The University of the State of New York

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

No. 25-072

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:
Gulkowitz Berger LLP, attorneys for petitioner, by Shaya M. Berger, 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 determined that the educational program respondent's (the district's) Committee on Special Education (CSE) had recommended for her son for the 2024-25 school year was appropriate and which denied her request to be reimbursed for her son's tuition at the Special Torah Education Program (STEP) for the 2024-25 school year. The appeal must be sustained in part and the matter remanded to the IHO for further 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 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 will not be recited in detail.

Briefly, the student was parentally placed in STEP, a nonpublic school for the 2024-25 school year (Parent Exs. B at p. 1; M ¶¶ 2, 4, 5, 7, 9-11). Moreover, the evidence in the hearing record concerning the student's educational history is sparse. At the time of the impartial hearing, the student was 14 years old and had been attending STEP since September 2016 (Parent Exs. B at p. 1; N at p. 3).

A CSE convened on March 11, 2024 to develop an IEP for the student with an implementation date of July 8, 2024 (Parent Ex. B at pp. 1, 16-17, 23; Dist. Exs. 3; 4).[1] The March 2024 CSE found the student remained eligible for special education and related services as a student with an intellectual disability (Parent Ex. B at p. 1). The March 2024 CSE recommended 12-month services consisting of 35 periods per week of academic instruction in an 8:1+1 special class, and the related services of two 30-minute sessions per week of counseling services in a group of three, two 30-minute sessions per week of individual occupational therapy (OT), one 30-minute session per week of individual physical therapy (PT), one 30-minute session per week of individual speech-language therapy, and two 30-minute sessions per week of speech-language therapy in a group of three (Parent Ex. B at pp. 16-17).[2] In addition, the March 2024 CSE indicated that the student had a severe cognitive disability, significant deficits in communication/language, and significant deficits in adaptive behavior, required a highly specialized educational program, required educational support systems, and would participate in an alternate assessment (id. at pp. 20-21). The March 2024 CSE also recommended special transportation services of transportation from the closest safe curb location to school (id. at p. 22).

By prior written notice dated June 25, 2024, the district summarized the recommendations of the March 2024 CSE (Dist. Ex. 4 at pp. 1-6). In a school location letter dated June 25, 2024, the district identified the public school site to which the student was assigned for the 2024-25 school year (Dist. Ex. 5 at pp. 1-2).

In a 10-day written notice letter dated August 19, 2024, the parent, through her attorney, advised the district that she had not received a copy of the student's latest IEP or a school location letter (Parent Ex. C at p. 1). In addition, the parent expressed concern, based on prior recommendations, that the public school program would not be appropriate (id.). Specifically, the parent stated that "[t]he type of school, class size, limited school periods recommended for special classes, and lack of sufficient behavioral support recommended in the past [we]re among the reasons [the district] had not offered" the student a free appropriate public education (FAPE) (id.). For those reasons, the parent advised the district of her intention to unilaterally enroll the student at STEP for the 2024-25 school year, and seek public funding for the student's tuition and related services (id.).

On September 3, 2024, the parent signed an enrollment contract with STEP for the 2024-25 school year, which was countersigned by the school on the same day (Parent Ex. D).

A. Due Process Complaint Notice

In a due process complaint notice dated September 16, 2024, the parent alleged that the district denied the student a FAPE for the 2024-25 school year (Parent Ex. A at pp. 1-2).

[1] The hearing record contains multiple duplicative exhibits. For purposes of this decision, only parent exhibits are cited in instances where both a parent and district exhibit are identical in content. The IHO is reminded that it is her responsibility to exclude evidence that she determines to be irrelevant, immaterial, unreliable, or unduly repetitious (8 NYCRR 200.5[j][3][xii][c]).

[2] The March 2024 IEP includes two separate recommendations for one 30-minute session per week of individual OT for a total of two 30-minute sessions per week (Parent Ex. B at p. 16). It is not clear if this is a typographical error.

Specifically, the parent asserted that the March 2024 IEP was not appropriate, that the "type of public school as recommended in the IEP would have been inappropriate and not addressed the student['s] academic, social, emotional and behavioral needs," and that the district failed to send a proposed public school placement for the 2024-25 school year (id. at p. 1).

The parent also contended that the district did not respond to her 10-day notice advising the district of her intention to unilaterally enroll the student at STEP and seek public funding for the cost of the student's attendance (id. at p. 2). The parent asserted that STEP was an appropriate unilateral placement for the 2024-25 school year. As relief, the parent sought pendency; findings that the student was denied a FAPE for the 2024-25 school year and that STEP was an appropriate unilateral placement; as well as direct funding for the cost of the student's attendance at STEP for the 2024-25 school year (id.).

The district submitted a due process response dated October 3, 2024, which generally denied the parent's allegations and raised a number of affirmative defenses (Dist. Response to Due Process Compl. Not.).

B. Impartial Hearing Officer Decision

The parties convened for a prehearing conference before an IHO from the Office of Administrative Trials and Hearings (OATH) on November 18, 2024 and an impartial hearing was held on December 16, 2024 (Tr. pp. 1-33). In a decision dated December 27, 2024, the IHO determined that the district offered the student a FAPE for the 2024-25 school year, and as such she did not consider the appropriateness of the parent's unilateral placement or whether equitable considerations favored awarding the parent direct funding for the cost of the student's attendance at STEP (IHO Decision at p. 6). Specifically, the IHO found that the district sent the parent a prior written notice and a school location letter, both dated June 25, 2024 (id. at pp. 5-7 & n.4). The IHO further determined that the CSE considered sufficient evaluative information to develop an appropriate IEP for the 2024-2025 school year (id. at p. 6). In addition, the IHO found that the CSE considered other placements before recommending an 8:1+1 special class in a specialized school along with related services and special transportation (id. at p. 7). The IHO credited the testimony of the district's witness, who averred that she emailed a copy of the IEP to the parent and that another individual sent the parent a prior written notice and school location letter (id.). The IHO noted that the parent offered no evidence or testimony to contradict the district's witness (id.). Next, the IHO stated that once the district met its burden, the parent had the opportunity to present a case that demonstrated she did not receive the prior written notice or school location letter, "or provide further testimony on why the [p]lacement offered to [the s]tudent was not appropriate" (id.). The IHO determined that the parent did not present any evidence to support her argument that the CSE's recommendations were not appropriate and did not refute the district's evidence that she had been sent a prior written notice and school location letter (id.). The IHO also found that the parent's evidence was limited to the appropriateness of the student's unilateral placement at STEP, "which skip[ped] a step and assume[d the] student [wa]s entitled to direct payment" for STEP (id.). The IHO opined that testimony from the parent "[wa]s necessary to understand exactly where the [p]arent's concerns st[oo]d and additional information on the [p]rior [w]ritten [n]otice and [s]chool [l]ocation [l]etter" (id.). The IHO determined that "[i]n a case when [the district] properly defends [its recommended program and placement], [the p]arent must rebut the testimony and case made by [the district] to chip away at [the district]'s defense" (id. at p. 8). The IHO determined that the student was not entitled to direct payment of tuition reimbursement

and also found that for the purpose of pendency, the last agreed upon program was based on an unappealed June 18, 2018 IHO decision (id. at p. 9).

IV. Appeal for State-Level Review

The parent appeals and alleges that the IHO erred in finding that the district offered the student a FAPE for the 2024-25 school year, that the parent's unilateral placement at STEP was not appropriate, and that the district offered sufficient evidence that the school location letter was sent to the parent. The parent also argues that the district failed to demonstrate that it recommended an appropriate program and placement for the student. The parent also asserts that she met her burden of demonstrating the appropriateness of STEP and that there were no equitable considerations that would warrant a reduction in the parent's request for tuition funding. As relief, the parent requests findings that the student was denied a FAPE for the 2024-25 school year, that STEP was an appropriate unilateral placement, and an award of direct funding in the amount of $75,000 for the cost of the student's attendance at STEP for the 2024-25 school year.

In an answer, the district argues that the parent's request for review should be dismissed for failing to comply with the practice regulations.[3] The district further asserts that the IHO correctly determined that the district offered the student a FAPE for the 2024-25 school year and properly denied the parent's request for direct funding of tuition. The district argues that the IHO's FAPE determination was supported by the district's documentary and testimonial evidence. The district also alleges that the parent did not raise the issues related to implementation of the March 2024 IEP in her due process complaint notice and improperly raised it for the first time in the request for review. Next, the district argues that the parent did not prove STEP was an appropriate placement for the student and that equitable considerations do not favor the award of any tuition reimbursement.

The parent interposed a reply to the district's answer and argues that her request for review complies with the practice regulations, that the issues on appeal were properly identified, and reasserts that there was insufficient evidence for the IHO's determination that a school location letter was sent.

[3] The district contends that the parent's request for review should be dismissed for failure to comply with State regulations governing the initiation of the review and the form requirements for pleadings (see 8 NYCRR 279.4[a]; 279.8[c][1]-[3]; 8 NYCRR 279.8[a][4]). In general, the failure to comply with the practice requirements of Part 279 of the State regulations may result in the rejection of the submitted documents or the dismissal of a request for review by an SRO (8 NYCRR 279.8[a]-[b]; 279.13; see T.W. v. Spencerport Cent. Sch. Dist., 891 F. Supp. 2d 438, 440-41 [W.D.N.Y. 2012] [upholding dismissal of a petition for review that was untimely and exceeded page limitations]). However, "judgments rendered solely on the basis of easily corrected procedural errors or 'mere technicalities,' are generally disfavored" (J.E. v. Chappaqua Cent. Sch. Dist., 2015 WL 4934535, at *4-*6 [S.D.N.Y. Aug. 17, 2015], quoting Foman v. Davis, 371 U.S. 178 [1962]). Specifically, the district argues that the parent failed to set forth a clear and concise statement of the issues presented for review and the grounds for reversal or modification to be advanced, with each issue numbered and set forth separately (8 NYCRR 279.8[c][2]). Under these circumstances, I will exercise my discretion and decline to dismiss the parent's request for review (see 8 NCYRR 279.2[f]; 279.8[a]). It is undisputed that the district was able to respond to the parent's request for review and there is no indication that the district was prejudiced as a result of the form of the parent's pleading.

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]).[4]

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).

[4] 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).

VI. Discussion

A. Cumulative Procedural Violations

The parent contends that the IHO erred in finding that the student was offered a FAPE for the 2024-25 school year. The parent alleges that the district failed to respond to her 10-day written notice, failed to provide a copy of the March 2024 IEP, failed to provide prior written notice, and failed to provide a school location letter.

As noted above, when 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). However, under some circumstances, the cumulative impact of procedural violations may result in a denial of a FAPE even where the individual deficiencies themselves do not (L.O. v. New York City Dep't of Educ., 822 F.3d 95, 123-24 [2d Cir. 2016]; T.M., 752 F.3d at 170; R.E., 694 F.3d at 190-91 [noting that "even minor violations may cumulatively result in a denial of a FAPE"]; see also A.M. v. New York City Dep't of Educ., 845 F.3d 523, 541 [2nd Cir. 2017] [noting that it will be a "rare case where the violations, when taken together," rise to the level of a denial of a FAPE when the procedural errors do not affect the substance of the student's program]).

The hearing record reflects that on August 19, 2024, the parent's attorney wrote to the district stating that the parent had not received a copy of the "latest" IEP or a school location letter (Parent Ex. C at p. 1). The parent also expressed concern "based on prior recommendations" that the public school program recommended was not appropriate, and that the "type of school, class size, limited school periods recommended for special classes and lack of sufficient behavioral support recommended in the past" were among the reasons the district had failed to offer "a FAPE for many years" (id.). The parent notified the district of her intent to unilaterally enroll the student at STEP for the 2024-25 school year and to seek public funding for the student's tuition and related services at STEP (id.).

The requirement that parents provide notice of the unilateral placement either at the most recent CSE meeting prior to their removal of the student from public school, or by written notice 10 business days before such removal, "that they were rejecting the placement proposed by the public agency to provide a [FAPE] to their child, including stating their concerns and their intent to enroll their child in a private school at public expense" (20 U.S.C. § 1412[a][10][C][iii][I]; see 34 CFR 300.148[d][1]), "serves the important purpose of giving the school system an opportunity, before the child is removed, to assemble a team, evaluate the child, devise an appropriate plan, and determine whether a [FAPE] can be provided in the public schools" (Greenland Sch. Dist. v. Amy N., 358 F.3d 150, 160 [1st Cir. 2004]).

In this matter, the hearing record indicates that the district did not respond to the parent's 10-day notice letter and did not attempt to reconvene the CSE prior to the parent's unilateral placement of the student at STEP in September 2024. The special education teacher who testified on behalf of the district (district special education teacher) averred in her affidavit

in lieu of direct testimony that she emailed a copy of the IEP to the parent on March 12, 2024 (Dist. Ex. 13 ¶¶ 1, 17). Notably, the district special education teacher did not testify that she provided a copy of the IEP to the parent in response to the parent's August 19, 2024 10-day notice letter, wherein the parent's attorney stated the parent had not received the March 2024 IEP (Tr. p. 25). In addition, in her affidavit testimony, the district special education teacher stated that a prior written notice and school location were sent to the parent on June 25, 2024 (Dist. Ex. 13 ¶ 17). On cross-examination, the district special education teacher testified that she did not personally send the prior written notice and school location letter to the parent and could not address any school placement issues (Tr. pp. 25, 26). The district special education teacher's testimony did not demonstrate that the district responded to the parent's 10-day notice letter.

Turning to the parent's contention that she did not receive prior written notice of the recommendations of the March 2024 CSE or a school location letter, State and federal regulations require that a district provide parents of a student with a disability with prior written notice "a reasonable time before the school district proposes to or refuses to initiate or change the identification, evaluation, educational placement of the student or the provision of a [FAPE] to the student" (34 CFR 300.503[a]; 8 NYCRR 200.1[oo]; 200.5[a][1). Pursuant to State and federal regulation prior written notice must include a description of the action proposed or refused by the district; an explanation of why the district proposed or refused the action; a description of the other options that the CSE considered and the reasons why those options were rejected; a description of each evaluation procedure, assessment, record, or report the CSE used as a basis for the proposed or refused action; and a description of the other factors relevant to the CSE's proposal or refusal (34 CFR 300.503[b]; 8 NYCRR 200.5[a][3]).

Relatedly and although not explicitly stated in federal or State regulation, implicit in a district's obligation to implement an IEP is the requirement that, at some point prior to or contemporaneous with the date of initiation of services under an IEP, a district must notify parents in a reasonable fashion of the bricks and mortar location of the special education program and related services in a student's IEP (see T.C. v. New York City Dep't of Educ., 2016 WL 1261137, at *9 [S.D.N.Y. Mar. 30, 2016] [noting that "a parent must necessarily receive some form of notice of the school placement by the start of the school year"]; Tarlowe v. New York City Bd. of Educ., 2008 WL 2736027, at *6 [S.D.N.Y. July 3, 2008] [finding that a district's delay does not violate the IDEA so long as a public school site is found before the beginning of the school year]). While such information need not be communicated to the parents by any particular means in order to comply with federal and State regulation, it nonetheless follows that it must be shared with the parent before the student's IEP may be implemented. This analysis also fits with the competing notions that, while a district's assignment of a student to a particular school site is an administrative decision which must be made in conformance with the CSE's educational placement recommendation (see M.O. v. New York City Dep't of Educ., 793 F.3d 236, 244-45 [2d Cir. 2015]), there is district court authority indicating that a parent has a right to obtain information about an assigned public school site (see H.L. v. New York City Dep't of Educ., 2019 WL 181307, at *9 [S.D.N.Y. Jan. 11, 2019] [noting that "[i]n light of M.O., courts have found that parents have the right to obtain timely and relevant information regarding school placement, in order to evaluate whether the IEP can be implemented at the proposed location"]; F.B. v New York City Dep't of Educ., 2015 WL 5564446, at *11-*18 [S.D.N.Y. Sept. 21, 2015] [finding that the parents "had at least a procedural right to inquire whether the proposed school location had the resources set forth

in the IEP"]; V.S. v New York City Dep't of Educ., 25 F. Supp. 3d 295, 299-301 [E.D.N.Y. 2014] [finding that the "parent's right to meaningfully participate in the school selection process" should be considered rather than the "parent's right to determine the actual school selection"]; C.U. v. New York City Dep't of Educ., 2014 WL 2207997, at *14-*16 [S.D.N.Y. May 27, 2014] [holding that "parents have the procedural right to evaluate the school assignment" and "acquire relevant information about" it]).

The IHO found that the district sent the parent prior written notice and a school location letter on June 25, 2024 (IHO Decision at pp. 5, 7). Review of the hearing record also reflects that the March 2024 IEP and June 25, 2024 prior written notice contain an internal consistency, which was not addressed by the district in a response to the parent's 10-day notice or during the impartial hearing.[5] In addition, the IHO did not address the district's failure to respond to the parent's 10-day notice and there is no evidence in the hearing record to demonstrate that the district provided the parent with a copy of the IEP, prior written notice or a school location letter after the parent sent the 10-day notice on August 19, 2024.[6] Based on the foregoing, I find that the district did not meet its burden of demonstrating that it offered the student a FAPE and the IHO erred in finding so. The district committed several procedural violations which impeded the parent's ability to participate in the decision making process regarding the student's educational programming and, each of which, contributed to a denial of FAPE. While the district offered evidence that a copy of the March 2024 IEP was emailed to the parent in March 2024, the district did not respond to the allegations in the parent's August 19, 2024 10-day notice letter, which stated that she did not receive a copy of the IEP or a school location letter. In addition, the district failed to establish that it provided the parent with prior written notice and a school location letter after she informed the district that she had not received them. In review, the cumulative effect of these procedural violations impeded the student's right to a FAPE, hindered the parent's opportunity to participate in the decision-making process, or otherwise deprived the student of educational benefits (see 20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 300.513[a][2]; 8 NYCRR 200.5 [j][4][ii]). Therefore, the cumulative effect of these procedural violations resulted in a denial of FAPE to the student for the 2024-25 school year.

B. Remand

Having found that the district failed to offer the student a FAPE, the next issue to be discussed is whether STEP was an appropriate unilateral placement for the student for the 2024-25 school year. As the IHO determined that the district offered the student a FAPE for the 2024-25 school year, she declined to address the appropriateness of STEP as a unilateral placement (IHO

[5] The March 2024 IEP and June 25, 2024 prior written notice indicate that the March 2024 CSE recommended that the student attend an 8:1+1 special class ("D 75 all subjects") in a specialized school (Parent Ex. B at pp. 16, 22; Dist. Ex. 4 at pp. 1, 2). The March 2024 IEP and June 25, 2024 prior written notice also reflect that the March 2024 CSE considered but rejected an 8:1+1 special class in a specialized school as "too restrictive and preclude[d the student]'s development of skills needed for functioning in a larger social emotional environment" (Parent Ex. B at p. 25; Dist. Ex. 4 at p. 4).

[6] Although the district did not demonstrate that it responded to the parent's August 19, 2024 10-day notice letter, the March 2024 IEP was included as a parent exhibit in the hearing record. In addition, the district special education teacher's testimony that she emailed a copy of the IEP to the parent on March 12, 2024 was unrefuted (Tr. p. 25).

Decision at p. 6). 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]). Here, as the IHO has not yet ruled on whether the parent met her burden to prove that the unilateral placement was appropriate or whether equitable considerations would support the parent's request for relief, I will remand the matter to the IHO to address these issues in the first instance.

The IHO upon remand should ensure that an adequate record is developed upon which to base the necessary findings of fact and of law relative to the parent's requested relief. I will leave it to the IHO's sound discretion regarding adequate development of the hearing record on those topics and whether to provide the parent an opportunity to present additional evidence regarding the student's programming and progress at STEP and a concomitant opportunity for the district to respond. Additionally, the IHO may find it appropriate to schedule a prehearing conference with the parties to, among other things, simplify and clarify the issues left to be resolved at the hearing (see 8 NYCRR 200.5[j][3][xi][a]).

VII. Conclusion

In summary, the district's procedural violations cumulatively deprived the student of a FAPE for the 2024-25 school year and thus, review of the hearing record does not support the IHO's determination that the district offered the student a FAPE for the 2024-25 school year. As the IHO did not address the appropriateness of the parent's unilateral placement or equitable considerations, this matter is remanded to the IHO to make determinations on these issues.

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

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

IT IS ORDERED that the IHO's decision, dated December 27, 2024, is modified by reversing that portion which found that the district offered the student a FAPE for the 2024-25 school year; and

IT IS FURTHER ORDERED that the matter is remanded to the IHO to determine whether the parent's unilateral placement at STEP was appropriate for the student for the 2024-25 school year and whether equitable considerations weigh in favor of granting funding for the costs of tuition or related expenses.

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

CAROL H. HAUGE
STATE REVIEW OFFICER