



The University of the State of New York

The State Education Department

State Review Officer

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No. 24-094

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:

Liz Vladeck, General Counsel, attorneys for respondent, by Michael P. Heitz, 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 respondent (the district) offered the student an appropriate educational program for the 2021-22 and 2023-24 school years and denied their request for compensatory education related to the 2021-22 school year and prospective placement for the 2023-24 school year. The appeal must be dismissed.

II. Overview—Administrative Procedures

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

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

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

III. Facts and Procedural History

The parties' familiarity with this matter is presumed and, therefore, the facts and procedural history of the case and the IHO's decision will not be recited in detail here.

Evaluations of the student were conducted in February 2021, including a psychological evaluation, an educational evaluation, an observation, a social history, an occupational therapy (OT) evaluation, a physical therapy (PT) evaluation, and a speech-language evaluation (see Dist. Exs. 1-4, 6-8). The reports were summarized in a "Preschool Student Evaluation Summary Report" dated March 3, 2021 (see Dist. Ex. 5).

A Committee on Preschool Special Education (CPSE) convened on March 4, 2021 and determined the student was eligible for special education as a preschool student with a disability (see Dist. Ex. 9). The CPSE recommended 12-month programming consisting of an 8:1+2 special class in an approved special education program with three 30-minute sessions per week of individual speech-language therapy, three 30-minute sessions per week of individual OT, and two 30-minute sessions per week of individual PT (id. at pp. 17, 18).¹ The CPSE also recommended special transportation services (id. at p. 20). Participants at the meeting included a special education teacher/related service provider, the student's mother, the student's early intervention service coordinator, and the district's CPSE administrator (id. at p. 21).

In a letter dated June 3, 2021, the district notified the parents of the particular public school to which the district assigned the student to attend beginning on September 2, 2021 to access the center-based preschool 8:1+2 special education class recommended in the March 2021 IEP (Dist. Ex. 10). The student attended the recommended preschool placement during the 2021-22 school year (Parent Ex. N ¶¶ 4, 6; Dist. Ex. 21 at p. 1).

A CPSE convened on April 28, 2022 (see Parent Ex. C). The CPSE continued to recommend a 12-month 8:1+2 special class placement with three 30-minute sessions per week of individual speech-language therapy, three 30-minute sessions per week of individual OT, and two 30-minute sessions per week of individual PT (id. at p. 14). The CPSE also recommended assistive technology services of an individual tablet with the support of dynamic display speech generating device daily at school and home, and special transportation services (id. at pp. 14, 17). These services were projected to begin on May 13, 2022 (id. at p. 14). Participants at the meeting included a special education teacher/related service provider, the student's father, the speech provider, and the district's CPSE administrator (id. at p. 18).

The parents obtained a private psychological evaluation that was conducted over three dates in April, May, and June 2022 (June 2022 private evaluation) (Dist. Ex. 20). The evaluator determined that the student met the criteria for diagnoses of autism spectrum disorder (ASD) (a diagnosis the student had previously received) and attention deficit disorder (id. at p. 8; see Parent Ex. B at p. 5).

In a final notice of recommendation dated June 15, 2022, the district informed the parents that the student was assigned to attend the "SI Prep/AHRC" (AHRC) preschool for the 12-month 2022-23 school year and requested their consent for services (Parent Ex. D at pp. 1, 2).² The student attended AHRC during the 2022-23 school year (Parent Ex. N ¶¶ 13, 14).

In February and April 2023, the district began preparing for the student's transition to school-aged programming, including by conducting a social history and a classroom observation and administering the Vineland Adaptive Behavior Scales-Third Edition (Vineland-3) to the parents (Dist. Exs. 21-23).

¹ The student's eligibility for special education services as a preschool student with a disability and subsequently as a student with autism is not in dispute (8 NYCRR 200.1[mm], [zz][1]).

² The parents signed the letter consenting to services on June 16, 2022 (Parent Ex. D at p. 3).

A CSE convened on April 18, 2023 and found the student eligible for special education services as a student with autism (Dist. Ex. 24 at p. 1). The IEP noted that the CSE reviewed the student's June 2022 private evaluation (id.). The CSE recommended a 12-month 8:1+1 special class placement in a district specialized school with the following related services provided on a weekly basis: three 30-minute sessions of individual OT, two 30-minute sessions of individual PT, and three 30-minute sessions of individual speech-language therapy (id. at pp. 16-17, 20). The CSE also recommended that the student receive assistive technology services consisting of a tablet with dynamic display speech generating device daily at school and home (id. at p. 17). The CSE determined that the student did not require additional compensatory services to address lost skills and/or lack of expected progress due to remote learning, noting that the student made expected progress toward IEP goals and did not experience a loss in skills during blended and remote learning (id. at p. 18). Participants at the meeting included a regular education teacher, the student's parents, a district representative, a social worker, a parent advocate, and two representatives from AHRC (id. at p. 19).

In a prior written notice dated April 28, 2023, the district summarized the program and placement the April 18, 2023 CSE recommended and noted that the parents requested the student stay at AHRC (Dist. Ex. 25).

In an email to the district representative who attended the April 2023 CSE meeting, dated May 26, 2023, the parents' advocate sent a letter from the private evaluator and requested a new CSE meeting (Parent Ex. G at p. 1; see Parent Ex. H). The district responded, on May 31, 2023, denying the request for a reconvene and noting that the letter did not offer any new data (Parent Ex. G at p. 1).

On June 7, 2023, a CPSE convened to review an assistive technology evaluation of the student, completed on June 1, 2023, and recommend services for July and August 2023 (Parent Ex. I). The CPSE recommended programming consisting of an 8:1+2 special class in an approved preschool program with three 30-minute sessions per week each of individual speech-language therapy and OT, and two 30-minute sessions per week of individual PT to be implemented beginning June 22, 2023 (id. at p. 19). The CPSE also recommended assistive technology services consisting of a speech generating device (id.).

A prior written notice, dated June 9, 2023, informed the parents that the district assigned the student to attend a particular district specialized school and that the April 2023 IEP would be implemented at that school beginning in September 2023 (Dist. Ex. 26).

A. Due Process Complaint Notice

In a due process complaint notice dated May 25, 2023, the parents alleged that the district denied the student a free appropriate public education (FAPE) for the 2021-22 and 2023-24 school years (see Parent Ex. A). The parents requested pendency services, contending that the student's pendency program was the preschool placement at AHRC, and requested the student stay at AHRC throughout the entire impartial hearing (id. at p. 2).³

³ The parent noted that AHRC had an appropriate school age program for the student (Parent Ex. A at p. 2).

The parents argued that the student's district specialized school placement during the 2021-22 school year was not appropriate, as the program did not offer applied behavior analysis (ABA) methodology or have a Board Certified Behavior Analyst (BCBA) on staff and the school "was not safe" (Parent Ex. A at pp. 2-3, 5). The parents asserted that, due to a lack of services from the early intervention program (EIP) during the COVID-19 pandemic and due the inappropriate placement during the 2021-22 school year, the student regressed (id.). The parents requested a bank of 680 hours of compensatory education to make up for that inappropriate program (id. at p. 6).

Regarding the April 2023 CSE's recommendation, the parents contended that an 8:1+1 special class in a district specialized school was not appropriate as the student required placement in a school that used ABA instruction (Parent Ex. A at pp. 1, 4, 5-6). The parents further alleged that the CSE failed to address the student's behaviors (id. at p. 6). The parents argued that the district failed to provide an explanation as to why it did not recommend an ABA placement, when the information presented demonstrated that was what the student required (id.). The parents requested an order that the student be placed at AHRC (id.).

B. Impartial Hearing Officer Decision

An impartial hearing convened before the Office of Administrative Trials and Hearings (OATH) on June 29, 2023 and concluded on August 16, 2023, after three days of proceedings (see June 29, 2023 Tr. pp. 1-18; Tr. pp. 1-150).⁴ In a decision dated August 30, 2023, the IHO determined that the district offered and provided the student a FAPE for the school years at issue and denied the parents their requested relief (see IHO Decision at pp. 14-18).⁵

In regard to the compensatory education request related to the student's alleged regression due to services missed during the COVID-19 pandemic, the IHO held that, during COVID, the student was receiving services through the EIP, which was not the responsibility of the district (IHO Decision at pp. 17-18). Regarding the parents' allegations about the student's preschool program during the 2021-22 school year, the IHO found that the hearing record did not support that the student was only able to receive educational benefit through ABA services (id. at p. 17).

Turning to the 2023-24 school year, the IHO found that the district's program recommendations were appropriate and the absence of ABA did not deprive the student of a FAPE (IHO Decision at pp. 14-16). The IHO noted that the parent did not object to the recommendations in the IEP, as AHRC and the proposed program were very similar, only that the district recommendation did not mandate instruction using ABA methodology (id. at p. 16).⁶ Regarding

⁴ The transcript of proceedings held on June 29, 2023 is separately paginated and, accordingly, citations thereto will be preceded by the date (see Jun. 29, 2023 Tr. pp. 1-18). The remaining transcripts of proceedings held on July 24 and August 16, 2023 are consecutively paginated and will be cited without reference to the date (see Tr. pp. 1-150).

⁵ In an interim decision dated July 6, 2023, the IHO found that the student was entitled to pendency based on the June 2023 IEP and consisted of the student's attendance at AHRC and related services (Interim IHO Decision).

⁶ Noting that the programs were similar, the IHO held that the district needed only to establish it could implement the IEP (IHO Decision at p. 16). The IHO further noted that when the parents visited the assigned school, they

methodology, the IHO held that the hearing record did not support a finding that the student could only benefit from instruction using ABA methodology (*id.* at pp. 14-16).⁷ Accordingly, the IHO dismissed the parents' claims (*id.* at p. 18).

IV. Appeal for State-Level Review

The parents appeal.⁸ The parents assert that the IHO's decision was arbitrary and capricious and that the IHO shifted the burden to the parents to demonstrate that the district denied the student a FAPE. The parents contends that the IHO erred by not allowing impeachment evidence of the district witness.⁹ In addition, the parents assert that the IHO erred by "mischaracterizing and giving no weight" to the testimony of their witness from the nonpublic school the student attended. The parents argue that the IHO minimized the witness's credentials and knowledge of the student; noting also that the district's witness had never observed or worked with the student. The parents assert that, although the IHO may have been correct in finding that the student could be educated using alternative methodologies, the district "offered no evidence, argument, or testimony regarding what those alternative methods may be, as it is their burden to do." The parents further assert that the IHO ignored evidence showing the student needed instruction using ABA methodology, specifically referencing the student's 2019 psychological evaluation and the letter from the letter from the clinician who conducted the 2022 psychological evaluation of the student.

Specific to the 2021-22 school year, the parents assert that the preschool IEPs omitted their concerns about the lapse in services from the EIP due to the COVID-19 pandemic. The parents argue that the IHO failed to rule on the appropriateness of the 2021-22 school year program even though the due process complaint notice alleged that the student regressed during the 2021-22

did not inquire as to whether the school could implement the IEP; the IHO then held that the hearing record did not support that the district was unwilling or unable to address the parents' concerns about the proposed school location (*id.*).

⁷ The IHO did not credit the letter from the private clinician attributing the student's progress to ABA delivered to the student while attending AHRC, finding that the clinician had evaluated the student prior to his enrollment at AHRC and that the clinician did not provide any basis for his observations or conclusions on that point (IHO Decision at pp. 15-16). Also, the IHO found that the evidence in the hearing record did not "support the conclusion that the Student made significant progress" at AHRC (*id.* at p. 16). Moreover, the IHO found that the testimony of the student's father could not be credited regarding when he shared the contents of the June 2022 private evaluation with the CSE, the reasons for why the parents sought that evaluation, or that he witnessed the student exhibiting regression during the 2021-22 school year (*id.* at p. 16 n. 108).

⁸ The parents' initial request for review was dated March 18, 2024 and was served on the district on March 19, 2024 (Mar. 18, 2024 Req. for Rev. at p. 10; March 20, 2024 Aff. of Service). The amended request for review, which is accepted as the document initiating this appeal, was dated March 26, 2024 and served on that date (Amended Req. for Rev. at p. 10; Mar. 28, 2024 Aff. of Service). The parent submitted with the amended request for review SRO Exhibits C and D, which are emails between OATH and the parties and reflect that, although the IHO decision is dated August 30, 2023, the IHO did not distribute the decision to the parties until February 12, 2024 (SRO Exs. C; D at p. 1). The district does not dispute the facts regarding the timing of the dissemination of the IHO decision to the parties or allege that the parents' appeal was untimely served (Answer at p. 3).

⁹ The parents submit their proposed impeachment evidence and emails between the parties and the IHO on this topic (*see* SRO Exs. A, B, E).

school year. The parents further argue that IHO failed to correctly interpret and apply district guidance regarding compensatory education services to make up for loss of skill related to the COVID-19 pandemic.¹⁰

Regarding the 2023-24 school year, I parents assert that the IHO ignored evidence that the student made progress at AHRC with ABA methodology during the 2022-23 school year and that the CSE had the student continue at AHRC for the summer of 2023. The parents contend that the IHO erred by finding that the student was offered a FAPE for the 2023-24 school year as the district failed to sustain its burden of proof to explain the recommendations made by the 2023 CSE.¹¹

For relief, the parents request that the IHO's decision be reversed and the district be ordered to place the student at AHRC. Additionally, the parents request 680 hours of compensatory ABA therapy for the inappropriate recommendations made for the student for the 2021-22 school year and to address pandemic related learning loss.

In its answer, the district generally denies the parents' allegations and asserts that the IHO's decision should be upheld in its entirety.

V. Applicable Standards

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

¹⁰ The parents point to the district's offers during the resolution meeting to support their assertion that compensatory education is warranted.

¹¹ Addressing the IHO's statements on implementation, the parents contend that the IHO erred by indicating the parents did not ask the assigned public school site if it could implement the IEP. The parents contend that the crux of their complaint was a dispute as to the CSE's recommendations, in that the parents believed the student needed to be in a "structured full day ABA program." In addition, the parents assert that the district was responsible to demonstrate that the assigned school could implement the program and they visited the school despite not being in agreement with the CSE's recommendations finding it to be "unsafe."

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. 386, 399 [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, In 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., 580 U.S. at 404). 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., 580 U.S. at 403 [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]).¹²

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 Matter

Initially, the parents challenge the IHO's denial of their request to enter additional evidence after the hearing closed for the purpose of impeaching the testimony of the district's CPSE administrator.

Unless specifically prohibited by regulations, IHOs are provided with broad discretion, subject to administrative and judicial review procedures, with how they conduct an impartial hearing, in order that they may "accord each party a meaningful opportunity" to exercise their rights during the impartial hearing (Letter to Anonymous, 23 IDELR 1073 [OSEP 1995]; see Impartial Due Process Hearing, 71 Fed. Reg. 46704 [Aug. 14, 2006]). An IHO must provide all parties with an opportunity to present evidence and testimony, including the opportunity to confront and cross-examine witnesses (34 CFR 300.512[a][2]; 8 NYCRR 200.5[j][3][xii]). Furthermore, each party "shall have up to one day to present its case" (8 NYCRR 200.5[j][3][xiii]). While an IHO is required to exclude evidence and may limit the testimony of witnesses that he or she "determines to be irrelevant, immaterial, unreliable or unduly repetitious" (8 NYCRR 200.5[j][3][xii][c]-[e]), it is also an IHO's responsibility to ensure that there is an adequate and complete hearing record (see 8 NYCRR 200.5[j][3][vii]).

¹² 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., 580 U.S. at 402).

After the impartial hearing concluded, the parents' representative emailed the IHO, seeking to enter into the hearing record what the parents refer to as "impeachment" evidence (see SRO Exs. A-B, E; see also Req. for Rev.). In responding to the parents' request to submit documentary evidence after the conclusion of the impartial hearing, the IHO indicated she would not consider the evidence if it "existed: (1) when the parties exchanged their disclosures; or (2) at the time [the CPSE administrator] testified" (SRO Ex. B at p. 1). The parents do not dispute that the evidence existed at these points in time but argue that they were "able to find that email" after the hearing and that they could not have predicted the CPSE administrator's testimony (Req. for Rev. ¶ 13). As the parents raised allegations in the due process complaint notice about the student's placement during the 2021-22 school year and noted, factually, the circumstances surrounding the move to AHRC, the parents could have anticipated the relevance of the document in question, and, therefore, I do not find that the IHO abused her discretion in declining to receive the documentary evidence after the close of the impartial hearing.

Moreover, even if the evidence was received, review of the document proffered does not support the parents' position that the testimony of the CPSE administrator was not credible. During the impartial hearing, the district's CPSE administrator was asked whether it was true that the student was moved to AHRC based on the parents' request for "an ABA school" to which the administrator responded "[t]hat [wa]s not true" (Tr. p. 53). When asked why the student was moved from the public placement to AHRC, the administrator responded that "there was incident of safety that the parents were concerned about" at the student's previous school (Tr. pp. 53-54). She testified that the parents' reached out about that issue and, when questioned about when that outreach was made, she could not recall (id.).

The parents claim that the proposed evidence would impeach the credibility of the district's school psychologist regarding why the student was moved the AHRC after the 2021-22 school year. The proposed evidence consists of an email from the parents, dated June 3, 2022, in which they stated that they were seeking a different placement for the student beginning in September 2022 as they believed he would benefit from a "smaller, more structured program that provides ABA instruction" such as the program offered at AHRC (Parent Ex. E).¹³ The letter also included a statement by the parents indicating that they "fear[ed] for [the student's] safety" due to a recent event involving a threat made to the student's school (id.). The district's CPSE administrator responded that she was sorry to hear about the threat and that she "was under the impression that all was well and [all] were pleased with [the student's] program, since [she] recently did [the student's] annual review" on April 28, 2022 (id.). The district CPSE administrator indicated that she would have to see if there were any seats available and that she would get back to the parents (id.).

Based on a review of the proposed evidence presented by the parents, had the evidence been considered, it would not have warranted a determination that the CPSE administrator's testimony was not credible. While the email reflects more than one reason for the parent's request for the student to change schools (see SRO Ex. E), it does not indicate the rationale for the CPSE's decision to recommend the change and, therefore, does not contradict the administrator's testimony

¹³ The parents noted that their other child was in attendance at AHRC and that they were pleased with the school (SRO Ex. E).

that the change was made due to the parents' safety concerns (see Tr. pp. 54-54). Moreover, the CPSE administrator's testimony was generally consistent with the email sent by the parent in June 2022 and there is no indication that the administrator was being untruthful during the impartial hearing (compare SRO Ex. E, with Tr. pp. 53-54).

B. 2021-22 School Year

1. Compensatory Services Related to COVID-19 Pandemic

Regarding disruptions in services during the 2020-21 and 2021-22 school years due to the COVID-19 pandemic, both the United States Department of Education (USDOE) and the NYSED's Office of Special Education have issued guidance acknowledging that the global pandemic and the resulting closure of schools resulted in "an inevitable delay" in districts providing services to students with disabilities or engaging in the decision-making process regarding such services ("Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities," 76 IDELR 104 [OCR & OSERS 2020]; "Compensatory Services for Students with Disabilities as a Result of the COVID-19 Pandemic," at p. 1, Office of Special Educ. Mem. [June 2021], available at <https://www.nysed.gov/sites/default/files/programs/coronavirus/compensatory-services-for-students-with-disabilities-result-covid-19-pandemic.pdf>). In addition, the USDOE has noted reports from some local educational agencies that they were "having difficulty consistently providing the services determined necessary to meet [each] child's needs" and that, as a result, "some children may not have received appropriate services to allow them to make progress anticipated in their IEP goals" ("Return To School Roadmap: Development and Implementation of Individualized Education Programs in the Least Restrictive Environment under the Individuals with Disabilities Education Act," 79 IDELR 232 [OSERS 2021]).

To address these delays and other delivery-related issues that occurred as a result of the pandemic, the Office of Special Education Programs (OSEP) and NYSED's Office of Special Education have indicated that, when school resumes, a CSE should convene and "make individualized decisions about each child's present levels of academic achievement and functional performance and determine whether, and to what extent, compensatory services may be necessary to mitigate the impact of the COVID-19 pandemic on the child's receipt of appropriate services" ("Return To School Roadmap," 79 IDELR 232; "Compensatory Services for Students with Disabilities as a Result of the COVID-19 Pandemic," at pp. 1, 3; see also "Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities," 76 IDELR 104; "Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak," 76 IDELR 77 [OCR & OSERS 2020]; "Supplement #2 - Provision of Services to Students with Disabilities during Statewide School Closures Due to Novel Coronavirus (Covid-19) Outbreak in New York State," at pp. 2-5, Office of Special Educ. Mem. [June 2020], available at <https://www.nysed.gov/sites/default/files/programs/coronavirus/special-education-supplement-2-covid-qa-memo-6-20-2020.pdf>). The CSE's review might include a discussion of whether the student has new or different needs compared to before the pandemic, whether the student experienced a loss of skill or a lack of expected progress towards annual goals and in the general education curriculum, whether evaluations of the student or implementation of an IEP was delayed, and whether some of the student's IEP services could not be implemented due to the available

methods of service delivery or whether such methods of service delivery were not appropriate to meet the student's needs ("Return To School Roadmap," 79 IDELR 232; "Compensatory Services for Students with Disabilities as a Result of the COVID-19 Pandemic," at pp. 3-4; see "Supplement #2 - Provision of Services to Students with Disabilities during Statewide School Closures Due to Novel Coronavirus (Covid-19) Outbreak in New York State," at p. 1).

If the parent disagrees with a CSE's determination regarding the student's entitlement to compensatory services, State guidance notes that:

Parents of students with disabilities may resolve disputes with school districts regarding the provision of FAPE by pursuing one of the dispute resolution options provided for in the IDEA. A parent may file a State complaint directly with NYSED in accordance with Commissioner's Regulation section 200.5(l), request mediation in accordance with Commissioner's Regulation section 200.5(h), or file a due process complaint and proceed to hearing in accordance with Commissioner's Regulation section 200.5(j).

("Compensatory Services for Students with Disabilities as a Result of the COVID-19 Pandemic," at p. 5; "Supplement #2 - Provision of Services to Students with Disabilities during Statewide School Closures Due to Novel Coronavirus (Covid-19) Outbreak in New York State," at p. 6).

Regarding any lapse in services during the 2020-21 schoolyear, as the IHO found, upon the student's transition to the CPSE, the committee was not required to consider any loss of skill that occurred due to disruptions to delivery of EIP services. The guidance documents refer to the compensatory services to make up for loss of skills "when FAPE could not be provided" ("Compensatory Services for Students with Disabilities as a Result of the COVID-19 Pandemic," at p. 1). As the student was not eligible for a FAPE under the IDEA during the 2020-21 school year, the CPSE was not required to consider whether the compensatory services were necessary to mitigate the impact of any services that were not delivered during that period.

Further, in the due process complaint notice, although the parent alleged that lapses in the student's EIP services occurred due to the pandemic during the 2020-21 school year, the parent did not assert that the pandemic affected the student's preschool services during the 2021-22 school year, instead focusing on the appropriateness of the preschool program (see Parent Ex. A). Accordingly, there is no basis to disturb the IHO's determination regarding compensatory services to address loss of skill related to the COVID-19 pandemic.

2. Methodology

I turn next to the parents' claim that the student could only receive educational benefit through ABA services and, therefore, required compensatory education to make up for the lack of those services during the 2021-22 school year.

Generally, an IEP is not required to specify the methodologies used with a student and the precise teaching methodologies to be used by a student's teacher are usually a matter to be left to the teacher's discretion—absent evidence that a specific methodology is necessary (Rowley, 458 U.S. at 204; R.B. v. New York City Dep't of Educ., 589 Fed. App'x 572, 575-76 [2d Cir. Oct. 29,

2014]; A.S. v. New York City Dep't of Educ., 573 Fed. App'x 63, 66 [2d Cir. July 29, 2014]; K.L. v. New York City Dep't of Educ., 530 Fed. App'x 81, 86 [2d Cir. July 24, 2013]; R.E., 694 F.3d at 192-94; M.H., 685 F.3d at 257). As long as any methodologies referenced in a student's IEP are "appropriate to the [student's] needs," the omission of a particular methodology is not necessarily a procedural violation (R.B., 589 Fed. App'x at 576 [upholding an IEP when there was no evidence that the student "could not make progress with another methodology"], citing 34 CFR 300.39[a][3] and R.E., 694 F.3d at 192-94). Indeed, a CSE should take care to avoid restricting school district teachers and providers to using only the specific methodologies listed in a student's IEP unless the CSE believes such a restriction is necessary in order to provide the student a FAPE. However, when the use of a specific methodology is required for a student to receive an educational benefit, the student's IEP should so indicate (see, e.g., R.E., 694 F.3d at 194 [finding an IEP substantively inadequate where there was "clear consensus" that a student required a particular methodology, but where the "plan proposed in [the student's] IEP" offered "no guarantee" of the use of this methodology]). If the evaluative materials before the CSE recommend a particular methodology, there are no other evaluative materials before the CSE that suggest otherwise, and the school district does not conduct any evaluations "to call into question the opinions and recommendations contained in the evaluative materials," then, according to the Second Circuit, there is a "clear consensus" that requires that the methodology be placed on the IEP notwithstanding the testimonial opinion of a school district's CSE member (i.e. school psychologist) to rely on a broader approach by leaving the methodological question to the discretion of the teacher implementing the IEP (A.M. v. New York City Dep't of Educ., 845 F.3d 523, 544-45 [2d Cir. 2017]). The fact that some reports or evaluative materials do not mention a specific teaching methodology does not negate the "clear consensus" (R.E., 694 F.3d at 194).

Review of the hearing record reflects that, in October 2019 when the student was 18 months old, a psychological evaluation was conducted to assist in determining eligibility for services through the EIP (Parent Ex. B at p. 1). The October 2019 psychological evaluation and parent interview report indicated that the student met the criteria for a diagnosis of autism spectrum disorder, and the evaluator recommended that speech-language, OT, and PT evaluations of the student be conducted (id. at p. 6). The evaluator also recommended that the student receive "ABA therapy" aimed at developing greater capacity for shared attention and engagement, supporting the emergence of language functioning, supporting the development of initiative in language use and social reciprocity, and supporting the emergence of functional and later symbolic/pretend play (id. at p. 6).

Subsequent related services evaluations and a social history that occurred in February and March 2021 indicated the student was approved for and had been receiving 10 60-minute sessions per week of ABA services through the EIP (Dist. Exs. 4 at p. 2; 6 at p. 2; 8 at p. 2). However, in late 2020 the student's ABA service provider was no longer available and, as of spring 2021, the student was waiting for a new provider to resume services (Dist. Exs. 4 at p. 2; 6 at p. 2; 8 at p. 2). Other than the October 2019 psychological evaluation noted above, no other evaluation reports included in the hearing record regarding the 2021-22 school year indicated the student required ABA services or recommended it for the student (see Dist. Exs. 1 at pp. 6-7; 2 at p. 3; 3; 4; 6; 7; 8).

Review of the March 2021 IEP, which planned for the student's transition from the EIP to the CPSE in September 2021, shows that the student's present levels of performance were

consistent with the information obtained from the CPSE evaluation of the student, including the February 2021 psychological and educational evaluation reports, an observation, a social history report, a pre-k evaluation summary report, as well as OT, PT, and speech-language evaluation reports (compare Dist. Ex. 9 at pp. 2-4, with Dist. Exs. 1-8; see Dist. Ex. 27 ¶ 10). Based on the information in these evaluations, the CPSE identified the student's academic, social, communication, and physical needs (Dist. Ex. 9 at pp. 2-4).

Consistent with the above documentation, the March 2021 IEP indicated that the student required the support of a small special class with related services of speech-language therapy, OT, and PT (Dist. Ex. 9 at p. 6). As the student had received a diagnosis of ASD, the CSE determined that he would benefit from verbal, visual, and physical prompts during instruction to address his attending, cognition, and communication skills, small group instruction, redirection during small and large group activities to increase his focus and attention, opportunities for reciprocal play to facilitate purposeful interactions with peers, repetition and verbal models to increase his receptive, expressive, and pragmatic language skills, opportunities for motor activities to provide input, and hand over hand prompting to address delays in motor skills and activities for daily living (ADL) (id. at p. 6). The March 2021 IEP included approximately 21 annual goals and 81 short-term objectives aligned to the student's needs (id. at pp. 7-16). The March 2021 CPSE recommended 12-month programming in an 8:1+2 special class in an approved district special education preschool and related services of individual OT, individual speech-language therapy, and individual PT (id. at pp. 1, 17, 18).

The CPSE administrator testified that the March 2021 CPSE's recommended 8:1+2 special class program was geared for students on the autism spectrum and that the environment was highly structured and supportive (Tr. p. 69; Parent Ex. 27 ¶¶ 1, 10). She further testified that instruction was very individualized, direct, and explicit, to address cognitive, communication, social/emotional, adaptive living, and motor skills that were reflective of evaluations (Tr. pp. 69-70; Parent Ex. 27 ¶ 10). According to the CPSE administrator, there were only two 8:1+2 special classes at the assigned school, therefore the program was able to offer intensive interventions using different strategies and techniques for students with ASD, as well as a nurturing environment and a high level of family engagement (Tr. pp. 69-70; Parent Ex. 27 ¶ 10). The CPSE administrator testified that while the classroom the student was assigned to attend did not "necessarily use ABA" methodology, she indicated that teachers in the 8:1+2 special classes had a master's degree and training in working with students recommended for special education services (Tr. p. 70). As such, those teachers used different resources or methodologies and individualized a student's learning and addressed their needs so that a student could become more of a participant in the classroom and address need areas, which frequently tended to be in the social/emotional and communication skills areas (id.).

Although, at the time the March 2021 CPSE developed the student's March 2021 IEP, he had been recommended for and received instruction using ABA through the EIP, review of the evaluative information available to the March 2021 CPSE with respect to his needs and annual goals did not indicate a clear consensus that the student required instruction using ABA methodology in order to receive a FAPE.

Finally, the parents allege that the student regressed during the 2021-22 school year; however, the student's progress or lack thereof cannot be relied on to retrospectively assess the

CPSE's recommendations (see C.L.K. v. Arlington Sch. Dist., 2013 WL 6818376, at *13 [S.D.N.Y. Dec. 23, 2013] [finding that "a substantively appropriate IEP may not be rendered inadequate through testimony and exhibits that were not before the CSE about subsequent events . . . that seek to alter the information available to the CSE"], citing R.E., 694 F.3d at 186–87).¹⁴

Based on the foregoing, I see no reason to disturb the IHO's finding with regard to ABA methodology and the 2021-22 school year.

C. 2023-24 School Year

During the 2022-23 school year, the student attended the recommended approved preschool placement at AHRC (Parent Ex. N ¶¶ 4, 6; Dist. Ex. 21 at p. 1).

In preparation for educational planning for the 2023-24 school year, the district conducted a February 2, 2023 social history update and a February 16, 2023 classroom observation and administered the Vineland-3 to the parents in April 2023 (Dist. Exs. 21; 22; 23). The CSE convened on April 18, 2023 to develop the student's "Turning 5" IEP as he transitioned from the CPSE to the CSE (Dist. Ex. 24). Review of the April 2023 IEP and an April 28, 2023 prior written notice revealed that the CSE considered the February and April 2023 evaluative information and the results of the June 2022 private evaluation (Dist. Exs. 20; 24 at pp. 1-5; 25 at pp. 1-2). With the exception of the parent's statement reflected in the social history update that the student needed and benefited from the "integrated ABA support he receive[d]" (Dist. Ex. 21 at p. 2), the evaluative information available to the April 2023 CSE—including the June 2022 private psychological evaluation report—did not include recommendations for the use of ABA methodology with the student (see Dist. Exs. 20-23).

The April 2023 IEP identified the student's then-current present levels of performance, and based on that information, the CSE determined that he required a small, structured 8:1+1 setting in a specialized school, along with OT, PT, speech-language therapy, and an assistive technology device, sensory breaks, and positive praise and reinforcements (fidgets, bubbles) (Dist. Ex. 24 at p. 5). Additional management strategies the CSE determined the student would benefit from included verbal, visual, and physical prompts during instruction to address the student's attending and communication skills, small group instruction, redirection during small and large group activities to increase his focus and attention, visual aids/picture cards to aid with communication, opportunities for reciprocal play to facilitate purposeful interactions with peers, and verbal models to increase his receptive, expressive, and pragmatic language skills (id.). The April 2023 CSE also developed multiple annual goals and short-term objectives aligned to the student's identified needs (id. at pp. 7-15).

The April 2023 CSE recommended 12-month programming in an 8:1+1 special class in a specialized school, together with three 30-minute sessions per week of individual OT, two 30-minute sessions per week of individual PT, three 30-minute sessions per week of speech-language therapy, and assistive technology services consisting of a "[t]ablet with the support of dynamic

¹⁴ On the other hand, the student's progress or lack thereof may be relevant to educational planning going forward, and, therefore, the parents' allegations about the student's regression during the 2021-22 school year are discussed further below.

display speech generating device" to be used at home and school, daily (Dist. Ex. 24 at pp. 16-17). The IEP indicated that the CSE considered a State-approved nonpublic school placement for the student and it also reflected the parents' request that the student remain at AHRC, noting that they believed "he ha[d] made progress there and that movement to another school would cause him emotional stress" (id. at pp. 22-23). The IEP reflected the CSE's recommendation for an 8:1+1 special class placement in a specialized school with related services as the CSE determined it was "the most appropriate at this time," and "there [wa]s no evidence that [the student] w[ould] not make progress [in] the program recommended" (id. at p. 23).

The parents argue on appeal that the student regressed during the 2021-22 school year when he did not receive instruction using ABA and made progress during the 2022-23 school year when he received ABA instruction at AHRC, thereby demonstrating the student required the use of ABA methodology during the 2023-24 school year. However, review of results of the Student Annual Needs Determination Inventory (SANDI), administered to the student in fall 2021 and spring 2022 when the student attended the district's specialized preschool program and did not receive ABA instruction, shows that he made progress during the 2021-22 school year (compare Dist. Ex. 15 at pp. 1-2, with Dist. Ex. 16 at pp. 1-2). For example, the student achieved a fall 2021 total rubric score of 25 and a spring 2022 total rubric score of 50 (compare Dist. Ex. 15 at p. 1, with Dist. Ex. 16 at p. 1).¹⁵ Specific progress was noted in the student's ability to express five different emotions, respond to gestures, facial expressions, and tone of voice, made by familiar people, respond to sensory activities, visually follow a moving object, show interest in an object or person, make speech sounds that imitate rhymes and tones, imitate sounds and actions, and respond to environmental cues (compare Dist. Ex. 15 at pp. 1-2, with Dist. Ex. 16 at pp. 1-2). New skills that the student was beginning to exhibit by spring 2022 that were not introduced in fall 2021 included identifying himself in the mirror, connecting spoken words with familiar events/routines, holding and looking at a book, turning pages in a book, identifying favorite illustrations in a story, pointing to age-appropriate objects, signs, and symbols, completing a 10-piece puzzle, and following words being read aloud (compare Dist. Ex. 15 at pp. 1-2, with Dist. Ex. 16 at pp. 1-2). Additionally, the April 2022 teacher report indicated that the student's placement provided him with the supports needed to achieve his IEP annual goals, foster his independence, and gain academic and social skills (Dist. Ex. 18 at pp. 1-2). As such, the evidence in the hearing record does not support the parents' contention that the student showed regression during the 2021-22 school year when he was not receiving instruction using ABA methodology, rather, the evidence in the hearing record shows that he demonstrated progress during that period of time.

The parents also point to a letter from the private clinician who conducted the June 2022 private evaluation, dated May 26, 2023, which recommended ABA for the student (see Parent Ex. H; Dist. Ex. 20). The district declined to reconvene in response to the letter since the letter "d[id] not have any new data" and "restate[d] information from [the evaluator's] previous report as well as perspective based on conversation with [the student's] parents" (Parent Ex. G at p. 1). In terms of assessing the April 2023 IEP, the letter from the private evaluator is retrospective evidence as it was not before the CSE (see R.E., 694 F.3d at 186–87; C.L.K., 2013 WL 6818376, at *13). Further, the parents did not allege in the due process complaint notice that the district committed

¹⁵ The SANDI rubric key is as follows: 0-not introduced, 1-initial, 2-partial, 3-developed, 4-proficient (Dist. Exs. 15 at p. 1; 16 at p. 1).

a procedural violation when it failed to reconvene the CSE to consider the letter (Parent Ex. A). Further in reviewing the IHO's decision, she made a valid point in declining to accord the letter weight in assessing the CSE's recommendations as the private clinician evaluated the student in June 2022 but there was no indication the clinician had observed or reevaluated the student since the student attended AHRC during the 2022-23 school year and there is not a sufficient reason provided on appeal to depart from the IHO's finding as to weight accorded the letter (IHO Decision at pp. 15-16; see Dist. Ex. 20).

In consideration of the supports and services the April 2023 CSE recommended and review of the evaluative information the CSE considered, the hearing record does not demonstrate consensus that the student required ABA methodology to receive educational benefit or that he could only learn with ABA methodology. Therefore, I decline to overturn the impartial hearing officer's finding that the district offered the student a FAPE for the 2023-24 school year.¹⁶

VII. Conclusion

Having found that the IHO properly denied the parents' request for compensatory education relating to the 2021-22 school year and that the IHO did not err in finding that student was offered a FAPE for the 2023-24 school year, the necessary inquiry is at an end.

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

THE APPEAL IS DISMISSED.

**Dated: Albany, New York
May 30, 2024**

**STEVEN KROLAK
STATE REVIEW OFFICER**

¹⁶ The parents argue that the district's offers of settlement during the resolution session reflect that the district acknowledged the April 2023 IEP was deficient. However, the proposed resolution agreements, which the parents did not agree to, did not constitute an admission by the district or evidence in support of any of the parents' underlying claims (see Parent Exs. K; L).