The University of the State of New York

The State Education Department
State Review Officer
www.sro.nysed.gov

No. 25-048

**Application of a STUDENT WITH A DISABILITY, by his parent, for review of a determination of a hearing officer relating to the provision of educational services by the New York City Department of Education**

**Appearances:**
The Harel Law Firm, PC, attorneys for petitioner, by Galiah Harel, Esq.

Law Office of Anton G. Cohen, P.C., attorneys for petitioner, by Anton G. Cohen, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Thomas W. MacLeod, Esq.

## DECISION

### I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from a decision of an impartial hearing officer (IHO) which denied her request that respondent (the district) fund the cost of her son's tuition at the Bais Frieda Child Care Center, Inc. (Bais Frieda) for July and August 2024 of the 2024-25 12-month school year. The appeal must be sustained in part, and as explained herein, the matter must be remanded to the IHO for further administrative proceedings.

### 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

Given the disposition of this matter, a detailed recitation of the facts and procedural history is not necessary. Briefly, a Committee on Preschool Special Education (CPSE) convened on August 9, 2023 and found the student eligible for special education services as a preschool student with a disability (see Parent Ex. B). The CPSE recommended that the student be placed in a 7:1+1 special class in an integrated setting, with the support of speech-language therapy, occupational therapy (OT), and physical therapy (PT), with all services to be provided at an early childhood learning program beginning September 7, 2023 (id. at p. 17). The CPSE did not recommend

services to be delivered on a 12-month basis during July and August (id. at p. 18). The student attended Bais Frieda "for the 12 month extended 2023-2024 school year" (Parent Ex. K ¶ 4).[1]

On March 27, 2024, the CSE convened for the student's turning five meeting and found that the student was eligible for special education services as a student with autism (see Dist. Ex. 1).[2] The CSE recommended that the student be placed in a 12:1+1 special class with the support of counseling services, OT, PT, and speech-language therapy, as well as a full-time individual paraprofessional, with all of the student's services projected to be implemented beginning September 1, 2024 (id. at pp. 1, 32-33).

In a letter dated June 21, 2024, the parent notified the district of her belief that the student had not received "a proper or adequate educational and school placement for the twelve-month 2024-2025 school year" (Parent Ex. I at p. 2). The parent indicated that she would unilaterally place the student at Bais Frieda for the extended 2024-25 school year and seek funding for that placement (id.). The student attended Bais Frieda during summer 2024 (Parent Ex. K ¶ 4).

**A. Due Process Complaint Notice**

In a due process complaint notice dated July 30, 2024, the parent alleged that the district denied the student a free appropriate public education (FAPE) for the 2024-25 12-month school year (see Parent Ex. A). Prior to the start of the 12-month school year, the parent contended that the last IEP created for the student was dated August 2023 (id. at p. 3).[3] The parent noted that she had unilaterally placed the student at Bais Frieda for the 2023-24 school year (id.).[4] The parent argued that the student continued to require a full-time special education program during the summer 2024 consisting of a full-time 12:1+1 special class and the development and implementation of a behavioral intervention plan (BIP); however, the district failed to offer an appropriate placement (id. at pp. 3-4). Therefore, the parent indicated she advised the district that she intended to continue the student's placement at Bais Frieda for the 2024-25 12-month school year (id. at p. 4). The parent asserted that since the district failed to provide the student with an appropriate program and placement for the summer, this action was required (id.). As relief, the

[1] Bais Frieda has not been approved by the Commissioner of Education as a school with which districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

[2] The student's eligibility for special education as a student with autism is not in dispute (see 34 CFR 300.8[c][1]; 8 NYCRR 200.1[zz][1]).

[3] As a preschool student with a disability, the student was entitled to continue to receive special education and related services under the CPSE through summer 2024 (see Educ. Law §§ 3202[1]; 4410[1][i]; 8 NYCRR 200.1[mm][2]). Accordingly, although the March 2024 CSE IEP was developed after the August 2023 CPSE IEP, the August 2023 CPSE IEP would have been in effect for summer 2024. However, it is also worth noting that neither the August 2023 CPSE IEP nor the March 2024 CSE IEP recommended 12-month services for the student (Parent Ex. B; Dist. Ex. 1).

[4] The parent alleged that she prevailed at an impartial hearing, receiving an order directing the district to directly pay for the student's attendance at Bais Freida during the 2023-24 school year (Parent Ex. A at p. 3).

parent requested direct funding for the student's programming at Bais Frieda during summer 2024 (id.).

### B. Impartial Hearing Officer Decision

An impartial hearing convened before an IHO with the Office of Administrative Trials and Hearings (OATH) on October 16, 2024 and concluded on December 16, 2024, after two days of proceedings (Tr. pp. 1-52).[5] In a decision dated December 16, 2024, the IHO noted that the only issue was whether the student should have been found eligible for 12-month school year services (IHO Decision at p. 5). The IHO relayed the district's argument that neither of the student's IEPs recommended 12-month services, and that, although the director testified the student would "suffer regression" without 12-month school year services, the director also testified that she had never worked with the student (id.). Therefore, after reviewing the evidence and witness testimony, the IHO held that there was insufficient evidence to "substantiate" that the student would have suffered substantial regression to warrant extended school year services (id. at pp. 5-6). The IHO specifically noted that 12-month school year services were available to prevent substantial regression and further noted that a party seeking 12-month services bore the burden of production (id. at p. 6, n. 1). The IHO determined that the evidence in the hearing record did not support the parent's request that the student "be classified" as a 12-month student (id.). The IHO next found that the district provided the student with a FAPE as the parent failed to meet her burden of proof to show that the student would have suffered substantial regression if the student was not provided with 12-month school year services (id.). Therefore, the IHO found that the district offered the student a FAPE absent a recommendation that the student receive services during summer 2024 and further found that the district was not required to fund the student's placement at Bais Freida during the summer of 2024 (id. at p. 6).

## IV. Appeal for State-Level Review

The parent appeals arguing that the IHO erred in finding that the district offered the student a FAPE for summer 2024. The parent contends that the district failed to present any evidence or testimony to support its justification for recommending only a 10-month school year for the student rather than a 12-month school year. The parent argues that the IHO erred in placing the burden of proving the student exhibited substantial regression on the parent and that the district failed to prove that the lack of a summer program in the August 2023 IEP was appropriate for the student. According to the parent, the district did not present any evidence to show whether or not the student was at risk for substantial regression such that he required 12-month services during the summer of 2024.

Additionally, the parent argues that the IHO erred by not addressing whether the unilateral placement was appropriate for the student. The parent asserts that Bais Frieda was an appropriate placement for the student and funding should have been awarded. Lastly, the parent contends that equitable considerations favor her request for funding. The parent requests that the district be

[5] A pre-hearing conference was held on September 4, 2024, in which the parties indicated that they were still investigating whether settlement was possible (see Sep. 4, 2024 Tr. pp. 1-6).

ordered to fund Bais Frieda for the cost of the student's summer 2024 program in the amount of $24,000.

In its answer, the district acknowledges that the IHO placed the burden of proof to show that the student exhibited substantial regression on the parent and indicated that it would not defend that portion of the IHO decision. However, the district argues that the IHO's decision can be read more generally as a determination that the hearing record does not contain sufficient evidence of the student's need for 12-month services based on the likelihood that the student would experience substantial regression. The district asserts that the hearing record contains insufficient evidence that the student was at risk of any regression during the summer, let alone a substantial regression. The district argues that the testimony of the administrator at Bais Freida was the only evidence of potential regression and even that did not meet the standard of substantial regression and it was also self-serving due to the nonpublic school's financial interest in the outcome of the proceeding.

The district also contends that "the primary reason" the SRO should affirm the IHO decision is that the parent failed to prove the appropriateness of the unilateral placement. The district asserts that the testimony of the Bais Frieda administrator lacked sufficient detail as to how the school addressed the student's unique needs or provided him with specially designed instruction. According to the district, the hearing record is devoid of progress reports, assessments of the student, or session notes that describe the program, whether the program offered benefit to the student, or how the program was addressing the student's needs. The district acknowledges that equitable considerations may favor the parent; however, the district asserts that even if equities favor the parent, this does not entitle her to relief, when the unilateral placement was not appropriate.

**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" (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]).[6]

A board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents, if the services offered by the board of education were inadequate or inappropriate, the services selected by the parents were appropriate, and equitable considerations support the parents' claim (Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 [1993]; Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369-70 [1985]; R.E., 694 F.3d at 184-85; T.P., 554 F.3d at 252). In Burlington, the Court found that Congress intended retroactive reimbursement to parents by school officials as an available remedy in a proper case under the IDEA (471 U.S. at 370-71; see Gagliardo, 489 F.3d at 111; Cerra, 427 F.3d at 192). "Reimbursement merely requires [a district] to belatedly pay expenses that it should have paid all along and would have borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148).

The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see R.E., 694 F.3d at 184-85).

## VI. Discussion

### A. Burden of Proof

Generally, the parent's complaint in this matter relates solely to the summer portion of the 2024-25 school year and whether the student required 12-month services during the 2024 summer and the parent's appeal in this matter focuses on the IHO's application of the burden of proof when assessing whether 12-month services were required for the student.

Under the IDEA, the burden of persuasion in an administrative hearing challenging an IEP is on the party seeking relief (see Schaffer v. Weast, 546 U.S. 49, 59-62 [2005] [finding it improper under the IDEA to assume that every IEP is invalid until the school district demonstrates that it is not]).

Similar to the Supreme Court's finding in Weast, in this matter the IHO determined that a party seeking 12-month services bears the burden of production (IHO Decision at p. 6, n. 1). Additionally, in the IHO's analysis, the IHO specifically noted that the parent failed to meet her burden that the student would suffer substantial regression.

However, contrary to the IHO's assessment of the burden of proof, under State law, the burden of proof has been placed on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding

[6] The Supreme Court has stated that even if it is unreasonable to expect a student to attend a regular education setting and achieve on grade level, the educational program set forth in the student's IEP "must be appropriately ambitious in light of his [or her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives" (Endrew F., 580 U.S. at 402).

the appropriateness of such placement (Educ. Law § 4404[1][c]; see Hardison v. Bd. of Educ. of the Oneonta City Sch. Dist., 773 F.3d 372, 386 [2d Cir. 2014]; C.F. v. New York City Dep't of Educ., 746 F.3d 68, 76 [2d Cir. 2014]; R.E., 694 F.3d at 184-85). Ordinarily, however, which party bore the burden of persuasion in the impartial hearing becomes relevant only if the case is one of those "very few" in which the evidence is equipoise (Schaffer, 546 U.S. at 58; Reyes v. New York City Dep't of Educ., 760 F.3d 211, 219 [2d Cir. 2014]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 225 n.3 [2d Cir. 2012]; T.B. v. Haverstraw-Stony Point Cent. Sch. Dist., 933 F. Supp. 2d 554, 565 n.6 [S.D.N.Y. 2013]; A.D. v. New York City Dep't of Educ., 2013 WL 1155570, at *5 [S.D.N.Y. Mar. 19, 2013]; see F.L. v. New York City Dep't of Educ., 553 Fed. App'x 2, 4 [2d Cir. Jan. 8, 2014]).

With respect to 12-month services, State regulation provides that, students may "be considered for 12-month special services and/or programs in accordance with their need to prevent substantial regression" (8 NYCRR 200.16[i][3][v]). "Substantial regression" is defined as a "student's inability to maintain developmental levels due to a loss of skill or knowledge during the months of July and August of such severity as to require an inordinate period of review at the beginning of the school year to reestablish and maintain IEP goals and objectives mastered at the end of the previous school year" (8 NYCRR 200.1[aaa], [eee]). State guidance indicates that "an inordinate period of review" is considered to be a period of eight weeks or more (see "Extended School Year Programs and Services Questions and Answers," at p. 3, Office of Special Educ. [Updated June 2023], available at https://www.nysed.gov/sites/default/files/programs/special-education/extended-school-year-questions-and-answers-2023.pdf).

While it has been noted that there are situations where the difficulty in proving a negative might provide some leeway in the application of the burden of proof, such situations should be limited to where the evidence that would be available is in the possession or control of the opposing party (see Mejia v. Banks, 2024 WL 4350866, at *6 [S.D.N.Y. Sept. 30, 2024] [noting that the absence of evidence affirmatively showing that the parent did not provide the district with a 10-day notice was not a valid reason for concluding that the parent actually did comply with the notice requirement). This is not the case here as State regulation places the burden of determining whether or not a preschool student with a disability is at risk for substantial regression such that the student requires 12-month services on public school districts, not parents (8 NYCRR 200.16[i][3][v]).

With respect to the IHO's citation to D.D-S. v. Southold Union Free Sch. Dist. (2011), as support for his position that the burden is on parents to prove a need for substantial regression, the Court in D.D-S. specifically found that "a preponderance of the evidence show[ed]" that the student would not have exhibited substantial regression over the summer without the provision of 12-month services (D.D-S. v. Southold Union Free Sch. Dist., 2011 WL 3919040, at *15 (E.D.N.Y. Sept. 2, 2011), aff'd, 506 Fed. Appx. 80 [2d Cir. 2012][unpublished]). Additionally, the IHO's citation to Application of a Student with a Disability, Appeal No. 23-154 is similarly misplaced. In that matter, the SRO found that the CSE did not have any evidence in front of it to show that the student exhibited substantial regression such that he required a 12-month program; however, the SRO in that matter also reviewed all of the evaluative information available to the CSE in making that determination (Application of a Student with a Disability, Appeal No. 23-154). Accordingly, where the evidence shows that the district had sufficient evaluative information available to it at the CSE meeting, and the available evidence does not indicate either

substantial regression or a need for 12-month programming, the district would be justified in not recommending 12-month services. However, the IHO's burden shifting on this issue was improper.

Based on the above, the parent correctly argues that the IHO improperly placed the burden of proof regarding whether the student exhibited substantial regression on the parent. Additionally, the district essentially concedes that the IHO erred in shifting the burden of proof.

Pertinent in this case, when an IHO has not addressed claims set forth in a due process complaint notice, an SRO may consider whether the case should be remanded to the IHO for a determination of the claims that the IHO did not address (8 NYCRR 279.10[c]; see Educ. Law § 4404[2]; F.B. v. New York City Dep't of Educ., 923 F. Supp. 2d 570, 589 [S.D.N.Y. 2013] [indicating that the SRO may remand matters to the IHO to address claims set forth in the due process complaint notice that were unaddressed by the IHO], citing J.F. v. New York City Dep't of Educ., 2012 WL 5984915, at *9 n.4 [S.D.N.Y. Nov. 27, 2012]; see also D.N. v. New York City Dep't of Educ., 2013 WL 245780, at *3 [S.D.N.Y. Jan. 22, 2013]). As the IHO did not make any alternative findings, the issues in this case of whether the district properly determined that the student was not entitled to special education services during summer 2024, whether the unilateral placement of the student at Bais Freida was appropriate, and whether equitable considerations weigh in favor of granting the parent's request for relief, have not been properly addressed by an IHO. Therefore, these issues must be remanded to the IHO to render a determination on the merits (see 8 NYCRR 279.10[c]). The IHO's December 16, 2024 decision is vacated. Upon remand, the IHO is reminded that it is the district's burden to prove that the 10-month recommendation made by the August 2023 CPSE was appropriate for the student, which could be done by a proper analysis of the evaluative information before the August 2023 CPSE.

**VII. Conclusion**

Having found that the IHO imposed an improper burden of proof on the parent, the matter must be remanded for the IHO to address the issues regarding whether the student was entitled to 12-month school year services during summer 2024 using the correct standard of proof; and, if so, whether the unilateral placement of the student at Bais Frieda was appropriate and whether equitable considerations favor the parent's claim for funding of the costs of the student's tuition.

**THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.**

**IT IS ORDERED** that the December 16, 2024 IHO decision is vacated; and

**IT IS FURTHER ORDERED** that the matter is remanded to the IHO to address the issue of whether the student was entitled to receive 12-month school year services during summer 2024 as outlined in this decision.

**Dated:** **Albany, New York**
**July 25, 2025**

**STEVEN KROLAK**
**STATE REVIEW OFFICER**