



The University of the State of New York

The State Education Department

State Review Officer

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No. 19-037

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 New York City Department of Education

Appearances:

Howard Friedman, Special Assistant Corporation Counsel, attorneys for respondent, by Theresa Crotty, 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. Petitioners (the parents) appeal from a decision of an impartial hearing officer (IHO) which determined that the services respondent's (the district's) Committee on Special Education (CSE) recommended for their son for the 2018-19 school year were appropriate. The appeal must be sustained in part.

II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law § 4402; see 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[l]).

New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding "any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student" (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][6]-[7]; 34 CFR 300.503[a][1]-[2], 300.507[a][1]). First, after an opportunity to engage in a resolution process, the parties appear at an impartial hearing conducted at the local level before an IHO (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j]). An IHO typically conducts a trial-type hearing regarding the matters in dispute in which the parties have the right to be accompanied and advised by counsel and certain other individuals with special knowledge or training; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed five business days before the hearing; and obtain a verbatim record of the proceeding (20 U.S.C. § 1415[f][2][A], [h][1]-[3]; 34 CFR 300.512[a][1]-[4]; 8 NYCRR 200.5[j][3][v], [vii], [xii]). The IHO must render and transmit a final written decision in the matter to the parties not later than 45 days after the expiration period or adjusted period for the resolution process (34 CFR 300.510[b][2], [c], 300.515[a]; 8 NYCRR 200.5[j][5]). A party may seek a specific extension of time of the 45-day timeline, which the IHO may grant in accordance with State and federal regulations (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5]). The decision of the IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]).

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

The hearing record is not fully developed with respect to the student's educational history; however, there is sporadic information going back to the 2015-16 school year.

The committee on preschool education (CPSE) convened on May 5, 2015 and found the student eligible for special education as a preschool student with a disability (Parent Ex. B at pp. 1-2). At the time of the May 2015 CPSE meeting, the student was reported to have cognitive, speech-language, and motor skills in the average range but demonstrated delays in activities of daily living and social-emotional development, and the May 2015 IEP reported parental concerns regarding the student's behavior, speech-language difficulties, and sensory seeking tendencies (id. at pp. 4-6). The CPSE recommended that the student receive the support of a 1:1 special education

itinerant teacher (SEIT) for eight hours per week at "school/home" as well as two 30-minute sessions of 1:1 occupational therapy (OT) per week (id. at pp. 1, 2, 14). For the 2015-16 school year, the student attended a full day preschool (id. at p. 2).

Based on a January 2018 social history update, a CSE met on June 21, 2016 and developed an IESP for the student, finding the student eligible as a student with an other-health impairment, and recommending the student receive weekly services consisting of one session of 1:1 OT, one session of group OT, and one session of group counseling (Dist. Ex. 12 at p. 1). According to the report, the parents indicated that the student also received 8-10 hours per week of SEIT services during the 2017-18 school year (id.).

For the 2016-17 and 2017-18 school years, the programs developed for the student did not include SEIT services and the parents challenged those programs in a separate due process proceeding (see Parent Ex. C). It appears that although the final decision in that proceeding found a denial of FAPE for failure to recommend the support of a 1:1 special education teacher, the student was only awarded prospective payment for special education services for the 2017-18 school year (id. at pp. 16-17, 19).

For the 2018-19 school year, the student attended a nonpublic school (NPS) at parent expense (see Dist. Exs. 12 at p. 1; 15). On June 11, 2018 the district convened a CSE to conduct the student's annual review and to develop an individualized education services program (IESP) for the student for the 2018-19 school year (Dist. Ex. 20). Having determined the student remained eligible for special education as a student with an other-health impairment, the CSE developed two goals to address the student's social and emotional needs and recommended one 30-minute session of counseling per week in a group (id. at pp. 1, 5-6). The CSE noted that the student, according to a June 3, 2018 OT progress report, "achieved his stated goals and the provider indicated he no longer require[d] the intervention of an occupational therapist" (id. at p. 4); however, the parents expressed their belief that the student needed a sensory diet and continued to need OT services (id.). The CSE did not recommend OT services for the student for the 2018-19 school year (see id. at pp. 4, 6).

A. Due Process Complaint Notice

By due process complaint notice dated August 21, 2018, the parents alleged that the district did not "discharge its duties in the development and implementation of an educational program for [the student] for the 2018-2019 school year" (Parent Ex. A at p. 1). The parents contended that the CSE predetermined the student's program recommendation, denying the parents an opportunity to meaningfully participate in the development of the student's IESP (id. at pp. 4-5). In addition, the parents claimed that the "CSE review team was not duly constituted" and was not attended by "necessary members" (id. at p. 6). The parents argued that the June 2018 IESP did not provide adequate information with respect to the student's present levels of performance; included annual goals that were vague, generic, and not measurable; failed to include annual goals to address the student's deficits in reading fluency, decoding, impulsivity, and attention; and did not include meaningful academic and social/emotional management needs (Due Process Complaint at pp. 5-6).

With respect to the recommended program, the parents argued that the June 2018 IESP was inappropriate as it failed to provide the student with the supports and services he required, asserting that counseling was insufficient to address the student's "myriad challenges" (*id.* at p. 3). The parents maintained that the student required 1:1 support by a special education teacher "to be able to access education," asserting the student required a SEIT to address his academic, emotional, and social skills (*id.* at p. 4). Further, the parents claimed the CSE did not offer support with respect to the student's deficits in "reading fluency, phonics, decoding, impulsivity, focusing and sensory processing" (*id.* at p. 3). The parents also asserted that the district did not evaluate the student in all areas of suspected disability, specifically by failing to conduct an OT evaluation before removing OT services from the IESP (*id.*).

The parents also asserted that the student should have received eight hours of SEIT services per week and two 30-minute sessions of individual occupational therapy as pendency based upon the May 2015 IEP, the student's last agreed-upon placement (Parent Ex. A at p. 2).

For relief, the parents requested that the student be provided with eight hours of SEIT services per week and two 30-minute sessions of individual OT per week for the 2018-19 school year (Parent Ex. A at p. 7).

B. Impartial Hearing Officer Decision

On September 18, 2018 the parties proceeded to an impartial hearing, which concluded on November 27, 2018, after four days of proceedings (Tr. pp. 1-128).¹

On April 3, 2019, the IHO issued a final decision (IHO Decision at p. 10). The IHO found that the CSE had an FBA and a social history update completed, but that because the parents did not follow-up with authorizations for a neuropsychological IEE and a speech-language IEE, the district was prevented from conducting its own psychoeducational evaluation (*id.* at p. 9). The IHO found that a district psychoeducational evaluation would have been duplicative of, and could have invalidated, the neuropsychological evaluation the parent was seeking (*id.*). The IHO briefly reviewed information available to the June 2018 CSE, specifically referencing the district FBA, an OT report, and reports from the student's general education teacher that the student was on grade level academically, and found that the CSE's recommendation of continued counseling and the discontinuation of OT "appear[ed] appropriate" (*id.* at pp. 9-10). Additionally, the IHO found that there was no reason provided by the parent as to why she had not used the authorizations provided by the district to have a neuropsychological and a speech-language evaluation completed for the student, noting that tuition reimbursement could be denied if the parents did not cooperate with the district or if the parents' conduct prevented the CSE from developing an appropriate program for the student (*id.*).

¹ On October 4, 2018 the IHO issued an interim decision on pendency finding that, upon agreement of the parties, the student would continue to receive two 30-minute sessions of OT per week and eight hours of instruction by a SEIT per week (*see* Tr. pp. 6-8; IHO Interim Decision at p. 2). The IHO ordered services pursuant to pendency which "incorporate[] the services indicated on the student's CPSE-IEP dated May 5, 2015" (*id.*). The May 2015 IESP recommended eight hours of SEIT services per week in school and at home and two 30-minute sessions of individual OT per week in a separate location (Parent Ex. B at p. 14).

IV. Appeal for State-Level Review

On appeal, the parents argue that the IHO's decision should be overturned and the district should be ordered to provide the student with eight hours per week of individual SEIT services for the 2018-19 school year and an authorization for a neuropsychological evaluation of the student. As an initial matter, the parents assert that the IHO improperly placed the burden of proof on the parents, noting that the IHO laid out the standard for tuition reimbursement which would require the parents to prove the appropriateness of the unilateral placement. The parents assert that they were not seeking reimbursement and the burden for all issues should have been on the district. The parents also object to the IHO's factual determination that they provided no viable reason not to obtain the authorized neuropsychological and speech-language evaluations. The parents maintain that they had not received the authorizations in the mail until two weeks prior to the date of the CSE meeting, and it would have been impossible to obtain the evaluations within that timeframe. The parents further argue that the IHO incorrectly found that the district offered the student a FAPE for the 2018-19 school year. The parents claim that the student's "lack of focus and impulsive behaviors [we]re . . . negatively affecting his ability to learn in the classroom." The parents allege that the CSE ignored the recommendations of the student's SEIT and OT provider for continued SEIT services for the 2018-19 school year. The parents also asserted that reliance on the district FBA is misplaced because there was no observation of the student during socialization with his peers, an area in which the SEIT noted the student exhibited a lot of behavioral issues.

V. Applicable Standards

A board of education must offer a FAPE to each student with a disability residing in the school district who requires special education services or programs (20 U.S.C. § 1412[a][1][A]; Educ. Law § 4402[2][a], [b][2]). However, the IDEA confers no individual entitlement to special education or related services upon students who are enrolled by their parents in nonpublic schools (see 34 CFR 300.137[a]). Although districts are required by the IDEA to participate in a consultation process for making special education services available to students who are enrolled privately by their parents in nonpublic schools, such students are not individually entitled under the IDEA to receive some or all of the special education and related services they would receive if enrolled in a public school (see 34 CFR 300.134, 300.137[a], [c], 300.138[b]).

Education Law § 3602-c—commonly referred to as the dual-enrollment statute—requires parents who seek to obtain educational services for students with disabilities placed in nonpublic schools to file a request for such services in the district of location where the nonpublic school is located on or before the first day of June preceding the school year for which the request for services is made (Educ. Law § 3602-c[2]). "Boards of education of all school districts of the state shall furnish services to students who are residents of this state and who attend nonpublic schools located in such school districts, upon the written request of the parent" (Educ. Law § 3602-c[2][a]). In such circumstances, the district of location's CSE must review the request for services and "develop an [IESP] for the student based on the student's individual needs in the same manner and with the same contents as an [IEP]" (Educ. Law § 3602-c[2][b][1]). The CSE must "assure that special education programs and services are made available to students with disabilities attending nonpublic schools located within the school district on an equitable basis, as compared to special education programs and services provided to other students with disabilities attending public or

nonpublic schools located within the school district (*id.*).² Additionally, unlike the provisions of the IDEA, section 3602-c provides that a parent may seek review of the recommendation of the CSE pursuant to the impartial hearing and State-level review provisions of Education Law § 4404 (*id.*).

VI. Discussion

A. Burden of Proof

The parents assert that the IHO improperly shifted the burden of proof, essentially claiming that in setting forth the standard for cases involving tuition reimbursement, where the parent bears the burden of proof with respect to the parent's unilateral placement, the IHO, in effect, placed the burden of proof with respect to the provision of FAPE on the parents instead of the district.

Under the IDEA, the burden of persuasion in an administrative hearing challenging an IEP is on the party seeking relief (*see Schaffer v. Weast*, 546 U.S. 49, 59-62 [2005] [finding it improper under the IDEA to assume that every IEP is invalid until the school district demonstrates that it is not]). However, under State law, the burden of proof has been placed 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 Hardison v. Bd. of Educ. of the Oneonta City Sch. Dist.*, 773 F.3d 372, 386 [2d Cir. 2014]; *C.F. v. New York City Dep't of Educ.*, 746 F.3d 68, 76 [2d Cir. 2014]; *R.E. v. New York City Dep't of Educ.*, 694 F.3d 167,184-85 [2d Cir. 2012]).³

Consistent with the parents' assertion, the IHO did reiterate the standard for determining tuition reimbursement matters and indicated that parents bear the burden of showing that the private school selected by the parents is appropriate (IHO Decision at pp. 7-8). In addition, the IHO enunciated the *Schaeffer* ruling in his decision, but failed to reference State law that placed the burden of proof on the school district during an impartial hearing (*id.* at p. 7; *see* Educ. Law § 4404[1][c]).

Nevertheless, an examination of the IHO's decision reveals that the IHO weighed the evidence in the hearing record and made his decision based on his assessment of that evidence rather than by applying the burden of persuasion to one party or the other (*see* IHO Decision at pp.

² State guidance explains that providing services on an "equitable basis" means that "special education services are provided to parentally placed nonpublic school students with disabilities in the same manner as compared to other students with disabilities attending public or nonpublic schools located within the school district" ("Chapter 378 of the Laws of 2007 – Guidance on Parentally Placed Nonpublic Elementary and Secondary School Students with Disabilities Pursuant to the Individuals with Disabilities Education Act (IDEA) 2004 and New York State (NYS) Education Law Section 3602-c," Attachment 1 at p. 11, VESID Mem. [Sept. 2007], [available at http://www.p12.nysed.gov/specialed/publications/policy/nonpublic907.pdf](http://www.p12.nysed.gov/specialed/publications/policy/nonpublic907.pdf)). The guidance document further provides that "parentally placed nonpublic students must be provided services based on need and the same range of services provided by the district of location to its public school students must be made available to nonpublic students, taking into account the student's placement in the nonpublic school program" (*id.*).

³ The Court in *Schaffer* left open the question of whether States have the authority to shift the burden of proof through legislation (546 U.S. at 61-62).

9-10). Although the parent disagrees with the conclusions reached by the IHO, such disagreement does not demonstrate that the IHO failed to correctly apply the burden of proof in his analysis. Additionally, even assuming the IHO misallocated the burden of proof to the parent, the error would not require reversal insofar as the hearing record does not support a finding that this was one of those "very few cases" in which the evidence was in equipoise (Schaffer, 546 U.S. at 58; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 225 n.3 [2d Cir. 2012]). Furthermore, I have conducted an impartial and independent review of the entire hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]).

B. June 2018 IESP

1. Evaluative Information

The parents appeal from the IHO's determination that the parents did not follow-up with authorizations for a neuropsychological IEE and a speech-language IEE prior to the June 2018 CSE meeting. As relief, the parent requests that the district authorize a neuropsychological evaluation of the student "to determine his level of need." The parents also contend that by holding the June 2018 CSE meeting without these evaluations, the district showed it was not interested in evaluating the student and ignored the student's needs. The district asserts that it gave the parents authorizations for both evaluations and that the June 2018 CSE had sufficient information regarding the student's needs.

Initially, the due process complaint notice did not include a request for an IEE at public expense (see Parent Ex. A). In general, a party may not raise issues at the impartial hearing that were not raised in his or her 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[j][1][ii]), or the original 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][III]; 34 CFR 300.508[d][3][ii]; 8 NYCRR 200.5[i][7][b]; N.K. v. New York City Dep't of Educ., 961 F. Supp. 2d 577, 584-86 [S.D.N.Y. 2013]; see K.L. v. New York City Dep't of Educ., 530 Fed. App'x 81, 87 [2d Cir. July 24, 2013]).

When a matter arises that did not appear in a due process complaint notice, the next inquiry focuses on whether the opposing party, through the questioning of its witnesses, "open[ed] the door" under the holding of M.H., 685 F.3d at 250-51. The court in M.H. found that where a school district submits evidence or elicits testimony about issues that are outside the scope of the parent's due process complaint notice in order to show that the student was provided with a FAPE, the district opens the door for the plaintiff to contest the newly raised issues (see M.H., 685 F.3d at 250-51). Here, the authorizations for the neuropsychological and speech-language IEEs were entered into evidence by the district for the purpose of rebutting the parents' claim, contained in the due process complaint notice, that the district did not properly evaluate the student and their admission at the hearing did not raise any issues outside of that claim (see Tr. p. 33). Accordingly, the district did not open the door to a potential request for an IEE and that request is outside the scope of the proceeding.

Additionally, the authorization for a neuropsychological IEE was ordered in a separate proceeding regarding the student (see Tr. p. 33; Parent Ex. C at p. 18). Neither IHOs nor SROs

have authority to enforce prior decisions rendered by administrative hearing officers (*see* Educ. Law §§ 4404[1][a], [2]; *see, e.g., A.R. v. New York City Dep't of Educ.*, 407 F.3d 65, 76, 78 n.13 [2d Cir. 2005] [noting that IHOs do not retain jurisdiction to enforce their orders and that a party who receives a favorable administrative determination may enforce it in court]). An SRO does not have the authority to reopen and modify a final decision. Accordingly, issues relating to the prior IHO decision directing the district to authorize a neuropsychological IEE will not be reopened and ruled upon herein.

Although the parents' request for an IEE is not within the scope of the proceeding, the parents' claim that the June 2018 CSE did not have enough information regarding the student must still be addressed.

A district must conduct an evaluation of a student where the educational or related services needs of a student warrant a reevaluation or if the student's parent or teacher requests a reevaluation (34 CFR 300.303[a][2]; 8 NYCRR 200.4[b][4]); however, a district need not conduct a reevaluation more frequently than once per year unless the parent and the district otherwise agree and at least once every three years unless the district and the parent agree in writing that such a reevaluation is unnecessary (8 NYCRR 200.4[b][4]; *see* 34 CFR 300.303[b][1]-[2]). A CSE may direct that additional evaluations or assessments be conducted in order to appropriately assess the student in all areas related to the suspected disabilities (8 NYCRR 200.4[b][3]). Any evaluation of a student with a disability must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining, among other things the content of the student's IEP (20 U.S.C. § 1414[b][2][A]; 34 CFR 300.304[b][1][ii]; *see Letter to Clarke*, 48 IDELR 77 [OSEP 2007]). In particular, a district must rely on technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors (20 U.S.C. § 1414[b][2][C]; 34 CFR 300.304[b][3]; 8 NYCRR 200.4[b][6][x]). A district must ensure that a student is appropriately assessed in all areas related to the suspected disability, including, where appropriate, social and emotional status (20 U.S.C. § 1414[b][3][B]; 34 CFR 300.304[c][4]; 8 NYCRR 200.4[b][6][vii]). An evaluation of a student must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified (34 CFR 300.304[c][6]; 8 NYCRR 200.4[b][6][ix]).

With respect to the authorizations for IEEs, the hearing record includes authorizations for a neuropsychological IEE and a speech-language IEE (Dist. Exs. 7; 8). Both authorizations are dated December 21, 2017 (Dist. Exs. 7 at p. 1; 8 at p. 1). It appears as though the authorizations were part of a partial settlement between the parties and were ordered by an IHO in a prior proceeding (*see* Tr. pp. 33, 39; Parent Ex. C at pp. 4, 18). However, the student's mother testified that she did not receive the authorizations until June 2018 (Tr. pp. 118-21). The mother's testimony was confirmed by the district school psychologist, who testified that she contacted the parents on May 24, 2018 and the student's mother indicated that she had not yet received the authorizations for the two IEEs (Tr. p. 66).

A prior written notice dated June 26, 2018, indicated that the CSE considered the following assessments and reports when developing the student's June 2018 IESP: a January 3, 2018 social history update, a January 26, 2018 classroom observation, a February 1, 2018 functional behavioral

assessment, a June 3, 2018 OT progress report, a June 11, 2018 teacher report, and a June 11, 2018 SEIT progress report (Dist. Ex. 21 at p. 1).⁴ In addition, the June 2018 IESP indicated that the CSE considered a May 30, 2018 progress report for counseling; however, it also noted that the parent had declined continuation of counseling services during the then-current school year (Dist. Ex. 20 at p. 3). The school psychologist also testified that the CSE did not consider any other assessment materials and did not have any older evaluation reports at the meeting (Tr. p. 75).

The district school psychologist testified that she did not conduct a psychoeducational evaluation of the student because the parent did not report any academic concerns during the January 2018 social history update and because the testing could be duplicative of the neuropsychological IEE that was authorized by the district (Tr. p. 51).

In January 2018 the district conducted a social history update as a part of an IHO ordered reevaluation of the student (Dist. Ex. 12 at pp. 1-2). The student's mother served as informant for the assessment (*id.* at p. 1). At the time of the social history update, the student was classified as having an other-health impairment and, based on a June 21, 2017 IESP, was mandated to receive individual OT one time per week, group OT one time per week and group counseling one time per week (*id.*). By parent report, the student was receiving SEIT services "8 or 10 times" per week (*id.*). The student was not receiving counseling at the time, nor did the parent want him to (*id.*). The parent reported that the student was in good health, did not have a diagnosis, and was not on medication (*id.*). The parent described the student as loving, warm, good at heart, outgoing, funny, friendly and social and noted that the student's peers loved him, and he was a pleasure to be around (*id.*). However, the parent indicated that the student also had a "temperament" to work on (*id.*). The social history update indicated the student had difficulties with social cues, social norms, impulsivity, and comprehension (*id.*). In terms of academics, the parent indicated that because the student's then-current teacher was "structured," the student did not have academic issues (*id.*). However, the parent reported that the student stood on the back of his desk, walked around the class, and left the class when he wanted to go to the bathroom (*id.*).

The parent reported that while attending first grade at a non-public school the student was impulsive and "easily triggered to be mischievous" (Dist. Ex. 12 at p. 1). As detailed in the social history update, the parent reported that the student's SEIT provider helped the student with refocusing and redirection while the occupational therapist worked on the student's sensory needs (*id.*). The parent noted the student benefitted from OT services indicating that his sensory diet helped him calm down (*id.*). Further, the parent indicated that physical exercises, such as "brushing," released the student's energy allowing him to think clearly (*id.*). Lastly, the social history update noted that the parent was pleased with the SEIT and OT services the student was receiving and requested continuation of the services to address the student's impulsivity, lack of focus, and sensory needs (*id.* at p. 2).

⁴ Although the June 2018 prior written notice indicated that the date of the teacher report was June 11, 2018, the June 2018 IESP references a May 28, 2018 teacher progress report (compare Dist. Ex. 21 at p.1, with Dist. Ex. 20 at p. 1; see Tr. pp. 67-68). There is a May 28, 2018 teacher progress report included in the hearing record (Dist. Ex. 17).

On January 23, 2018, a district special education teacher conducted an observation of the student in a small, instructional, classroom setting where the student was receiving religious instruction in a foreign language (Dist. Ex. 14 at p. 1; see Dist. Ex. 9 at p. 1). According to the special education teacher, the class consisted of 18 students seated at individual desks with one instructor (Dist. Ex. 14 at p. 1). The student was seated in the front desk closest to the instructor and did not have a 1:1 aide present (id.). The observer indicated that the student appeared focused and on task throughout the observation and he followed verbal and written directions and responded to directives with minimal prompting (id.).

The district completed a functional behavioral assessment (FBA) of the student on January 26, 2018 (Dist. Ex. 13). In conducting the FBA, pursuant to an IHO's order from a prior proceeding, district staff conducted an FBA teacher interview in December 2017 and various observations of the student in his classroom at the NPS in January 2018 (see Dist. Exs. 2; 9; 11; 13).

Using the Functional Assessment Interview Tool (FAIT): Staff Version, the student's then-current teacher identified two "problem behaviors" exhibited by the student: a tendency to hum while working and difficulty remaining seated (Dist. Ex. 11 at p. 2). The teacher described both of the behaviors as "redirectable" (id.). The teacher identified several conditions that served as a trigger for the problem behaviors including times when academic work was required (humming), tasks that were perceived as difficult or confusing (both), multi-step work or projects (fidget/out of seat), transition times (both), unstructured situations (humming), when given directions to follow (humming), or when there was a change in routine (fidget/out of seat) (id. at p. 4). The teacher indicated that in response to the student's problem behaviors she provided non-verbal cues, verbally corrected the student privately, and helped the student get on task (id.). The teacher hypothesized that the student's problem behaviors were a means of avoiding work that was perceived as too hard (fidget/out of seat) or boring (both) (id. at p. 1). She suggested that the student's humming behavior occurred as a result of the student's desire for more or less stimulation/excitement (id. at p. 4). When completing the FAIT, the teacher noted that the student was a hard worker, vivacious, well-liked by peers, curious, smart when focused, and that he loved to learn and would rather write than have free time (id. at p. 3). The teacher indicated that lessons that allowed for artistic expression of concepts and provided a small group setting helped to create successful learning conditions for the student (id.).

Interview notes, dated December 22, 2017, taken by a district school psychologist and special education teacher, indicated that the CSE team visited the student's non-public school to conduct an FBA teacher interview (Dist. Ex. 9). According to the district staff, the student's teacher characterized the student as an active student who demonstrated good academic skills when focused (id.). The notes indicated that the student did not appear to need academic support at that time based on his present levels of performance (id.). The district staff indicated that the student's teacher identified the student's problem behaviors, starting with the most significant, as: humming under his breath while working; difficulty staying seated and sitting on the top/edge of the chair; tapping his pencil on the desk while working; and at times being internally distracted and requiring movement breaks (id.). The district staff noted that according to the student's teacher, the SEIT provider was a distraction for the student as his behavior reportedly changed when the SEIT was present (id.). The teacher indicated that the presence of the SEIT in the classroom was a "concern" as the student reached out to her and talked with her while the class was receiving instructions and

participating in the lesson (id.). Lastly, district staff noted that according to the teacher the student was respectful toward her, was a curious student, loved to learn, loved writing, and, when focused, showed good academic skills (id.).

In conducting the January 2018 FBA, three district personnel (a school social worker, school psychologist, and district special education teacher) observed the student on separate dates during large group instruction and individual work and collected baseline data on an ABC chart, which was reflected in the FBA report (Dist. Exs. 2; 13 at pp. 1, 4-5). According to the ABC chart, target behaviors included humming and out-of-seat behavior (Dist. Ex. 2 at p. 1). During the first observation, the SEIT was present and the student was observed following the general education teacher's instructions and directions regarding a writing lesson (Dist. Ex. 13 at p. 5; see Dist. Ex. 2 at pp. 1-9). During this observation the student asked for permission to leave his seat to sharpen a pencil and returned to his seat, and, after having done so, he continued his work (Dist. Ex. 13 at p. 5; see Dist. Ex. 2 at p. 1). The student was observed to be fidgety in his chair but was engaged in the activity and participated (Dist. Ex. 13 at p. 5). According to the FBA, there were no occurrences of out-of-seat behavior, with the exception of when the student asked for permission to sharpen his pencil (Dist. Ex. 13 at p. 5; see Dist. Ex. 2 at pp. 1-9). During the observation, the student was prompted by the SEIT provider to read the words in his book as she pointed (Dist. Ex. 13 at p. 5; see Dist. Ex. 2 at p. 2).

As detailed in the FBA, during the second observation (absent the SEIT provider), the student was observed following the teacher's instructions and directions with minimal to no prompting (Dist. Ex. 13 at p. 5). The student was noted to get out of his seat once to throw away paper and retrieve a glue stick but then returned to his desk and continued with his work (Dist. Ex. 13 at p. 5; see Dist. Ex. 2 at p. 10). When the class transitioned from independent seat work to large group instruction, the student cleared his desk and put out the proper book (Dist. Ex. 13 at p. 5). The observer noted that the student was engaged and attentive during the large group instruction and there were no occurrences of the target behavior during that transition time (Dist. Ex. 13 at p. 5; see Dist. Ex. 2 at pp. 12-13). In addition, when transitioning from group work to independent writing seat work, the student responded as instructed and then raised his hand to request the use of the bathroom (Dist. Ex. 13 at p. 5; see Dist. Ex. 2 at p. 14). When returning from the bathroom the student took a seat and began working on the assigned writing activity (Dist. Ex. 13 at p. 5; Dist. Ex. 2 at p. 14). During the last observations, which included a reading lesson and praying, the student remained seated for the duration of the activity, was focused and followed the teacher's directives (Dist. Ex. 13 at p. 5; see Dist. Ex. 2 at pp. 15-16).⁵

Based on a review of the student's records, the staff interview, information from the student's IESP, assessment of the student's preferences, and direct data from the ABC Chart, the

⁵ With respect to influencing factors, the FBA indicated that the student used a weighted lap pad during formal instruction, which supported his in-seat behavior (Dist. Ex. 13 at p. 3). Information with respect to influencing factors on the student's behaviors was taken from a May 2017 OT progress report which was not included in the hearing record (Dist. Ex. 13 at p. 3). Additionally, the January 2018 FBA report did not indicate whether the student's attending and focus was with the benefit of the weighted lap pad or if the student was independently self-monitoring his actions (Dist. Ex. 13).

FBA report identified the student's targeted problem behavior as "out of seat" (Dist. Ex. 13 at pp. 1-2).⁶ According to the FBA, antecedents to the student's out-of-seat behavior included difficult tasks, transitions, and multi-step work (*id.*). The targeted problem behavior was reported as occurring during secular studies in the afternoon and frequently, on a daily basis (*id.* at p. 3). Consequences for the student's out-of-seat behavior included verbal cues from the teacher, verbal corrections (privately), and assistance from the teacher with getting back on task (*id.* at p. 4). According to the FBA, the function of the problem behavior was avoidance/escape of non-preferred or difficult or boring tasks (*id.*). The FBA indicated that there were no skill or performance deficits related to the student's out-of-seat behavior (*id.*).

In summary, the FBA noted that the student's out-of-seat behavior was limited to only three occurrences throughout the observations and occurred when the student requested permission to leave his seat or left his seat to retrieve classwork for a task (Dist. Ex. 13 at p. 5). The FBA concluded that based on the collected data, the development of a behavioral intervention plan (BIP) for out-of-seat behavior was not appropriate at that time (*id.* at p. 5). The FBA indicated that the current behavioral supports and interventions in place at the time of the FBA included SEIT services in the classroom Monday through Thursday from 2:00-3:45 and noted that the classroom teacher provided the student with movement breaks (Dist. Ex. 13 at p. 7).

The June 2018 IESP also referenced a May 2018 teacher progress report, which was completed by two of the student's non-public school teachers on a form provided by the district (Dist. Exs. 17; 20 at p. 1). With respect to the student's academics, the teachers' report indicated that the student's decoding was average, reading comprehension was "great" (he understood what he read on his own, at his level, and what was read to him), and written expression was average with the student writing short sentences without prompting (Dist. Ex. 17 at p. 1). The report indicated that the student needed coaching to write more sophisticated sentences (*id.*). Regarding mathematics, the teachers reported that the student's calculation skills were good (slow but correct), and that his ability to solve word problems was below average as the student had a harder time focusing on full word problems (*id.* at p. 2). The teachers left blank sections of the form that solicited information regarding the student's language skills, performance in science and social studies, and instructional modifications attempted to assist the student (*id.*). With respect to fine motor skills the teachers indicated the student was asked to write with a pen because "sensory-wise" pencils were not working for the student (*id.* at p. 3). They noted that the student kept pressing so hard on the pencils that they would crack (*id.*). Further, the teachers indicated that the student had an average rate of skill and information acquisition, his learning style was small group/visual, and his strengths were his curiosity and love of new information (*id.*). The teachers opined that the student had an average ability to succeed within the current educational setting and described his social/emotional functioning as "good," although noted the student sometimes displayed impulsive reactions to peers (*id.* at p. 4). The teachers expressed that the student had positive interactions with adults and noted his classroom behavior was good, as was his compliance

⁶ State regulation defines 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 includes, 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]).

and work completion (id.). Lastly, the teachers noted that the student had great organization but sometimes lost focus and demonstrated difficulty dealing with frustration (id.).

The June 2018 CSE also considered a June 3, 2018 OT progress report which indicated the student received two sessions of OT per week to address his sensory processing and graphomotor skills (Dist. Ex. 18 at p. 1). The OT progress report indicated that the student achieved an established sensory motor goal related to proper letter formation when writing his name and also achieved graphomotor goals related to printing numbers 1-10 using a visual model and sitting appropriately during formal instruction for 20 minutes using a weighted lap pad as needed (id.). The OT progress report indicated that the student demonstrated "appropriate core and fine motor strength to write words and sentences legibly with an appropriate tripod grasp, line alignment, sizing and spacing" (id.). In addition, the report indicated that the student behaved in an appropriate manner during therapy sessions, with minimal sensory seeking behaviors noted and that he was able to attend and focus on tasks without the provision of sensory motor input prior to table top activities (id.). The June 2018 OT progress report reflected the occupational therapist's opinion that the student had met his established annual goals and no longer required the intervention of an occupational therapist (id.). However, the report indicated that a SEIT provider would be beneficial in order to monitor and provide interventions for the student's behavior in group settings (id.).

The hearing record contains an undated, unsigned teacher progress report designated in the June 11, 2018 IESP and the June 26, 2018 prior written notice as a June 11, 2018 SEIT progress report (compare Dist. Ex. 3, with Dist. Exs. 20 at pp. 1-2; 21 at p. 1; see Tr. pp. 67-68). The SEIT progress report included information related to the student's academic achievement/instructional/functional levels, social development, physical development, and management needs (Dist. Ex. 3 at pp. 1-3). According to the report, the student was in the first grade and his grade equivalent for both reading and math was first grade (id. at p. 1). With respect to reading, the SEIT indicated that the student fell within the average range of his class, noting he could decode and blend words well but read at a slower pace and needed to work on reading fluency (id.). Additionally, the SEIT noted that the student needed to apply phonics skills when decoding challenging or unfamiliar words (id.). With respect to writing the SEIT indicated that the student was also in the average range of his class, could write "nice" sentences with details, summarize a book, and generate ideas when given a writing assignment (id.). She noted he had very neat handwriting and was meticulous with his writing but sometimes confused the direction of letters (id.).

In terms of mathematics the SEIT indicated that the student was "within the average of his class," grasped new skills and used those skills to problem solve, knew addition and subtraction facts and could complete a worksheet successfully; however, the report noted that at times the student lost focus and would need much redirection (Dist. Ex. 3 at p. 1). With respect to the student's learning style, the SEIT reported the student learned best in a small group or 1:1 because in a large group setting he had difficulty paying attention to the lessons and often needed refocusing (id. at p. 2). According to the SEIT, the student responded very well to positive reinforcement, as well as rewards and prizes, which motivated him to succeed (id.).

With respect to social development, the SEIT indicated that the student did not receive counseling (Dist. Ex. 3 at p. 2). She noted the student aimed to please and wanted to do well but

that his behavior often disturbed peers; the student would call out in class, get out of his seat, poke peers, and needed "much" redirection and refocusing (id.). The SEIT reported that the student might become aggressive when frustrated, demonstrated difficulty transitioning, had difficulty listening to directions and required "much" prompting, but was popular and well liked (id.). With regard to the student's physical development, the SEIT progress report indicated the student's coordination, mobility, and balance were age appropriate (id.).

In terms of addressing the student's management needs, the SEIT recommended that the student have 1:1 support services in the classroom setting (Dist. Ex. 3 at pp. 2-3). The SEIT recommended six annual goals for the student (id. at p. 2). The goals targeted the student's ability to maintain focus on tasks independently, demonstrate enhanced focusing skills needed to negotiate the academic environment, and improve social skills by independently negotiating and managing conflict resolution (id. at pp. 2-3). The remaining goals targeted the student's development of expressive language skills, and ability to reduce socially disruptive behaviors, as well as need for repeated teacher redirection (id.).

The June 2018 IESP also reflected the CSE's consideration of a May 30, 2018 counseling progress report (Dist. Ex. 20 at p. 3).⁷ According to the IESP, the provider stated that, as of the last session, the student presented as "tremendously impulsive and agenda driven, experiencing difficulty listening to rules" and recommended the continuation of counseling services at the then-current mandate to address the student's ability to self-regulate in the classroom (id. at p. 3).

Although the June 2018 CSE had information from the student's teachers and providers and from observations of the student in his class at the NPS, the June 2018 CSE had limited objective information regarding the student's academic abilities. The hearing record does not include any standardized assessments to support the rather general statements that the student's academic skills were in the average range. Additionally, while the student's May 2015 IEP included scores from formal testing, the hearing record does not include reports from that testing or indicate the date that it was conducted, and the district school psychologist testified that the June 2018 CSE did not consider any evaluations other than the ones described in detail above (see Tr. p. 75; Parent Ex. B at p. 4).⁸

⁷ Although the June 2018 CSE considered the May 30, 2018 counseling progress report, the IESP present levels of performance noted that the parent declined continuation of counseling services during the then-current academic year but did not specify how long it had been since the student received the services (Dist. Ex. 20 at p. 3).

⁸ At the time of the May 2015 CPSE, as measured by the Wechsler Preschool and Primary Scale of Intelligence (WPPSI), the student had a verbal IQ of 104; a performance IQ of 117; and a full-scale IQ of 112 (Parent Ex. B at p. 4). As reported on the May 2015 IEP, results of the Developmental Assessment of Young Children – Second Edition (DAYC-2) indicated that the student's cognition, speech-language and motor skills were age appropriate but that his ADL skills and social emotional development were delayed (id.). The May 2015 IEP also indicated that the student's auditory comprehension (standard score 92, percentile rank 30) and expressive language skills (standard score 94 and percentile 34) were within the average range as assessed using the Preschool Language Scale-5 (id.). Lastly, the May 2015 IEP indicated that, according to the Peabody Developmental Motor Scales – Second Edition (PDMS-2), the student received a fine motor quotient of 103, and was considered average as compared to peers his age (id.). The IEP indicated that deficits were noted in the student's sensory processing

The district school psychologist indicated that one of the reasons she believed a psychoeducational evaluation was unnecessary was because the parent did not report academic concerns during the January 2018 social history update (Tr. p. 51), and generally, the teacher reports support the belief that the student was functioning at grade level academically (see Dist. Exs. 3 at p. 1; 17). The evaluative information in front of the June 2018 CSE also indicated that the parent had concerns regarding the student's impulsivity, lack of focus, and sensory needs, that the student was reading at a slower pace and needed to work on reading fluency, and that in a large group setting the student had difficulty maintaining attention and required refocusing (see Dist. Ex. 3 at pp. 1, 2; 12 at p. 2).

Although it is understandable that the district was concerned about the possibility of duplicative testing, the district nonetheless remained responsible for ensuring that the CSE had sufficient information regarding the student's needs (20 U.S.C. § 1414[b][3][B]; 34 CFR 300.304[c][4]; 8 NYCRR 200.4[b][6][vii]) and, based on the above, it appears that the June 2018 CSE did not have sufficient objective information regarding the student's cognitive, academic and motor functioning, and how those factors may have related to the student's behavior, without additional testing.

2. Program Recommendation

The parents appeal from the IHO's finding that the June 2018 IESP was appropriate. The parents' primary objection to the June 2018 IESP was that it did not include sufficient special education supports to address the student's lack of focus and impulsive behaviors.

The student's needs are discussed in detail in the evaluative information section above; however, the evaluative information provides some seemingly conflicting information with regard to the student's social, emotional, and behavioral needs.

In the January 2018 social history update, the parent described the student as loving, warm, good at heart, outgoing, funny, social, and a pleasure to be around (Dist. Ex. 12 at p. 1). In addition, according to the FBA teacher interview notes, the student's teacher indicated the student was respectful, curious, loved to learn, and loved writing (Dist. Ex. 9). Further, his teacher described the student as interacting well with adults, displaying good classroom behavior, demonstrating great organization, showing good compliance and work completion (id.). The January 2018 class observation, which was conducted during religious instruction in a foreign language, indicated that the student appeared to be focused and on task, he followed verbal and written directions, and responded to the instructor's directives with minimal prompting (Dist. Ex. 14).

In contrast, the student's mother also described the student as easily triggered to be mischievous; demonstrating difficulty with social cues, social norms, impulsivity, and comprehension; and having a "temperament to work on" (Dist. Ex. 12 at p. 1). She reported that the student stood on the back of his desk, walked around the room and "goes out when he wants to go to the bathroom" (id.). The student's teacher described the student as losing focus and demonstrating difficulty dealing with frustration while sometimes reacting impulsively toward

"with reference to the Sensory Profile Questionnaire"(id.).

peers (Dist. Ex. 9). The teacher interview notes indicated that the student showed interfering behaviors of humming, difficulty remaining in his seat, tapping a pencil, and being internally distracted and the FBA indicated that the behaviors occurred "frequently on a daily basis" in response to difficult tasks, transitions, and multi-step work (Dist. Exs. 9; 13 at p. 3). The May 2018 SEIT progress report indicated that, although the student was popular and well liked, he was impulsive, disturbed peers, called out, was out of seat, poked peers and could be aggressive when frustrated (Dist. Ex. 3 at p. 2). She also described the student as having difficulty listening to directions, needing much prompting and having difficulty paying attention in large groups (*id.*). The SEIT recommended that the student be provided 1:1 support in the classroom and put forth six annual goals targeting focusing, managing conflict, improving expressive language skills, and decreasing disruptive behaviors, as well as the need for redirection (*id.* at pp. 2-3). The counseling report, as reflected in the June 2018 IESP, described the student as tremendously impulsive, agenda driven, and having difficulty listening to rules and recommended continued counseling to address the student's ability to self-regulate (Dist. Ex. 20 at p. 3).

The school psychologist initially testified that the student's academic needs were discussed at the CSE meeting; however, later acknowledged that the CSE did not discuss the student's difficulty with word problems, reading fluency, applying phonics, and decoding skills to challenging and unfamiliar words or his potential to engage in aggressive behavior (Tr. pp. 58, 62-63, 68, 72). The school psychologist testified that the CSE "sort of integrated the social goals" recommended by the SEIT into the student's IESP (Tr. p. 64). She noted that at the time the CSE did not have a speech-language evaluation to address the expressive language goals that were included in the SEIT's report (Tr. p. 64; *see* Dist. Ex. 3 at p. 2). The school psychologist confirmed that she did not ask about the student's expressive language skills when developing the student's IESP (Tr. p. 64).

To address the student's needs, the June 2018 CSE recommended one 30-minute session of group counseling per week in a separate location (Dist. Ex. 20 at p. 6). The IESP also included two annual goals directed at improving the student's self-regulation and social problem-solving skills (*id.* at p. 5). In addition, the IESP included management needs for the student, such as preferential seating, prompts for refocusing, redirection, opportunities for small group instruction, verbal praise, positive reinforcement, and movement breaks (*id.* at p. 4). Additionally, while the observations conducted as part of the FBA noted only three occurrences of out-of-seat behavior and deemed each to be appropriate given the circumstances, resulting in a recommendation that a BIP was not needed (Dist. Ex. 13 at p. 5; 20 at p. 3), the IESP also identified "clearly defined and reinforced behavioral expectations" as a management need for the student (Dist. Ex. 20 at p. 4).⁹

⁹ The special factor procedures set forth in State regulations 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]).

Overall, given the inconsistencies in the evaluative information before the CSE, and the lack of standardized testing coupled with the CSE's failure to discuss the student's academic weaknesses, the CSE's decision to recommend counseling only does not appear to be sufficient support for the student. In particular, the IESP calls for opportunities for small group instruction, as well as "clearly defined and reinforced behavioral expectations"; however, the IESP is silent as to how those management needs would be met in the student's classroom without special education support.

Moreover, according to the psychologist, the student's general education teacher at the CSE meeting noted that she felt the SEIT was more of a distraction and "hinderance" to the student (Tr. p. 77-78). The FBA reported the student's behaviors as occurring in the afternoon during secular studies (Dist. Ex. 13 at p. 3), which may have been the time the SEIT was present in the classroom. Prior to removing the SEIT services, the CSE could have investigated further as to whether the student's behaviors were connected to the topic/method of instruction at that time or the presence of the SEIT, particularly in light of the occupational therapist and SEIT recommending continuation of special education teacher support for the student. Accordingly, the IHO erred in determining that the June 2018 CSE made an appropriate IESP recommendation for the student.

C. Relief

The only relief the parents request for the denial of an appropriate IESP for the 2018-19 school year is eight hours per week of SEIT service; however, as of the time of this decision, the parents have already been awarded this relief through pendency.

On October 4, 2018 the IHO issued an interim decision on pendency finding that, upon agreement of the parties, the student would continue to receive two 30-minute sessions of OT per week and eight hours of instruction by a SEIT per week (see Tr. pp. 6-8; IHO Interim Decision at p. 2). The student's right to pendency automatically attached as of the filing of the due process complaint notice on August 21, 2018 (see Parent Ex. A; see also 20 U.S.C. § 1415[j]; Educ. Law §§ 4404[4]; 4410[7][c]; 34 CFR 300.518[a]; 8 NYCRR 200.5[m]; Child's Status During Proceedings, 71 Fed. Reg. 46710 [2006][*"a child's right to remain in the current educational placement attaches when a due process complaint is filed"*]). The student was entitled to receive eight hours per week of SEIT services from the beginning of the 2018-19 school year through the pendency of this proceeding, and the 2018-19 school year is now over. As the parents are already entitled to the relief requested, as part of pendency in this proceeding, no further relief will be considered for the 2018-19 school year.

VII. Conclusion

In summary, the hearing record indicates that the June 2018 CSE did not have sufficient information available to it to support the recommendation for counseling services without any additional special education support for the 2018-19 school year. However, as the parents are entitled to all of the relief requested through pendency, no further relief is warranted.

I have considered the parties' remaining contentions and find them unnecessary to address in light of my determinations herein.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

IT IS ORDERED that the IHO's April 3, 2019 Decision is modified by reversing that portion which found that the June 2018 CSE had sufficient evaluative information regarding the student's needs and made an appropriate recommendation.

Dated: **Albany, New York**
 July 17, 2019

CAROL H. HAUGE
STATE REVIEW OFFICER