAPE. As noted above, compensatory education is available as a remedy to make up for a denial of a FAPE for a student who remains eligible for instruction under the IDEA (see E. Lyme, 790 F.3d at 456 & n.15). In this case, as the student is still eligible for instruction under the IDEA, the "gross violation" standard does not apply. The question then is whether the award of compensatory education was calculated to place the student in the same position he would have occupied if the school district had offered him a FAPE from the beginning of the 2016-17 school year (M.M. v. New York City Dep't of Educ., 2017 WL 1194685, at *8 [S.D.N.Y. Mar. 30, 2017]).

Turning to the parent's contention that the IHO should have awarded compensatory education for the entirety of the 2016-17 school year, the IHO determined that the February 2017 IEP that recommended the BOCES 8:1+1 special class placement offered the student a FAPE, and that the student was entitled to receive compensatory services for the period of approximately 16 school weeks, from September 2016 to January 2017, during which the student received no services. To attempt to place the student in a position he would have been in had he not been deprived of those services, the IHO awarded the student compensatory tutoring services, OT, speech-language therapy, and counseling services, equal to the amount the student would have received during that time period (IHO Decision at pp. 17-18). In total, the IHO ordered the district to provide 400 hours of private tutoring services and 48 30-minute sessions each of OT, speech-language therapy, and counseling (id. at pp. 18-19).

In addressing the parent's assertion that the IHO erred when he determined that the denial of a FAPE ended in January, the hearing record shows that the CSE met on February 3, 2017 to develop the student's IEP for the remainder of the 2016-17 school year; however, the resultant IEP was not scheduled to be implemented until February 28, 2017 (see Dist. Ex. 24 at pp. 1, 13, 19-22). Accordingly, based on the unappealed determination that the district was obligated to develop an IEP once the parent requested assistance in placing the student, the denial of a FAPE continued until the scheduled date of implementation of the February 2017 IEP. Accordingly, the IHO should have awarded compensatory education from September 2016 through February 2017. However, while the IHO erred in determining that the denial of a FAPE ended in January 2017, upon review the amount of compensatory services awarded is reasonable, and the hearing record does not provide evidence to support increasing the award.

With respect to the amount of compensatory services awarded, the IHO awarded 400 hours of tutoring services, corresponding to 25 hours per week for the 16-week period the IHO found the district denied the student a FAPE, roughly equivalent to the amount of time the student was recommended to be placed in the 8:1+1 BOCES special class by the February 2017 IEP (IHO

[12] To the extent the district argues in its memorandum of law that it "has never failed to offer FAPE to the student," it is well-established that a memorandum of law is not a substitute for a pleading, which is expected to set forth the party's allegations of error with appropriate citation to the IHO's decision and the hearing record, and that claims not identified in a party's pleading "shall be deemed abandoned and will not be addressed" (8 NYCRR 279.8[c][2]-[4]; 279.8[d]; see Application of a Student with a Disability, Appeal No. 15-070). Here, the district does not explicitly cross-appeal the IHO's determination that it failed to offer the student a FAPE from September 2016 to January 2017.

Decision at pp. 18-19; Dist. Ex. 24 at p. 19). The only evidence in the hearing record recommending a specific amount of services for the student is an evaluation conducted by Lindamood-Bell in February 2017 (Parent Ex. Z). As a result of this evaluation, Lindamood-Bell reported that the student "may benefit from an initial period of intensive, daily instruction—4 hours per day, five days per week—for 30 – 40 weeks to develop his language and literacy skills" (id. at p. 6). However, no one from Lindamood-Bell testified regarding this recommendation, and so it is altogether unclear from the evidence in the hearing record—and without the parent identifying the specific relief sought in the request for review—what compensatory education services would effectuate the purpose of this equitable remedy: to provide special education services that would place the student in the position that he would have been but for the denial of a FAPE. In addition, while the IHO applied a generally hour-for-hour approach to the calculation of the compensation education award, the tutoring awarded would provide a more intensive level of instruction than the recommended 8:1+1 special class placement. Accordingly, as the hearing record also indicates that the student received an unspecified amount of tutoring services between January 2017 and March 2017, there is no basis to depart from the IHO's award of 400 hours of compensatory tutoring services (Tr. pp. 121-23; Dist. Exs. 18; 25 at pp. 51, 57-58; 42 at p. 3).

With respect to the award of compensatory related services, the student would have received a lesser amount of OT and counseling services had the February 2017 IEP been in place at the start of the school year (compare IHO Decision at pp. 18-19, with Dist. Ex. 24 at p. 19). In particular, while the February 2017 IEP did not include any specific recommendation for counseling services, the IHO awarded compensatory counseling services (IHO Decision at pp. 18-19; Dist. Ex. 24 at p. 19). With respect to OT, the February 2017 IEP recommended two 30-minute sessions per week, while the IHO awarded 48 30-minute sessions as compensatory education, sufficient to remedy a 24-week period of deprivation if applying an hour-for-hour approach (IHO Decision at pp. 18-19; Dist. Ex. 24 at p. 19). The award of 48 30-minute sessions of speech-language therapy was apparently intended to remedy the district's failure to provide the student with 16 weeks of services at the agreed-upon level (IHO Decision at pp. 18-19; Dist. Exs. 24 at p. 19; 40 at pp. 1, 2, 10). Although the hearing record supports a finding that the district denied the student a FAPE beyond the 16-week period determined by the IHO, the hearing record contains no information upon which an additional award can be premised, as there is no indication to what degree the student requires additional services to put him in the position he would have occupied but for the denial of a FAPE.[13]

VII. Conclusion

Based on the foregoing, the district offered the student a FAPE for the period starting February 28, 2017, and the IHO's award for compensatory education services for the denial of a FAPE to the student for the portion of the 2016-17 school year prior to that date was an appropriate remedy.

[13] As noted above, the parent originally requested 800 hours of compensatory tutoring services, 180 hours each of OT, speech-language therapy, and resource room services, and 220 hours of counseling services (Dist. Ex. 35 at pp. 9-10). On appeal, the parent does not assert that the compensatory education award was insufficient to remedy the denial of a FAPE to the student during the period from September 2016 through January 2017.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

THE CROSS-APPEAL IS DISMISSED.

IT IS ORDERED that the IHO's decision, dated July 12, 2017, is modified, by reversing so much thereof as found that the district offered the student a FAPE prior to February 28, 2017.

Dated: **Albany, New York**
September 22, 2017

CAROL H. HAUGE
STATE REVIEW OFFICER