



The University of the State of New York

The State Education Department

State Review Officer

www.sro.nysed.gov

No. 24-181

Application of the NEW YORK CITY DEPARTMENT OF EDUCATION for review of a determination of a hearing officer relating to the provision of educational services to a student with a disability

Appearances:

Liz Vladeck, General Counsel, attorneys for petitioner, by Frank J. Lamonica, Esq.

The Law Offices of Regina Skyer and Associates, LLC, attorneys for petitioners, by Timothy S. Nelson, Esq.

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the district) appeals from a decision of an impartial hearing officer (IHO) which held that the district failed to prove that it provided the student with a free appropriate public education (FAPE) for the 2022-23 school year and directed the district to reimburse respondents (the parents) for the tuition they paid for the student's placement at the Stephen Gaynor School (Stephen Gaynor) for the 2022-23 school year. The appeal must be sustained.

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

For the student's kindergarten through fifth grade school years, he attended a private, general education school, where he was provided with support from a learning specialist (Tr. p. 61; Parent Ex. B at p. 2). On April 6, 2019, the district conducted a psychoeducational evaluation of the student, which was summarized in a written report dated May 1, 2019 (Dist. Ex. 4 at pp. 1, 8). The district subsequently conducted an occupational therapy (OT) evaluation on June 10, 2019 which resulted in a report dated June 24, 2019 (Dist. Ex. 5 at pp. 1, 5). On an unknown date in

2019, a CSE convened and determined that the student was eligible for special education as a student with an other health impairment and developed an individualized education services plan (IESP) for the student for fourth grade (2019-20 school year) that included a recommendation for special education teacher support services (SETSS) and OT (Tr. pp. 113-14; Parent Ex. B at p. 2).¹ On August 31, 2021 and September 9, 2021, the student underwent private neuropsychological testing resulting in a September 2021 neuropsychological evaluation report (Parent Ex. B).²

Although the 2021-22 school year is not at issue, it is worth noting that the student first attended Stephen Gaynor during the 2021-22 school year (Parent Exs. B at p. 1; V at ¶1). A CSE convened on January 26, 2022, to formulate the student's IEP for the remainder of the 2021-22 school year and for the beginning of the 2022-23 school year (see generally Parent Ex. D). In developing the January 2022 IEP, the CSE reviewed the September 2021 private neuropsychological evaluation report and a 2021-22 mid-year report from Stephen Gaynor (Parent Ex. D at p. 1; see Parent Ex. B; Dist. Ex. 3).³ Based on its review, the CSE recommended that the student receive integrated co-teaching services (ICT) in all classes (25 times per week); SETSS for three periods per week in math and two periods per week in English language arts (ELA); one 30-minute session per week of individual counseling services; and two 30-minute sessions per week of individual occupational therapy (OT) (Parent Ex. D at pp. 1, 22).

In a school location letter dated February 22, 2022, the district notified the parents of the student's assigned public school for the remainder of the 2021-22 school year (Parent Ex. F; Dist. Ex. 6).

In a prior written notice dated August 5, 2022, the district informed the parents of the student's continued eligibility for special education at a district school for the 2022-23 school year

¹ A copy of the student's IESP developed for fourth grade was not included in the hearing record.

² The hearing record contains duplicate copies of the November 2021 neuropsychological evaluation report, as well as duplicate copies of several other exhibits, including a February 2022 prior written notice and school location letter and an August 2022 prior written notice and school location letter (compare Parent Ex. B, with Dist. Ex. 2; Parent Exs. E; G, with Dist. Ex. 6; Parent Exs. I; J with Dist. Ex. 7). For purposes of this decision, only the parents' exhibits will be cited when there are duplicate exhibits. However, there is a slight difference in the February 2022 prior written notice and school location letter, as while the parents' copies are undated, the district's copies are dated February 22, 2022 (compare Parent Exs. E; G, with Dist. Ex. 6). Similarly, upon comparison, Parent Ex. D and District Ex. 1 are not the exact same document but also contain slight differences. The IHO is reminded that it is his responsibility to exclude evidence that he determines to be irrelevant, immaterial, unreliable, or unduly repetitious (8 NYCRR 200.5[j][3][xii][c]).

³ Although the February 22, 2022 prior written notice indicated that the CSE considered a March 2019 social history, a May 2019 psychoeducational assessment, a June 2019 occupational therapy report, a July 2019 classroom observation, and a January 2022 teacher report in developing the student's IEP, the IEP itself only identified the 2021 neuropsychological evaluation and a Stephen Gaynor mid-year report for the 2021-22 school year as documents reviewed by the CSE (compare Parent Ex. B at p. 1, with Dist. Ex. 6 at pp. 1-2). The district representative testified that while all of the documents were available for review, the neuropsychological evaluation and Stephen Gaynor report were the "controlling documents," as they were most recent (Tr. pp. 105-112; Dist. Ex. 11 at p. 1). The district representative testified that the district's prior written notice "automatically populate[d] prior assessments" that it had conducted and to his knowledge he was unable to delete them from the prior written notice, even if it was inaccurate (Tr. pp. 106, 113-15).

based on the January 2022 IEP (Parent Ex. I). Also on August 5, 2022, the district informed the parents of the student's assigned public school for the 2022-23 school year in a school location letter (Parent Ex. J).

In a letter to the district, dated August 22, 2022, the parents indicated that the district failed to "provide a program and placement reasonably calculated to provide the student a meaningful educational benefit" and that, as a result, notified the district of their intent to unilaterally place the student at Stephen Gaynor for the 2022-23 school year and seek public funding for the placement (see Parent Ex. R).⁴ The district responded to the parents' ten-day notice via a letter dated September 13, 2022, confirming receipt of the parents' ten-day notice and advising the parents that their "unilateral placement claim [wa]s not appropriate for settlement" and if they were "still interested in pursuing a unilateral placement or program at the [d]istrict's expense [they] must file a [d]ue [p]rocess [c]omplaint" (Parent Ex. S).

A. Due Process Complaint Notice

In a due process complaint notice dated October 16, 2023, the parents alleged that the district denied the student a free appropriate public education (FAPE) for the 2022-23 school year (Parent Ex. A). The parents raised allegations related to a failure to evaluate the student in all areas of suspected disability, the composition of the CSE, the lack of an assistive technology evaluation, failure to provide adequate prior written notices and copies of evaluations prior to the CSE meeting, failure to provide a school location letter for the 2022-23 school year, the appropriateness of the recommended educational program—asserting the student required a small structured environment and individualized attention, a denial of parent participation and a lack of consideration of the full continuum of services (*id.* at pp. 3-4). The parents requested that the district reimburse them for the costs of the student's tuition at Stephen Gaynor for the 2022-23 school year.

In response to the parents' due process complaint notice, the district emailed the parents, on November 22, 2023, copies of the August 5, 2023 prior written notice of recommendation and school location letter (see Parent Ex. T). In the email, the district noted "[t]his serves as the D[ue]P[rocess]R[esponse]" (*id.* at p. 1).

B. Impartial Hearing Officer Decision

A pre-hearing conference was held on November 21, 2023 (Tr. pp. 1-31). An impartial hearing convened on December 15, 2023 and concluded on March 12, 2024 after four days of proceedings (Tr. pp. 32-242). In a decision dated March 29, 2024, the IHO determined that the district failed to offer the student a free appropriate public education (FAPE) for the 2022-23 school year (IHO Decision at pp. 6-11). The IHO reviewed the issues raised by the parents in the due process complaint notice and found in favor of the district on all issues, except the IHO found a denial of FAPE based on the district's failure to conduct an assistive technology evaluation and

⁴ One of the student's parents testified that as of August 2022 the parents had not received a prior written notice or school location letter for the 2022-23 school year (Parent Ex. V at ¶22). After the pre-hearing conference in this matter, the parents reviewed their email and in one of the parents' spam folders located copies of the August 5, 2022 prior written notice and school location letter (Parent Ex. V at ¶¶27-28).

a finding that the program recommendation was not appropriate due to the size of the recommended class (*id.*). The IHO also noted that the district violated the due process procedures by failing to invite the parent to a resolution meeting (*id.* at p. 11). The IHO then found that Stephen Gaynor was an appropriate unilateral placement for the student and that equitable considerations weighed in favor of the parents' request for an award of tuition reimbursement (IHO Decision at pp. 11, 12, 14-15). As relief, the IHO ordered the district to reimburse the parents for the cost of the student's tuition at Stephen Gaynor for the 2022-23 school year (*id.* at p. 17).

IV. Appeal for State-Level Review

The district appeals. The parties' familiarity with the particular issues for review on appeal in the district's request for review and the parents' answer thereto is also presumed and, therefore, the allegations and arguments will not be recited here. The gravamen of the parties' dispute on appeal is whether the IHO erred in holding that the district failed to provide the student with a FAPE for the 2022-23 school year.

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]). 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, an IHO's decision must be made on substantive grounds based on a determination of whether the student received a FAPE (20 U.S.C. § 1415[f][3][E][i]). A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction" (Rowley, 458 U.S. at 203). However, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP" (Walczak, 142 F.3d at 130; see Rowley, 458 U.S. at 189). "The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created" (Andrew 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 Andrew 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]).⁵

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

⁵ 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" (Andrew F., 580 U.S. at 402).

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

Initially, it is noted that the due process complaint notice raised a number of issues that the IHO found in favor of the district on and which the parents have not raised on appeal, specifically: that the district failed to provide the parents with necessary documents before the January 2022 CSE meeting; that the district failed to consider the parents' private neuropsychological evaluation; that the January 2022 CSE was not duly constituted; that the district denied the parents the opportunity to meaningfully participate in the CSE process; and that the assigned district school could not implement the IEP for the 2022-23 school year (Parent Ex. A at pp. 2-5; IHO Decision at pp. 6-7). In his decision, the IHO addressed all of these assertions and held that they were not supported by the hearing record (IHO Decision at pp. 7-10). Because neither the district nor the parents appealed from these determinations, they have become final and binding on the parties and will not be reviewed on appeal (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; see M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6-*7, *10 [S.D.N.Y. Mar. 21, 2013]).

A. January 2022 IEP

A review of the student's needs is necessary in order to address the parents' allegations that the annual goals included in the January 2022 IEP and the recommendations for ICT and SETSS were not appropriate.

With regard to the student's needs, a review of the January 2022 IEP shows that the present levels of performance were taken almost verbatim from the Stephen Gaynor mid-year report and the private September 2021 neuropsychological evaluation (compare Parent Ex. D at pp. 1-8, with Parent Ex. B, Dist. Ex. 3).⁶ In terms of academic functioning, the IEP indicated that, with intervention, the student had shown growth in reading, including decoding, and that his sight word vocabulary and reading comprehension were "on par" with his same aged peers (Parent Ex. D at p. 4). However, the student's reading fluency was below average, likely due to residual reading weaknesses and slow processing speed (id.). The IEP indicated that the student's spelling abilities and writing fluency were on the lower end of average and that he left out letters in words or used

⁶ The January 2022 IEP reflected that the "parent indicated that teacher report [wa]s an accurate reflection of student's current functioning" (Parent Ex. D at pp. 5, 6).

incorrect spelling (id.). The student also struggled to use correct grammar and to organize and elaborate on his ideas when writing (id.). According to the IEP, the student's most difficult area, and something that declined from prior evaluation, was his math functioning (id. at p. 3). The IEP noted that the student's math facts were not automatic, and he displayed gaps in knowledge related to regrouping, long division, fractions, and decimals (id.). The student was also confused by some computational symbols (id.). The January 2022 IEP characterized the student as "hardworking" and stated that through repetition and practice he was able to accurately complete assignments on the material he was learning (id. at p. 2). In addition, the IEP indicated that the student benefited from small group instruction and multi-sensory lessons, which helped him stay on task and allowed him to ask for help when needed (id.). The IEP stated that the student enjoyed playing games related to the math topics he was learning and collaborated well with his peers (id.). When new math content was introduced, the student benefited from strategies being broken down for him and having an opportunity to repeat his problem-solving process back to the teacher to check for understanding (id.). The student also benefitted from being provided with a completed sample problem on his assignments (id.). The IEP noted that, at times, the student made computational errors due to his fact fluency (id.). He was encouraged to think about friendly factors of 5 and 10 when solving multiplication and division problems to help him calculate his answer (id.). According to the IEP, the student benefited from guided worksheets and using a multiplication chart, one-to-one teacher support when solving certain division problems, use of manipulatives in visualizing fractions, use of friendly factors, and fact fluency practice (id. at p. 3).

With respect to language functioning, the January 2022 IEP indicated that, overall, the student exhibited intact language skills but noted that his verbal fluency and word retrieval skills were in the low average range, and the student demonstrated some difficulty expressing his ideas due to word finding issues (Parent Ex. D at p. 4).

Turning to the student's social/emotional development, consistent with the 2021 neuropsychological evaluation report, the January 2022 IEP indicated that the student was friendly and creative but also exhibited some mild symptoms of anxiety and depression (Parent Ex. D at p. 6). The student required time to adjust to new situations and people and indicated some fear of being alone or away from his parents (id.). According to the IEP, the student's anxiety symptoms did not rise to the level of an anxiety disorder but warranted monitoring (id.). The IEP indicated that the student had a diagnosis of ADHD and that his teachers reported that he struggled with attention and self-regulation in the classroom, as well as with accepting redirection (id.). In terms of physical development, the January 2022 IEP indicated that qualitatively and based on the student's developmental history, he had mild weaknesses in graphomotor output and suggested he might benefit from assistive technology support while taking notes and completing writing tasks (Parent Exs. B at p. 5; D at p. 7).

Consistent with the 2021 neuropsychological evaluation report, the January 2022 IEP identified resources and strategies to address the student's management needs that included: use of a scribe, preferential seating in close proximity to the teacher/instructional material, schedules/checklists, outlining/visual organizers, visual supports, PowerPoint presentations, animations, charts, auditory supports, verbal discretion, presentations, songs, rhymes, readings, study carrel, on-task focusing prompts, extra time on tasks to account for fluency delays, information read to him to help with comprehension, on-task focusing prompts and use of a fidget device to help with focusing in class, use of visual aids to help in understanding information that

allowed the student to use his cognitive strengths, and repetition of tasks to help retention of information (Parent Ex. D at p. 8).

With regard to the effect of the student's needs on involvement and progress in the general education curriculum the January 2022 IEP indicated the student had a diagnosis of ADHD and exhibited focusing delays and difficulty regulating himself, which affected his ability to grasp information and retain what he had been taught (Parent Ex. D at p. 8). The IEP noted that, as a result, the student "benefited from occupational [therapy] services to help in his ability to learn skills for regulation and help with more focus driven tasks such as writing" (*id.*). In addition, the student would benefit from small group instruction during the day to support new tasks and skills taught during the school day (*id.*).

The January 2022 IEP included annual goals aligned with the student's needs in ELA, reading, mathematics, counseling, and OT (Parent Ex. D at pp. 10-21). The same IEP included multiple testing accommodations consistent with the recommendations in the 2021 neuropsychological report on all classroom, local, and State assessments including extended time (time and a half), breaks (three minute break after every 15 minutes of testing), use of a fidget, separate location/room (in a separate location with minimal distractions and no more than 12 students), on-task focusing prompts (non-verbal signals to attend), revised test directions (directions read and reread aloud), use of scribe (answers recorded in any manner), preferential seating (close proximity to teacher/proctor to help with distractibility), answers recorded in any manner (answers recorded directly in test booklet), and use of masks and markers (can use sheets of paper when reading to block out parts of the passages to limit distractions when reading) (Parent Ex. D at p. 24; Dist. Ex. 2 at p. 8).

Overall, the IHO found that the annual goals included in the January 2022 IEP addressed the student's identified needs; however, the IHO found that the district "failed to carry its burden of showing that the OT goals in the IEP were appropriate for the [s]tudent" (IHO Decision at pp. 10-11).⁷ As neither party appeals from the IHO's finding that the annual goals were appropriate, that finding is final and binding on the parties and will not be reviewed on appeal. However, the district appeals from the IHO's finding that it failed to carry its burden of proving the OT goals were appropriate, arguing that the district's representative, who was also the school psychologist (district representative), provided testimony defending the district's OT goals and recommendations and that the IHO's ultimate finding that the district's recommended program was not appropriate for the student was in error (Req. for Rev. ¶ 11).

Here, the record reflects that the majority of the annual goals in the January 2022 IEP targeted the student's weaknesses in reading, writing and mathematics, and included skills needed to be successful in other content area courses. The appropriateness of the January 2022 IEP's

⁷ Regarding the January 2022 IEP's science and social studies goals, the IHO held that the hearing record did not support the parents' allegations that goals in those areas were necessary to provide the student with a FAPE (IHO Decision at p. 11). The IHO further held that the IEP's recommendations for ICT, SETSS and its eight academic goals reflected that the January 2022 IEP contained adequate goals to support the student's special educational instruction (*id.*).

recommendations for ICT services and SETSS, as well as the appropriateness of the annual goals for OT specifically, are discussed in further detail below.

1. Sufficiently of Evaluative Information

The district contends that the IHO erred in finding that the lack of an assistive technology evaluation resulted in a denial of FAPE and that the CSE did not possess information regarding the implementation of the student's OT pursuant to his prior IESP.⁸

On December 16, 2021, the district requested that the parents provide the district with related service provider progress reports, work samples, assessments, report cards, transcripts, and other relevant educational records prior to the January 2022 CSE meeting (Dist. Ex. 8). On January 25, 2022, the parents emailed the district a copy of the student's September 2021 neuropsychological evaluation (Parent Ex. U).

According to the district representative's testimony by affidavit and his live cross-examination during the impartial hearing, the student had been deemed eligible for special education services in 2019 and had an IESP since 2020 (Tr. p. 82, Dist. Ex. 11 ¶ 10). Therefore, the January 26, 2022 CSE meeting was not an initial referral but was an annual review (Tr. p. 82). The district representative explained that the purpose of an annual review was to review updated information that reflected a student's then-current needs to ensure that the IEP had goals and a program that matched those needs (*id.*). He indicated that annual reviews were held every year to review a student's IEP and to make sure the IEP had current information in it going onto the next school year (Tr. p. 83). The district representative further noted that if a parent submitted an evaluation for review, the CSE meeting would technically be considered a reevaluation meeting (Tr. p. 86).

The district representative's testimony indicated that to prepare for an initial CSE meeting certain things were required (e.g., classroom observation, social history) (Tr. p. 90). For a reevaluation meeting, the CSE was only supposed to consider the new information presented by the parent (*id.*). In the instant case, the parent submitted a 2021 neuropsychological evaluation report which the CSE was tasked to review (*id.*). The CSE also reviewed the Stephen Gaynor mid-year student report (Parent Ex. D at p.1; *see* Dist. Ex. 3). The district representative indicated the CSE had sufficient information about the student; he did not need further evaluation to offer the student an appropriate program for the 2022-23 school year (Tr. pp. 95-96). He noted the 2021 neuropsychological evaluation and the progress reports from Stephen Gaynor provided sufficient information to move forward and offer the student a placement (Tr. pp. 96, 98). The district representative testified that the district's prior notice package (PNP) automatically populated other evaluations conducted in 2019 on a prior written notice dated February 22, 2022 and another prior written notice dated August 5, 2022 (e.g., psychoeducational evaluation, social history, classroom observation) and those evaluations were previously considered at the student's initial CSE review in 2019 (*see* Tr. pp. 109-116; 118-120; Dist. 11 ¶¶ 13, 14; *see also* Dist Exs. 4; 5; 6; 7). The hearing record shows that the parents provided the district with a copy of their private 2021

⁸ The IHO noted that the district's June 24, 2019 evaluation was "not more than three years old at the time of the [CSE] meeting" and that it was therefore proper for the CSE to use the June 2019 OT evaluation to create an IEP for the 2022-23 school year (IHO Decision at pp. 7-8).

neuropsychological evaluation report the day before the scheduled January 26, 2022 CSE meeting and that the evaluation report included a recommendation for an assistive technology evaluation (Parent Exs B at p. 7; U; see Tr. pp. 94-95). The district representative testified that, although the private neuropsychologist recommended an assistive technology evaluation, the parent did not request that one be conducted but provided consent to conduct other evaluations the day before the CSE meeting (Tr. pp. 95-96; see Parent Ex. U). He explained that in an instance such as this, the district could conduct an assistive technology evaluation after the CSE meeting and reconvene in the future to review that evaluation (Tr. p. 104). According to the district representative's testimony, in terms of making the process efficient, the district would conduct the assistive technology evaluation after the CSE meeting as there were lots of moving parts and different people involved in the CSE meeting process (id.). He explained that if an evaluation were to be done after an IEP meeting was held, it would not "muddle that process" with which he was tasked (id.). According to the testimony by the district representative, in this case, meeting compliance deadlines and offering the student a placement was the primary objective (Tr. p. 99). Assistive technology would be a small part of a program that the CSE might ultimately recommend, but offering a placement recommendation far exceeded tabling the meeting in which case a placement would not have been offered at all while waiting for an assistive technology evaluation to be conducted (id.).

The district representative testified that he reviewed the private neuropsychological evaluation dated September 1, 2021 (2021 neuropsychological evaluation) and the Stephen Gaynor teacher's progress reports in creating the January 2022 IEP, although the 2021 neuropsychological evaluation was not in the prior written notices included in the hearing record (Tr. pp. 106, 108, 110; Parent Exs. 2; 3; Dist. Exs. 6; 7; 11 ¶¶ 6, 16).⁹ He indicated that the January 2022 CSE had available to it evaluation reports for the student that were still within the three-year window of the CSE being able to consider them, and therefore it was not necessary for the January 2022 CSE to conduct additional evaluations (Tr. pp. 87-88). With regard to the January 2022 reevaluation meeting, the district representative testified that given compliance deadlines, "it wouldn't be his call" to table the meeting for additional evaluations (Tr. p. 88). He explained that the CSE was tasked with going forward with what it had available at the time of the meeting and complying with compliance deadlines pertaining to meetings and offerings of placements (Tr. pp. 88-89).

With respect to an assistive technology evaluation, the September 2021 neuropsychological evaluation stated that "an assistive technology evaluation is recommended to provide support for [the student's] motor weaknesses" (Parent Ex. B at p. 7), and the district representative also testified that the neuropsychological evaluation only recommended that an assistive technology evaluation be conducted (Tr. p. 97). The parents' January 25, 2022 email to the district indicated that the district had the parents' consent to speak with the evaluator who conducted the September 2021 neuropsychological evaluation "and to do any assessment that [the district] th[ought] was necessary" (Parent Ex. U). The district representative noted that "the neuropsychologist recommend[ed] a lot of things, and ultimately the parent has to request – the evaluation if they want it done" (Tr. p. 96). The district representative explained that "[i]n this case, [the CSE] had enough information to move forward with... th[e] meeting. If there was an

⁹ As noted above, the CSE's consideration of the 2021 neuropsychological evaluation and the Stephen Gaynor mid-year report were reflected in the January 2022 IEP (Parent Ex. D at p. 1).

additional request for assistive technology, I'm not aware of it being brought up at the meeting" (Tr. pp. 95-96). He testified that he did not recall the parents specifically requesting an assistive technology evaluation or putting the request for an assistive technology evaluation in writing (Tr. p. 95; Parent Ex. U).

Regarding evaluating the student's OT needs for the development of annual goals in OT, the district representative testified that he did not "independently" recall reviewing the June 2019 OT evaluation before the January 2022 CSE meeting, but that if there was an OT evaluation available that was conducted less than three years prior, and if there was no updated version, it "could be reviewed" (Tr. p. 119). The district representative stated that even though the student "was not receiving occupational therapy at his unilateral placement so [the CSE] couldn't have gotten information from an occupational therapist" the CSE "could go on information from [Gaynor's] teacher report about if [the student] ha[d] certain difficulty with fine or graphomotor skills" (Tr. p. 120).

The hearing record reflects that the recommendation for an assistive technology evaluation stemmed from the student's fine motor and handwriting needs (Parent Ex. B at pp. 6-7). Similarly, concerns regarding the student's need for OT stemmed from difficulties the student had with fine motor skills and handwriting (Dist. Ex. 5 at pp. 3-4). Here, the hearing record shows that although the CSE did not have recent OT progress reports to review, the private neuropsychologist administered the Beery-Buktenica Developmental Test of Visual Motor Integrations - Sixth Edition (Beery VMI) to assess the student's fine motor functioning, visual perception, and visual-motor integration skills (Parent Ex. B at p. 4). Based on the student's performance on the Beery VMI, the evaluator reported that the student demonstrated right hand dominance for all drawing and writing tasks (*id.*). The evaluator noted that the student demonstrated an awkward four finger grasp and while his handwriting was legible, the student used a mixture of upper and lowercase letters and exhibited poor word boundaries in his writing (*id.*). According to the evaluator, on tasks measuring motor speed, coordination, and dexterity the student performed in the above average range and on tasks involving copying and construction designs the student displayed average skills (*id.*). The evaluator concluded that "qualitatively and based on [the student's] developmental history, he has mild weaknesses in graphomotor output" (*id.* at pp. 4, 10). The evaluator did not report any other deficits in this area. As such, the hearing record shows that the January 2022 CSE had sufficient information regarding the student's fine motor and graphomotor needs to develop annual goals and recommend services to address them.

Additionally, review of the January 2022 IEP shows that the CSE considered the student's motor weakness; specifically, the IEP noted that the student "ha[d] mild weakness in graphomotor output" and that "he may benefit from assistive technology support while taking notes and completing writing tasks" (Parent Ex. D at p. 7). Nevertheless, rather than addressing this need through assistive technology, the CSE addressed it through OT and management needs, including the use of a scribe (*id.* at pp. 8, 20-21, 22, 24). The failure to conduct an assistive technology evaluation does not result in a denial of a FAPE where the need for which the evaluation would have been conducted is addressed in another manner on the student's IEP (*see D.B. v. Ithaca City Sch. Dist.*, 690 Fed. Appx. 778, 782 [2d Cir. 2017]). Accordingly, in this instance, while it may have been better practice for the district to have conducted an assistive technology evaluation of the student, the CSE addressed the identified need as a weakness in graphomotor output and the IEP included the use of a scribe to address that need.

2. Annual Goals for OT

The IHO held that the CSE's lack of information regarding the student's OT needs rendered the goals created by the CSE for the student's January 2022 IEP inappropriate for the student (IHO Decision at pp. 10-11).

An IEP must include a written statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and meet each of the student's other educational needs that result from the student's disability (see 20 U.S.C. § 1414[d][1][A][i][II]; 34 CFR 300.320[a][2][i]; 8 NYCRR 200.4[d][2][iii]). Each annual goal shall include the evaluative criteria, evaluation procedures and schedules to be used to measure progress toward meeting the annual goal during the period beginning with placement and ending with the next scheduled review by the committee (8 NYCRR 200.4[d][2][iii][b]; see 20 U.S.C. § 1414[d][1][A][i][III]; 34 CFR 300.320[a][3]). Additionally, the carryover of annual goals from a student's IEP in the prior school year to the next school year's IEP has been found to be appropriate "[w]here a student's needs and objectives remain substantially the same, '[i]t is especially sensible that [an IEP] would reflect continuity with [a student's] needs and objectives as of [previous years,]'" (P.C. v. Rye City Sch. Dist., 232 F. Supp. 3d 394, 413-15 [S.D.N.Y. 2017] quoting L.B. v. New York City Dep't of Educ., 2016 WL 5404654, at *11 [S.D.N.Y. Sept. 27, 2016]).

However, the IDEA does not require that a district create a specific number of goals for each of a student's deficits, and the failure to create a specific annual goal does not necessarily rise to the level of a denial of FAPE; rather, a determination must be made as to whether the IEP, as a whole, contained sufficient goals to address the student's areas of need (J.L. v. New York City Dep't of Educ., 2013 WL 625064, at *13 [S.D.N.Y. Feb. 20, 2013]; see C.M. v. New York City Dep't of Educ., 2017 WL 607579, at *20-*21 [S.D.N.Y. Feb. 14, 2017]).

The January 2022 IEP identified two annual goals to improve the student's ability: to fold a paper in half lengthwise and widthwise within 1/8 of an inch of corners; and using the verbal cue of "dot, dot, not a lot" the student would apply the appropriate number of dots in the correct position (Parent Ex. D at pp. 20-21). The district representative testified that the CSE "left... the same frequencies that were... on [a] prior [IESP]...[and] to the best of our ability, created goals so that we could offer as full a placement as possible at the time of the meeting" (Tr. p. 123). The district representative stated that the "special education teacher wrote" the January 2022 IEP's two OT goals "from the information that's conveyed in the teacher report from Stephen Gaynor and what was conveyed during the meeting orally by the... parent" (Tr. pp. 124-25). Although the student was not specifically receiving OT at Stephen Gaynor, the district representative stated that "to the extent that in the Stephen Gaynor teacher report they described fine motor skill deficits or graphomotor skill deficits, that could be used...to... create an occupational therapy goal" (Tr. pp. 125-26). Overall, the evidence in the hearing record indicates that the annual goals developed by the CSE for the student's January 2022 IEP were appropriately aligned with the student's skill levels at the time the IEP was developed. Any failure in aligning the student's OT annual goals with the student's then-current needs in OT does not by itself rise to the level of a denial of FAPE in this instance.

3. ICT Services

The district appeals from the IHO's determination that the January 2022 IEP was substantively inappropriate for the student due to the lack of a recommendation for a smaller class size.

The January 2022 CSE recommended the student receive ICT services, along with SETSS and related services (Parent Ex. D at p. 22).

State regulation defines ICT services as the provision of specially designed instruction and academic instruction provided to a group of students with disabilities and nondisabled students and states that the maximum number of students with disabilities receiving ICT services in a class shall be determined in accordance with the students' individual needs as recommended on their IEPs, provided that the number of students with disabilities in such classes shall not exceed 12 students and that the school personnel assigned to each class shall minimally include a special education teacher and a general education teacher (8 NYCRR 200.6[g]).

The parent asserted that ICT services would not have provided the student with "the small, structured environment and individualized attention need for [the student] to learn" (Parent Ex. A at p. 4). This appears to have come from the September 2021 neuropsychological evaluation report, which recommended that the student "require[d] placement in a non-public specialized school setting with structured classrooms with peers with average to above average intellectual abilities, no significant behavioral or emotional difficulties and smaller teacher-to-student ratios" (Parent Ex. B at p. 7 [emphasis omitted]).

The district representative testified that in responding to the parents' concerns for a smaller class size for the student, the CSE was obligated to look for the least restrictive environment in which the student could make meaningful progress (Tr. pp. 128, 130). He noted the student never attended public school as he was always unilaterally placed in a private school by his parents (Tr. p. 129). The CSE did not know how the student would respond to the recommended ICT services with SETSS, along with related services of counseling and OT (id.). Also, the district representative testified that to his knowledge, the student was not receiving counseling or OT at Stephen Gaynor and the CSE did not know how the student would respond to intervention per those related services (id.).¹⁰ He noted there was a lot of information that made it difficult to

¹⁰ Testimony by affidavit by the director of the upper division at Stephen Gaynor indicated she was familiar with the student because during the 2022-23 school year, he was in the "Blue Cluster," upper school classes at Stephen Gaynor, which she oversaw (Parent Ex. W ¶¶ 4, 17). During cross examination at the impartial hearing, the director of the upper division at Stephen Gaynor testified that the school had occupational therapists on staff that were used in the Blue Cluster as a consultant (Tr. p. 202). The consultant would come into a classroom, observe a student, work with the student in that setting "for a little bit," consult with the teachers, and share with the entire team ways to support a student (id.). She reported the student did not receive OT from a remediation standpoint and she did not recall whether an OT consultant ever consulted specifically about the student (Tr. pp. 202-03). Similarly with regard to counseling, the director of the upper division at Stephen Gaynor testified the Blue Cluster had a psychologist that integrated into all classrooms and was part of the school's social-emotional curriculum (Tr. pp. 203-04). The psychologist had set meetings with students and also met with students as needed (Tr. p. 204). The director of the upper division at Stephen Gaynor testified she knew the counselor had some set meetings with the student during the 2022-23 school year but did not know how many (id.).

justify a more restrictive program recommendation (*id.*). In addition, according to the district representative, the CSE's recommendations for an ICT classroom with SETSS and related services of counseling and OT were based on offering the student the appropriate academic rigor (*id.*). The next more restrictive and more supportive setting on the continuum would have been a 12:1 classroom where academically, students were generally two or more grades behind the student, and where, based on his reported skills, he would not have had appropriate academic rigor (Tr. pp. 129-30, 134-35). Further, the district representative explained that a recommendation for a State approved non-public school would have been "excessively restrictive" since to his knowledge, the student had never attended public school and the CSE did not know how the student would respond to the level of support present in the recommended program of an ICT classroom, SETSS, and related services of counseling and OT (Tr. 135). The district representative testified that the CSE needed to see how the student responded to the recommended program and services, and then go from there, gathering more information (*id.*). He reported that a 12:1 special class would have been too restrictive, especially since the district could offer an ICT setting on the continuum of services (Tr. p. 136; *see* Tr. pp. 136-139). When asked about the private neuropsychologist's recommendation for the student to attend a nonpublic school, the district representative reiterated the CSE's task of recommending a student for placement in the LRE where that student could make meaningful progress (Tr. p. 140). He reported the CSE understood the private evaluator's recommendation within the context that the private evaluator had no obligation to recommend the least restrictive environment and that often the private evaluators recommended an optimal environment (Tr. p. 141). He further testified that the January 2022 CSE recommended SETSS to help the student transition from private to public school (Tr. pp. 140-41).

As established above, the CSE reviewed the 2021 neuropsychological evaluation report and the Stephen Gaynor mid-year report. The CSE continued the student's eligibility for special education programs and services as a student with an Other Health Impairment, identified the student's need for small group instruction during the school day and recommended ICT services 25 times per week, SETSS for a total of five times per week to focus on math and ELA, individual related services of counseling one time per week for 30 minutes and OT two times per week for 30 minutes, and supports to address the student's management needs, and accommodations to address the student's academic, social-emotional, and OT-related needs (Parent Ex. D at pp. 8, 22, 24, 27; *see* Dist. Exs. 6; 7). The January 2021 IEP included the parents' expressed concern with the size of the recommended ICT classroom setting and preference for a special education school for the student (Parent Ex. D at p. 28).

While the neuropsychologist who conducted the September 2021 neuropsychological evaluation was not obligated to consider the student's LRE in recommending a placement for the student, as explained by the district representative, the CSE was required to take into consideration the restrictiveness of the recommended placement and its place on the continuum of services when recommending an educational program for the student, and, accordingly, it was reasonable for the CSE to reject a special class placement for the student based on his academic ability, concerns that a special class placement would be too restrictive for the student, and a view that the student's needs could be addressed through the support of a special education teacher within the student's academic classes as well as additional related services and SETSS. Given that a student's recommended program must also be provided in the LRE, the CSE should not be faulted in making LRE considerations a part of the CSE's deliberations even if the parents perceive the resulting placement as less ideal (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, 489 F.3d at 108; Walczak, 142 F.3d at 132).

Based on the comprehensiveness of the January 2022 IEP and the strength of the district representative's testimony, the hearing record supports a finding that the January 26, 2022 CSE developed an appropriate IEP for the student and the district met its burden to offer the student a FAPE for the 2022-23 school year.

B. Lack of Resolution Meeting

The IDEA specifically contemplates a resolution period, which allots 30 days from the receipt of the due process complaint notice for the district to resolve some or all of the issues in the complaint to the parent's satisfaction or the parties may proceed to an impartial hearing (20 U.S.C. § 1415[f][1][B]; see 8 NYCRR 200.5[j][2][v]). In his decision, the IHO found that the district "violated the law when it failed to invite the [p]arents to a [r]esolution [m]eeting" (IHO Decision at p. 11). The district does not claim that it invited the parents to a resolution meeting, rather the district asserts that the IHO erred by making such a finding (Req. for Rev. ¶ 16).

As set forth in further detail above, New York State's two-tiered system of administrative review was crafted to give the parties the opportunity to engage in a resolution process, but directs that if the parties fail to do so, they will then appear before an IHO for an impartial hearing to be conducted at the local level (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j]). This is precisely what occurred in this matter. Essentially, the parents filed their due process complaint notice, the district acknowledged its receipt of the parents' due process complaint notice, the district failed to invite the parents to a resolution meeting, and the matter proceeded to an impartial hearing. Although it is required for the district to hold resolution meetings, the regulation identifies what happens in the event one is not held and that is what occurred in this matter; accordingly, the district's failure to hold a resolution meeting did not deprive the parents or student of their due process rights.¹¹ The IHO's assertion that the district's failure to hold a resolution meeting in this matter violated the parents' due process rights was in error and must be reversed.

¹¹ When a parent files a due process complaint notice, the district must immediately initiate, but not later than two business days after receipt, the appointment of an IHO utilizing the rotational selection process (8 NYCRR 200.5[j][3][i][a]). State and federal regulations also provide that, within 15 days of the receipt of the due process complaint notice, the district shall convene a resolution meeting where the parents discuss their complaint and the school district has an opportunity to resolve that complaint with the parents and the relevant members of the CSE who have specific knowledge of the facts identified in the complaint, including a representative of the school district who has decision-making authority but not including an attorney of the school district unless the parents are accompanied by an attorney (20 U.S.C. § 1415[f][1][B][i]; 34 CFR 300.510[a]; 8 NYCRR 200.5[j][2][i]). The resolution period provision allots 30 days from the receipt of the due process complaint notice for the district to resolve the complaint to the parent's satisfaction or the parties may proceed to an impartial hearing (20 U.S.C. § 1415[f][1][B][ii]; 34 CFR 300.510[b][1]; 8 NYCRR 200.5[j][2][v]). Except where the parties have agreed to waive the resolution process or use mediation, a parent's failure to participate in a resolution meeting "will delay the timeline for the resolution process," as well as the timeline for the impartial hearing, until the meeting is held (34 CFR 300.510[b][3]; 8 NYCRR 200.5[j][2][vi]).

VII. Conclusion

Having found that the IHO conducted a thorough review of the student's needs and the hearing record, but erred with respect to whether the January 26, 2022 IEP provided the student with a FAPE, the IHO's determination that the district failed to offer the student a FAPE must be reversed.

THE APPEAL IS SUSTAINED.

IT IS ORDERED that the IHO's decision, dated March 29, 2024, is modified by reversing those portions which found that the district failed to meet its burden to prove that it provided the student with a FAPE for the 2022-23 school year; and

IT IS FURTHER ORDERED that the IHO's decision, dated March 29, 2024, is modified by reversing that portion which held that the district violated the law by failing to hold a resolution meeting; and

IT IS FURTHER ORDERED that the IHO's decision, dated March 29, 2024, is modified by reversing the IHO's direction to the district to reimburse the parents for the amount they paid toward the student's tuition at Stephen Gaynor for the 2022-23 school year.

Dated: **Albany, New York**
 June 28, 2024

CAROL H. HAUGE
STATE REVIEW OFFICER