



The University of the State of New York

The State Education Department

State Review Officer

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No. 25-118

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 Emily McNamara, Esq.

Law Offices of Neal H. Rosenberg, attorneys for respondents, by Jenna L. Pantel, 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 ordered it to reimburse respondents (the parents) for a portion of their daughter's tuition at SINAI Schools (SINAI) for the 2023-24 school year. The parents cross-appeal from that portion of the IHO's decision which found that the district offered the student an appropriate educational program from the beginning of the 2023-24 school year until November 9, 2023. The appeal must be sustained in part. The cross-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

The parties' familiarity with this matter is presumed and, therefore, the student's educational history will not be recited here in detail. The student has received diagnoses of an attention deficit hyperactivity disorder (ADHD) and a specific learning disorder with an impairment in reading (Dist. Exs. 3 at p. 1; 4 at p. 1). She initially attended SINAI at Yeshiva of Central Queens (YCQ), a nonpublic school that provides special education "within a partner mainstream school," for the 2021-22 school year and continued attending school there for the 2022-23 school year (fourth grade) (Parent Exs. D; J; K ¶15; L¶ 3; Dist. Exs. 1 at pp. 1, 21-22; 3

at p. 1; 4 at p. 1; 5 at p. 1).¹ At that time, the student attended a "special education classroom" and received speech-language therapy, occupational therapy (OT), and counseling services (Dist. Ex. 5 at p. 1).

In fall 2022, the district conducted a psychoeducational evaluation, an OT evaluation, and a social history of the student due to the parents' concerns about the student's reading development (Dist. Exs. 3-5). On November 9, 2022, a CSE convened for a meeting, in which the student's mother participated, determined that the student was eligible for special education as a student with a learning disability, and developed an IEP for the student with a projected implementation date of December 12, 2022 (Dist. Ex. 1 at pp. 1, 23).^{2, 3} The November 2022 CSE recommended a 12:1+1 special class placement in English language arts (ELA), writing, and social studies, and that the student receive the following supports and services: two 30-minute sessions per week of speech-language therapy in a group setting; two 30-minute sessions per week of individual OT; one 30-minute session per week of individual counseling; one 30-minute session per week of group counseling; and testing accommodations (Dist. Exs. 1 at pp. 16-17, 19; 2 at p. 1).⁴

On May 5, 2023, the parents executed an enrollment contract with SINAi for the 10-month 2023-24 school year (Parent Ex. E). Under the contract's terms, the parents were obligated to pay \$120,000.00, the full yearly tuition, unless the parents withdrew the student's enrollment to accept the district's placement and provided SINAi with written notice no later than October 16, 2023, in which event the parents would have been obligated to pay only the prorated tuition through the date of withdrawal (see id.).

On June 20, 2023, the district issued a prior written notice and a school location letter (Dist. Ex. 2). The prior written notice memorialized the recommendations of the November 2022 CSE, as well as the other placement options considered (compare Dist. Ex. 1 at pp. 16-17, 23, with Dist. Ex. 2 at pp. 1-2). According to the prior written notice, the November 2022 CSE considered a September 2022 psychoeducational assessment, a September 2022 social history update, and an October 2022 OT assessment in developing the student's IEP (Dist. Ex. 2 at pp. 1-2). The school location letter identified the public school site to which the student was assigned to receive the recommended special education programming (see id. at p. 5).⁵

¹ Sinai at YCQ 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 a learning disability is not in dispute (see 34 CFR 300.8[c][10]; 8 NYCRR 200.1[zz][6]).

³ The projected date of annual review was November 9, 2023, after the start of the 2023-24 school year (Dist. Ex. 1 at p. 1).

⁴ The November 2022 CSE recommended that the frequency for the 12:1+1 special class consist of five periods of ELA per week, five periods of writing per week, and three periods of social studies per week (Dist. Ex. 1 at p. 16).

⁵ The student's mother toured the assigned public school in or around November 2023 (see Dec. 12, 2023 Tr. pp. 81, 83-85; Parent Ex. L ¶¶ 10-11).

In a letter dated August 22, 2023, the parents informed the district of their disagreement with the November 2022 IEP and the placement recommended therein (Parent Ex. C at p. 1). The August 2023 letter expressed the parents' intent to unilaterally enroll the student at SINAI for the 2023-24 school year and seek district funding for the costs of her enrollment (*id.*).

The student attended fifth grade at SINAI at YCQ for the 2023-24 school year, which ran from September 7, 2023 through June 19, 2024 (Parent Exs. I at p. 1; J).

A. Amended Due Process Complaint Notice

In an amended due process complaint notice dated January 9, 2024, the parents alleged that the district denied the student a free appropriate public education (FAPE) for the 2023-24 school year based on procedural flaws in the development of the November 2022 IEP, as well as substantive deficiencies in the IEP itself (Parent Ex. B at pp. 1, 4).⁶ Among other concerns, the parents alleged that the November 2022 CSE was invalidly constituted; the district failed to fully evaluate the student, consider the appropriate evaluative data, and reflect the evaluative data in the IEP; the November 2022 IEP failed to adequately describe the student, reflect the student's needs, or provide sufficient guidance for implementing the IEP; the November 2022 IEP contained insufficient management needs and goals; the documentation before the November 2022 CSE did not support their recommendations; the recommended placement was not appropriate or sufficient to support the student; and the assigned school would not have been able to implement the student's IEP (*id.* at pp. 1-4). Regarding the district's placement recommendation, specifically, the parents alleged that the November 2022 CSE inappropriately reduced the student's level of support from a 12:1+1 special class for all academic subjects, including math, to a 12:1+1 special class for ELA, writing, and social studies only (*id.* at p. 2).

According to the parents, SINAI at YCQ, provided a small, full-time special education class with instruction tailored to the student's needs and was an appropriate setting for the student (Parent Ex. B at p. 4). The parents further alleged that they fully cooperated with the district and notified the district of their concerns throughout the IEP process (*id.* at p. 5). Thus, according to the parents, equitable considerations did not warrant "a reduction or elimination of an otherwise appropriate tuition award" (*id.*)

As relief, the parents requested an order awarding "[d]irect/prospective payment of tuition and related services[] or, in the alternative, tuition and related services reimbursement," as well as "the provision of transportation" (Parent Ex. B at p. 5).

B. Impartial Hearing Officer Decision

After multiple prehearing conferences, an impartial hearing convened on September 4, 2024 and concluded on December 12, 2024, after three days of proceedings devoted to the merits (see Nov. 7, 2023 Tr. pp. 1-6; Nov. 30, 2023 Tr. pp. 7-12; Dec. 21, 2023 Tr. pp. 13-18; Feb. 20, 2024 Tr. pp. 19-23; Mar. 19, 2024 pp. 24-29; Apr. 23, 2024 Tr. pp. 30-33; May 15, 2024 Tr. pp. 34-37; June 12, 2024 Tr. pp. 38-42; July 18, 2024 Tr. pp. 43-47; Sept. 4, 2024 Tr. pp. 48-66; Sept.

⁶ The parents previously filed a due process complaint notice dated October 2, 2023 (Parent Ex. A at p. 1).

18, 2024 Tr. pp. 67-72; Oct. 31, 2024 Tr. pp. 73-95; Dec. 12, 2024 Tr. pp. 1-46).⁷ Both parties offered exhibits, each of which the IHO admitted into evidence (see Sept. 4, 2024 Tr. pp. 51-53; Dec. 12, 2024 Tr. pp. 7, 18-19; Parent Exs. A-J; Dist. Exs. 1-6). The parents presented testimony by affidavit from the director of SINAI at YCQ and the student's mother, each of whom appeared for cross-examination during the hearing (see Dec. 12, 2024 Tr. pp. 18-34; Parent Exs. K; L). The district presented testimony by affidavit from a school psychologist, who appeared for cross-examination during the hearing, as well as live testimony from a special education teacher at the assigned public school (see Oct. 31, 2024 Tr. pp. 80-91; Dec. 12, 2024 Tr. pp. 5-17; Dist. Ex. 6).

In a decision dated January 13, 2025, the IHO found that the district "provided the [s]tudent with a FAPE for a portion of the 2023-24 school year, specifically[,] from the beginning of the 2023-24 school year until November 9, 2023" (IHO Decision at pp. 3-4, 6). The IHO found that the November 2022 IEP "enumerate[d] the [s]tudent's present levels of performance;" "provide[d] a clear understanding of the [s]tudent's functional levels;" and included specific goals "to enable the [s]tudent to make progress given [] [her] needs" (id. at p. 6). According to the IHO, testimony from the school psychologist explained how the recommended program "was able to meet the [s]tudent's needs" and why the other options considered by the CSE were rejected; and the special education teacher testified that the assigned school "had room to implement the [s]tudent's program in a 12:1+1 classroom" (id.). Thus, "[a]fter considering all of the witness testimony and the documentary evidence in the hearing record," the IHO found that "the [d]istrict . . . 'offer[ed] a cogent and responsive explanation for'" the recommendations contained in the November 2022 IEP (id.). However, considering that "the only IEP . . . in the hearing record is the one dated November 9, 2022," the IHO found that district failed to reconvene a CSE on November 9, 2023 to conduct the requisite annual review and that "the [s]tudent's IEP was outdated" as of November 10, 2023 (id.). Thus, according to the IHO, the district denied the student a FAPE from November 10, 2023 through "the remainder of the 2023-24 school year" (id.).

Having determined that the district denied the student a FAPE for a portion of the 2023-24 school year, the IHO then addressed whether SINAI at YCQ was an appropriate unilateral placement for the student (see IHO Decision at pp. 6-8). The IHO found that the parents met their burden in that regard, reasoning that SINAI at YCQ "developed individualized goals for the [s]tudent;" SINAI at YCQ provided instruction tailored to the student's needs from sufficiently trained teachers along "with the supports that the [s]tudent needed to make progress;" and the student was making progress at SINAI at YCQ (id. at pp. 7-8).

Finally, as for the portion of the school year during which the district failed to provide a FAPE, the IHO found that equitable considerations supported the parents' request for relief (IHO Decision at p. 9). In that regard, the IHO reasoned that the parents participated in the November 2022 CSE meeting and "sent the [d]istrict a 'Ten Day Notice'" (id.). Moreover, the IHO found "no issue with the reasonableness of the cost of [the student's] tuition" at SINAI at YCQ (id.). Accordingly, the IHO ordered that the district reimburse the parents for the tuition paid to SINAI at YCQ in the amount of \$1,500.00; and, having found that "the [d]istrict provided [a] FAPE to the [s]tudent until November 9, 2023," the IHO applied a 20 percent reduction to the remaining

⁷ The transcripts from the impartial hearing in this matter were not consecutively paginated throughout the impartial hearing. For clarity, transcript citations in this decision will refer to the date of the impartial hearing and the page number, such as "Dec. 12, 2024 Tr. p. 1."

tuition balance of \$118,500.00, ordering that the district pay \$94,800.00 directly to SINAI at YCQ (id. at pp. 9-10).⁸

IV. Appeal for State-Level Review

The district appeals and argues that the IHO erred in determining that the student was denied a FAPE for a portion of the 2023-24 school year. The district contends that the November 2022 IEP was the operative IEP on the first day of school for the 2023-24 school year, and that the IHO should have found that the student was offered a FAPE for the entire 2023-24 school year. The district further alleges that the IHO erred in determining that the district's failure to convene a CSE on or before November 9, 2023, resulted in a denial of a FAPE to the student. The district asserts that the parents did not allege that the district failed to conduct an annual review for the 2023-24 school year in either the initial due process complaint notice or the amended due process complaint notice and that this claim was outside the scope of the impartial hearing. As relief, the district requests reversal of the IHO's FAPE determinations and denial of the parents' request for tuition reimbursement for the 2023-24 school year.

In an answer and cross-appeal, the parents allege that the IHO erred in finding that the November 2022 IEP offered the student a FAPE. The parents argue that the district failed to conduct and consider appropriate evaluative data and that the district failed to address these allegations during the impartial hearing. The parents further assert that the recommended 12:1+1 special class for ELA, writing, and social studies was insufficient for the student and that she required special education support for math and science. The parents also claim that the district failed to meet its burden of proof to demonstrate the appropriateness of its recommendations, as the district's only witness was unable to explain the basis for changing the student's recommendations from a 12:1+1 special class for all academic subjects in the prior IEP, to a recommendation for a general education classroom for math and science. Lastly, the parents assert that the assigned school was not capable of implementing the November 2022 IEP. As relief, the parents request a finding that the student was denied a FAPE for the entire 2023-24 school year and an award of tuition reimbursement for the 2023-24 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

⁸ The evidence in the hearing record indicates that the parents made multiple payments to SINAI at YCQ, in the total amount of \$1,500.00 (Parent Exs. F ¶ 6).

(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]).⁹

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. Scope of Impartial Hearing and Review

As an initial matter, I must address the district's contention that the IHO erred in considering the district's purported failure to reconvene a CSE for an annual review of the student's educational program in November 2023. The district asserts that the parents did not raise that issue in their due process complaint notice and that the November 2022 IEP was in effect at the start of the 2023-24 school year. Thus, according to the district, if the November 2022 IEP offered the student a FAPE, that should have been the end of the inquiry.¹⁰

⁹ 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).

¹⁰ The parents' answer with cross-appeal took no position as to whether the district's purported failure to reconvene a CSE in November 2023 for an annual review was outside the scope of the impartial hearing.

Generally, the party requesting an impartial hearing has the first opportunity to identify the range of issues to be addressed at the hearing (Application of a Student with a Disability, Appeal No. 09-141; Application of the Dep't of Educ., Appeal No. 08-056). Under the IDEA and its implementing regulations, a party requesting an impartial hearing may not raise issues at the impartial hearing that were not raised in its original due process complaint notice unless the other party agrees (20 U.S.C. § 1415[f][3][B]; 34 CFR 300.508[d][3][i], 300.511[d]; 8 NYCRR 200.5[i][7][i][a]; [j][1][ii]), or the original due process complaint is amended prior to the impartial hearing per permission given by the IHO at least five days prior to the impartial hearing (20 U.S.C. § 1415[c][2][E][i][II]; 34 CFR 300.507[d][3][ii]; 8 NYCRR 200.5[i][7][b]).¹¹ When a matter arises that did not appear in a due process complaint notice, the next inquiry is whether the district, through the questioning of its witnesses, "open[ed] the door" to the issue under the holding of M.H. v. New York City Department of Education (685 F.3d at 250-51; see also Bd. of Educ. of Mamaroneck Union Free Sch. Dist. v. A.D., 739 Fed. App'x 79, 80 [2d Cir. Oct. 12, 2018]; B.M. v. New York City Dep't of Educ., 569 Fed. App'x 57, 58-59 [2d Cir. June 18, 2014]; J.G. v. Brewster Cent. Sch. Dist., 2018 WL 749010, at *10 [S.D.N.Y. Feb. 7, 2018]; C.M. v. New York City Dep't of Educ., 2017 WL 607579, at *14 [S.D.N.Y. Feb. 14, 2017]; D.B. v. New York City Dep't of Educ., 966 F. Supp. 2d 315, 327-28 [S.D.N.Y. 2013]; N.K. v. New York City Dep't of Educ., 961 F. Supp. 2d 577, 584-86 [S.D.N.Y. 2013]; A.M. v. New York City Dep't of Educ., 964 F. Supp. 2d 270, 282-84 [S.D.N.Y. 2013]; J.C.S. v. Blind Brook-Rye Union Free Sch. Dist., 2013 WL 3975942, *9 [S.D.N.Y. Aug. 5, 2013]).

Moreover, it is essential that the IHO disclose his or her intention to reach an issue which the parties have not raised as a matter of basic fairness and due process of law (Application of a Child with a Handicapping Condition, Appeal No. 91-40; see John M. v. Bd. of Educ. of Evanston Tp. High Sch. Dist. 202, 502 F.3d 708, 713 [7th Cir. 2007]). Although an IHO has the authority to ask questions of counsel or witnesses for the purposes of clarification or completeness of the hearing record (8 NYCRR 200.5[j][3][vii]), or even inquire as to whether the parties agree that an issue should be addressed, it is impermissible for the IHO to simply expand the scope of the issues raised without the express consent of the parties and then base his or her determination on new issues raised *sua sponte* (see Dep't of Educ., Hawai'i v. C.B., 2012 WL 220517, at *7-*8 [D. Haw., Jan. 24, 2012] [finding that the administrative hearing officer improperly considered an issue beyond the scope of the parents' due process complaint notice]).

Although the initial due process complaint notice preceded the annual review date of November 9, 2023, the parents amended their due process complaint notice in January 2024, at which time the district's failure to conduct an annual review would have been apparent (compare Parent Ex. A at p. 1, and Parent Ex. B at p. 1, with Dist. Ex. 1 at p. 1).¹² Nevertheless, the amended

¹¹ "The parent must state all of the alleged deficiencies in the IEP in their initial due process complaint in order for the resolution period to function. To permit [the parents] to add a new claim after the resolution period has expired would allow them to sandbag the school district" (R.E., 694 F.3d 167 at 187-88 n.4; see also B.M., 569 Fed. App'x at 58-59).

¹² The district has an obligation to review the IEP of a student with a disability periodically but at least annually, and the CSE, upon review, must revise a student's IEP as necessary to address "[t]he results of any reevaluation;" "[i]nformation about the child provided to, or by, the parents" during the course of a review of existing evaluation data; the student's anticipated needs; or other matters (20 U.S.C. § 1414[d][4][A]; 34 CFR 300.324[b][1][ii][C]; 8 NYCRR 200.4[f][2][ii]).

due process complaint notice did not allege that the district failed to convene a CSE for an annual review or request an order directing the district to review the student's educational program (see Parent Ex. B at pp. 1-5). The closest allegations presented in the amended due process complaint notice were as follows: "[t]he IEP reflects information and reports that were nearly a year old by the time th[e] IEP would be implemented for the 2023-2024 school year;" and, "[r]ather than sending a new school location letter, the [district] should have considered that the IEP that the school placement would be implementing was going to be 10 months old" (id. at p. 3).¹³ However, these vague assertions must be read in conjunction with the parents' other allegations, including the allegations that the documentation before the November 2022 CSE did not support its recommendations and that the November 2022 IEP did not provide an appropriately supportive placement for the student (id. at p. 2). As the parents' amended due process complaint notice did not include a specific allegation that the district failed to conduct an annual review in or after November 2023, and the allegations contained in the amended due process complaint notice tend to emphasize the substantive inadequacy of the November 2022 IEP, the scope of the impartial hearing did not include the district's purported failure to hold an annual review meeting during the 2023-24 school year (see, e.g., Application of a Student with a Disability, Appeal No. 24-248 [The parent's allegation "that the district '[f]ailed to develop an appropriate and timely IEP'" did not encompass the specific allegation that the district failed to convene a CSE to conduct an annual review]).

Moreover, review of the hearing transcript reveals no indication from the IHO, and no express agreement from the parties, that the IHO intended to consider the district's purported failure to conduct an annual review. Nor did the district "open the door" to the issue through its questioning of hearing witnesses (see Oct. 31, 2024 Tr. pp. 81-92; Dec. 12, 2024 Tr. pp. 5-18, 29-34). I therefore find that the IHO erred in determining that the district deprived the student of a FAPE, beginning on November 10, 2023, by its failure to hold an annual review meeting during the 2023-24 school year (see, e.g., Application of a Student with a Disability, Appeal No. 24-631 ["[T]he IHO went outside the scope of the impartial hearing in finding that the district failed to implement the [student's] recommended services" where the due process complaint notice contained no such allegation and the hearing transcript showed no indication from the IHO, nor express agreement from the parties, that the IHO would reach that issue]).

Turning to the parents' claims, State regulations governing practice before the Office of State Review provide that "any issue not identified in a party's request for review, answer, or answer with cross-appeal shall be deemed abandoned and will not be addressed by a State Review Officer" (8 NYCRR 279.8[c][4]). In their January 9, 2024 amended due process complaint notice, the parents alleged that the November 2022 CSE was invalidly constituted, that the district failed to sufficiently evaluate the student in all areas of suspected disability, failed to consider the appropriate evaluative data, and failed to include the evaluative data in the IEP. The parents also contended that the November 2022 IEP failed to adequately describe the student, reflect the student's needs, or provide sufficient guidance for implementing the IEP; that the November 2022 IEP contained insufficient management needs and goals; the documentation before the November 2022 CSE did not support their recommendations; the recommended placement was not appropriate or sufficient to support the student; and the assigned school would not have been able

¹³ I note that the district issued the school location letter over four months prior to the IEP's annual review date (compare Dist. Ex. 2 at p. 5, with Dist. Ex. 1 at p. 1).

to implement the student's IEP. Regarding the district's placement recommendation, specifically, the parents alleged that the November 2022 CSE inappropriately reduced the student's level of support from a 12:1+1 special class for all academic subjects, including math, to a 12:1+1 special class for ELA, writing, and social studies only.

In their answer and cross-appeal, the parents reassert their claims that the district failed to conduct and consider appropriate evaluative data, that the recommended 12:1+1 special class for ELA, writing, and social studies was insufficient for the student and that she required special education support for math and science, and that the assigned school was not capable of implementing the November 2022 IEP.

Review of the parents' answer and cross-appeal indicates that the parents have not reasserted the claim that the November 2022 CSE was improperly composed, or reasserted their other claims related to the development of the November 2022 IEP, and those claims are deemed abandoned and will not be further addressed. In addition, neither party has appealed from the IHO's determinations that SINAI at YCQ was an appropriate unilateral placement for the student or that equitable considerations supported the parents' request for relief. Those determinations have, therefore, 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 (S.D.N.Y. March 21, 2013)).

Upon an independent review of the hearing record and as discussed more fully below, I find that the district failed to demonstrate the appropriateness of its recommendation that the student be placed in a 12:1+1 special class for ELA, writing, and social studies and a general education classroom for math and science.

B. Sufficiency and Consideration of Evaluative Information

As explained above, the IHO erred in considering the district's purported failure to conduct the student's annual review during the 2023-24 school year; and the district correctly asserts that the November 2022 IEP was in place at the beginning of the 2023-24 school year. Moreover, the hearing record indicates that the parents based their decision to unilaterally place the student for the 2023-24 school year on their disagreement with the November 2022 IEP and the assigned school recommendation (see generally Parent Exs. B; C).¹⁴ Accordingly, the parents' entitlement to relief turns on whether the recommendations contained in the November 2022 IEP offered the student a FAPE.

First, a review of the student's needs and then-current functioning, as known to the district when it developed the student's November 2022 IEP, will provide the context necessary to evaluate the adequacy of the district's recommendations. To that end, the following materials, which were available to the district and considered in developing the November 2022 IEP, are included in the hearing record: a psychoeducational evaluation report dated September 16, 2022; a social history

¹⁴ The Second Circuit has made clear that parents are entitled to rely on an IEP "as written when they decide to [unilaterally] place" their child before the beginning of a school year (Bd. of Educ. of Yorktown Cent. Sch. Dist. v. C.S., 990 F.3d 152, 173 [2d Cir. 2021]; see R.E., 694 F.3d at 187-88 ["At the time the parents must decide whether to make a unilateral placement . . . [t]he appropriate inquiry is into the nature of the program actually offered"]).

update dated September 13, 2022, and an OT evaluation report dated October 25, 2022 (see Dist. Exs. 2 at pp. 1-2; 3 at p. 1; 4 at p. 1; 5 at pp. 1, 6).¹⁵

In September 2022, the district completed a social history update and a psychoeducational evaluation, which included administration of the Kaufman Test of Educational Achievement - Third Edition (KTEA-3), a records review, and a student interview (Dist. Exs. 3 at pp. 1-2; 4 at p. 1).¹⁶ According to the psychoeducational evaluation report and the social history update, the parents requested a reevaluation to address concern that the student's reading development was affecting her performance in other subjects (Dist. Exs. 3 at p. 1; 4 at p. 1). The student's mother reported that the student spoke in short sentences, even with encouragement, and that her limited vocabulary affected her reading comprehension (see Dist. Exs. 3 at p. 1; 4 at p. 1). The student's mother further reported that the student "guess[ed] words without sounding them out when reading;" "ha[d] difficulty with letter formation, sizing[,] and spacing while writing passages;" was "unable to complete word-based math problems independently;" and "tend[ed] to shut down and cry" when frustrated (see Dist. Exs. 3 at p. 1; 4 at p. 1).

According to the social history update, the student had received diagnoses of dyslexia and ADHD (Dist. Ex. 4 at pp. 1-2). The September 2022 psychoeducational evaluation report referenced a March 31, 2022 psychological evaluation of the student, which stated that, "[p]er recent evaluation results, [the student] ha[d] been formally diagnosed with Specific Learning Disorder, with Impairment in Reading" (Dist. Ex. 3 at p. 1). The psychoeducational evaluation report further indicated that, based on prior administration of the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V), the student's "overall level of general intellectual function was in the average range, as compared to peers her age, including areas of strength and weakness" (id.).

The November 2022 IEP reflected the results of the administration of the Wechsler Abbreviated Scale of Intelligence - Second Edition (WASI-II) to the student during the September 2022 psychoeducational evaluation, which yielded a full-scale intelligence quotient (FSIQ) score of 93, which fell at the 32nd percentile and within the average range in comparison to the student's same-aged peers (Dist. Ex. 1 at p. 1; see Dist. Ex. 3 at pp. 2, 5).¹⁷ The vocabulary and similarities subtests comprising the Verbal Comprehension Index (VCI) of the WASI-II, administered to measure the student's verbal reasoning and expression ability, yielded a VCI composite standard score of 98, which fell at the 45th percentile and within the average range (Dist. Ex. 1 at p. 1; see

¹⁵ The November 2022 IEP indicated that the CSE requested teachers' reports, and provided a template to SINAi at YCQ, in an effort to obtain information regarding the student's academic performance and her functioning in the areas of speech-language, social development, and physical development; but "no narrative report was submitted" to the November 2022 CSE (see Dist. Ex. 1 at pp. 3-4). According to the November 2022 IEP, the CSE received a comprehensive student plan, "consist[ing] of [] various sentences and 'rating' number[s] . . . to indicate how [the student] was [] performing for [a given] skill" (id. at p. 3). The hearing record does not include a SINAi plan corresponding to the time the November 2022 IEP was created (see Parent Exs. A-L; Dist. Exs. 1-6).

¹⁶ The reference to the "Kaufman Test of Educational Achievement - Second Edition" on the first page of the evaluation report is, presumably, a typographical error (Dist. Ex. 3 at p. 1). Later in the report, it was noted that the student's academic skill development was assessed via selected reading, mathematics, and writing tasks on the "Kaufman Test of Educational Achievement - Third Edition" (id. at p. 2).

¹⁷ The evaluative information reported in the November 2022 IEP was consistent with the September 2022 psychoeducational evaluation report (compare Dist. Ex. 1 at pp. 1-4, with Dist. Ex. 3 at pp. 2-4).

Dist. Ex. 3 at pp. 2, 5).¹⁸ Block design and the matrix reasoning tasks comprising the Perceptual Reasoning Index (PRI) of the WASI-II, administered to measure the student's perceptual organization, visual information processing, and visual concept formation, yielded a PRI composite standard score of 90, which fell at the 45th percentile and within the average range (Dist. Ex. 1 at p. 1; see Dist. Ex. 3 at pp. 2, 5).¹⁹

The November 2022 IEP reported information from the administration of the JTEA-3 as reported in the September 2022 psychoeducational evaluation report, including the student's performance on selected reading, writing, and math tasks (compare Dist. Ex. 1 at pp. 1-3, with Dist. Ex. 3 at pp. 2-3, 5).

In the area of reading, the IEP and the psychoeducational evaluation report indicated the following results: a standard score of 63, which fell at the first percentile and within the low range, on the letter and word recognition subtest; a standard score of 70, which fell at the second percentile and within the below average range, on the reading comprehension subtest; a standard score of 69, which fell at the second percentile and within the low range on the spelling subtest; and a standard score of 74, which fell at the fourth percentile and within the below average range on the nonsense word decoding subtest (Dist. Ex. 1 at pp. 1-2; see Dist. Ex. 3 at pp. 3, 5). The IEP indicated that the student read "basic CVC sight words," made letter reversal errors with "b" and "d" when reading and was not able to read "sentence strips and respond to questions" (Dist. Ex. 1 at p. 2).

According to the IEP and the psychoeducational evaluation report, the student's "writing skills were assessed by a spelling task," which revealed spelling skills within the low range as compared to grade-level peers (Dist. Ex. 1 at p. 3; see Dist. Ex. 3 at p. 3).²⁰ The student wrote her words on the line, and her letter formation appeared legible with appropriate spacing between letters (Dist. Ex. 1 at p. 3; see Dist. Ex. 3 at p. 3). However, the student did not use editing or letter sound correspondence strategies when writing words from dictation and misspelled words such as "so, do, farm and open" (Dist. Ex. 1 at p. 3; see Dist. Ex. 3 at p. 3). Additionally, "[s]ome of [the student's] errors were due to phonological processing challenges and letter reversals" (Dist. Ex. 1 at p. 3; see Dist. Ex. 3 at p. 3).

The IEP and the psychoeducational evaluation report indicated that, on the math concepts and applications subtest, during which the examiner presented "[t]est questions and items" orally and in print, the student obtained a standard score of 91, which fell at the 27th percentile and within

¹⁸ The psychoeducational evaluation report indicated that, in a school setting, abilities within the verbal reasoning and expression domain, were typically associated with the academic skills of reading and understanding content material, understanding math word problems, and writing with appropriate language and vocabulary (Dist. Ex. 3 at p. 2). The November 2022 IEP described the student's difficulties in these areas, consistent with the psychoeducational evaluation report (Dist. Exs. 1 at p. 2; 3 at p. 2).

¹⁹ The psychoeducational report indicated that, in a school setting, abilities within the perceptual reasoning domain were typically associated with the academic skills of reasoning through math problems and inferential reading comprehension (Dist. Ex. 3 at p. 2). The November 2022 IEP described the student's skills in this area consistent with the psychoeducational evaluation (compare Dist. Ex. 1 at pp. 1-2, with Dist. Ex. 3 at p. 3).

²⁰ The student reportedly benefited from verbal reassurance from the examiner to complete the spelling task (Dist. Ex. 1 at p. 3; see Dist. Ex. 3 at p. 3).

the average range (Dist. Ex. 1 at p. 2; see Dist. Ex. 3 at pp. 3, 5). The student "was able to identify three-digit numbers, [perform] measurement[s], [perform] skip counting and sequencing with two-digit numbers, solve addition word problems, perform mental math accurately[,] and interpret graphs," but she "made errors on items assessing her skills in computing with coins and telling time" (Dist. Ex. 1 at p. 2; Dist. Ex. 3 at p. 3).²¹ According to the IEP and the psychoeducational report, the student expressed, among other things, that math was her favorite subject in school while reading and spelling, which she found to be "very difficult," were "her least favorite school activities" (compare Dist. Ex. 1 at pp. 3-4, with Dist. Ex. 3 at pp. 3-4).

Turning to the student's classroom functioning, the November 2022 IEP indicated that the student could not participate in the general education curriculum due to her delays in the area of reading and writing and that she needed support from a special education teacher (see Dist. Ex. 1 at p. 5).²² Regarding reading, specifically, the IEP reported the following information: the student's reading skills were "below grade level expectations"; according to the parent, the student's reading challenges "affect[ed] her participation in class"; according to the student's school, her comprehension skills were stronger than her reading skills; the student could "decode short phrases and digraphs" but "need[ed] to work on suffices [sic] and blends, glued sounds[,] and complex sounds"; and the student could "answer basic 'wh' question[s] but ha[d] difficulty with higher order questions" (id. at pp. 2-4, 23).^{23, 24} In writing, the IEP reported that the student made "letter reversals[,] especially with b and d"; "need[ed] reminders to punctuate sentences"; and needed "sentence starters to write" (id. at p. 3). Regarding math, the IEP reported that the student "ha[d] mastered the multiplication tables and underst[ood] that division is inverse of multiplication" but had difficulty with multistep, multi-operational word problems (id.).

Regarding speech, the IEP reported that the student "present[ed] with expressive and receptive language delays" and needed to improve her retelling and vocabulary skills (Dist. Ex. 1 at p. 3). As for the student's social development, the IEP indicated that the student "need[ed] to work on following directions and developing coping skills" (Dist. Ex. 1 at p. 4). The IEP also noted the mother's concern that the student did "not think she [wa]s good enough" and struggled to make friends (id. at pp. 4, 23).²⁵

²¹ The evaluator opined that the student's score on the math concepts and applications "subtest may have been an underrepresentation of her true abilities in math" (Dist. Ex. 3 at p. 3; see Dist. Ex. 1 at pp. 2-3). According to the evaluator, the student "may have scored lower due to low motivation and frustration tolerance," as evidenced in her "comments about wanting the test to be over" because "she wanted to go home" (Dist. Ex. 3 at p. 3; see Dist. Ex. 1 at pp. 2-3).

²² The November 2022 IEP noted that, according to her mother, the student needed a small class (Dist. Ex. 1 at pp. 4, 23).

²³ The November 2022 IEP described student's reading level as Fountas & Pinnel (F&P) Level E (Dist. Ex. 1 at p. 3).

²⁴ The student's classroom teacher from SINAI at YCQ participated in the November 2022 CSE meeting (Dec. 12, 2024 Tr. p. 8; Dist. Ex. 3 at p. 23).

²⁵ The student's mother reported to the November 2022 CSE that the student had friends, but not many (see Dist. Ex. 1 at pp. 4, 23).

According to the IEP, the parent reported that the student was healthy and without any physical limitations (Dist. Ex. 1 at p. 4). While the IEP contained no reference to the October 2022 OT evaluation, the IEP indicated that the student had difficulty with visual motor skills, using a tripod grasp, and using classroom tools appropriately (Dist. Exs. 1 at p. 4; 5 at pp. 1, 6).²⁶

Based on the foregoing, the district had sufficient evaluative information from testing and the input of her teachers and providers regarding the student's learning style, academic performance, and functional abilities and the present levels of performance included in the November 2022 IEP show that the district relied on that information and accurately reflected the student's needs. Notwithstanding the sufficient information available to the November 2022 CSE, and as discussed below, the November 2022 CSE failed to recommend an appropriate classroom setting for the student.

C. November 2022 IEP Recommendation for a 12:1+1 Special Class

The parents contend that the district failed to meet its burden of proving that a 12:1+1 special class placement for only ELA, writing, and social studies was appropriate for the student. In that regard, the parents argue that, although the school psychologist testified that she did not believe the student's reading and writing deficits would affect her in math and science, the totality of the evidence showed that the student needed special education support for math and science as well her other academic subjects. The district contends that the CSE's placement recommendation was appropriate because the student was performing on grade level in math, had good comprehension skills, and could have benefited from interaction with nondisabled peers.

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]).²⁷ Under State law, however, the burden of proof has been placed on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see Hardison v. Bd. of Educ. of the Oneonta City Sch. Dist., 773 F.3d 372, 386 [2d Cir. 2014]; C.F. v. New York City Dep't of Educ., 746 F.3d 68, 76 [2d Cir. 2014]; R.E., 694 F.3d at 184-85). In an impartial hearing, the district must therefore prove that the IEP it created was appropriate to meet the student's special education needs by "offer[ing] a cogent and responsive explanation for [its] decisions that shows the IEP [wa]s reasonably calculated to enable the

²⁶ Consistent with the recommendation in the OT evaluation report, the November 2022 CSE recommended that the student continue to receive individual OT twice per week for 30 minutes (compare Dist. Ex. 5 at pp. 1, 5, with Dist. Ex. 1 at p. 16).

²⁷ Ordinarily, 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., 685 F.3d at 225 n.3; 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]).

[student] to make progress appropriate in light of [her] circumstances" (Endrew F., 580 U.S. at 404).

Here, the district's presentation of evidence included the November 2022 IEP; a June 2023 prior written notice and school location letter; documents resulting from the district's fall 2022 reevaluation of the student, namely, the psychoeducational evaluation report, the social history update, and the OT evaluation report; as well as testimony from the school psychologist who participated in the November 2022 CSE meeting and a special education teacher at the assigned public school (see Sept. 4, 2024 Tr. pp. 51-53; Oct. 31, 2024 Tr. pp. 80-91; Dec. 12, 2024 Tr. pp. 5-17; Dist. Exs. 1-6).

The November 2022 CSE identified strategies to address the student's management needs, including scaffolding, praise and encouragement, positive reinforcement, prompting and redirection, breaks, on-task focusing prompts, and preferential seating (Dist. Ex. 1 at pp. 4-5). Review of the student's November 2022 IEP shows that the CSE developed academic annual goals to improve the student's ability to answer higher-order thinking questions from text read independently, independently decode and encode unfamiliar words using phonics skill strategies, use transition words to produce written paragraphs, and use an editing checklist to write and self-correct sentences and passages (id. at pp. 6-9). Social/emotional and speech-language annual goals in the IEP were designed to improve the student's ability to identify the reason why and use self-regulation/coping strategies when upset, improve emotional awareness, decipher new vocabulary based on context clues, and summarize and retell text heard or read in complete sentences (verbally and in writing) (id. at pp. 10-13). Additionally, the CSE developed an annual goal to improve the student's hand strength and fine motor skills when using classroom tools (id. at p. 15).

As stated previously, the November 2022 CSE recommended a 12:1+1 special class placement for ELA, writing, and social studies instruction, together with related services (Dist. Ex. 1 at pp. 16-17). Both the November 2022 IEP and June 2023 prior written notice indicated that the November 2022 CSE considered other placement options for the student, namely, integrated co-teaching (ICT) services and a 12:1+1 special class in a specialized school, but rejected those options as not intensive enough to meet the student's needs or too intensive, respectively (compare Dist. Ex. 1 at p. 23, with Dist. Ex. 2 at p. 2). The IEP also stated that the student required support from a special education teacher due to her delays in the areas of reading and writing (Dist. Ex. 1 at p. 5).

According to the school psychologist, the CSE purposely declined to recommend a 12:1+1 special class for math because the student was functioning on grade level in math (Dec. 12, 2024 Tr. p. 16; Dist. Ex. 6 ¶¶ 1, 11).²⁸ The school psychologist further testified the student did not have deficits in math and that "plac[ing] [the student] in a 12:1[+]1 classroom may have hindered her progress in [that] area," explaining that the CSE aimed to target weaknesses and increase strengths

²⁸ State regulation provides that "the maximum class size for special classes containing students whose management needs interfere with the instructional process, to the extent that an additional adult is needed within the classroom to assist in the instruction of such students, shall not exceed 12 students, with one or more supplementary school personnel assigned to each class during periods of instruction" (8 NYCRR 200.6[h][4][i]).

(Dec. 12, 2024 Tr. pp. 16-17; Dist. Ex. 6 ¶ 11). According to the school psychologist, the CSE believed that the student was able to perform similarly to her peers in math, and by recommending a general education classroom for math, the CSE aimed to build on that area of strength for the student (see Dec. 12, 2024 Tr. p. 17; Dist. Ex. 6 ¶ 11).

With regard to the student's classroom functioning in math, the IEP reflected that the student "ha[d] mastered the multiplication tables and underst[ood] that division is inverse of multiplication;" but also that the student had difficulty with multi-step, multi-operational word problems; and, according to the parent report in the social history, the student could not complete word-based math problems independently (Dist. Exs. 1 at p. 3; 3 at p. 1; 4 at p. 1). Thus, the CSE's determination that the student did not have deficits in math appears to be based on the student's performance on the KTEA-3 math concepts and applications subtest, during which the student was not required to solely read math questions, because the report indicated that the examiner presented the questions both orally and in print (see Dist. Ex. 3 at p. 3).

As for the CSE's decision to recommend a general education science class, the school psychologist testified that, despite her "difficulty in reading," the student had good comprehension skills and could "benefit from her non-disabled peers [in] a general education environment" (Dec. 12, 2024 Tr. p. 17). Although the school psychologist's explanation was theoretically logical, it did not adequately address the parents' concern that the student's reading deficits would have affected her performance in other subjects, or the November 2022 CSE's determination that the student "c[ould not] participate in the general education curriculum as she present[ed] [with] delays in the areas of reading and writing," such that she "need[ed] support from [a] special education teacher" (Dist. Ex. 1 at pp. 4, 5).

Despite awareness that the student had difficulty with "comprehension of text that she read independently," as well as multi-step, multi-operational word problems, and despite its determination that the student needed more support during ELA, writing, and social studies instruction than a classroom where ICT services were delivered would have offered, the November 2022 CSE recommended no special education support for the student in her fifth grade math and science classes (see Dist. Exs. 1 at pp. 3, 16; 2 at pp. 1-2).²⁹ While I acknowledge the district's obligation to ensure the student's access to nondisabled peers to the maximum extent appropriate (see 20 U.S.C. § 1412[a][5][A]; 34 CFR 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc][2], 200.4[d][4][ii], 200.6[a][1]), considering the student's skill delays, as described above, I am not convinced that the student could have completed assignments such as solving word problems independently in a general education math class or performed adequately in a general education science class without some special education support. The evidence in the hearing record suggests, instead, that the although the student may not have required a special class placement for math and science, she required some support to address her reading and writing needs arising during math and science instruction, support which may have been provided by recommendations such as ICT services, consultant teacher services, or resource room services (see Dist. Ex. 1 at pp. 1-4; 2 at pp. 1-2; 3 at pp. 1-5; 4 at p. 1; 6 ¶¶ 5-11).

²⁹ During cross-examination, the school psychologist agreed that the student was performing at a first grade reading level at the time of the November 2022 CSE meeting (Dec. 12, 2024 Tr. at p. 14).

Based on the foregoing, I find that the district did not meet its burden of proving that the recommended placement, which limited the student's special class instruction to ELA, writing, and social studies and assigned the student to fifth grade general education classes for math and science, in conjunction with the recommended related services, resulted in an IEP with sufficiently supportive programming to address the student's needs (see, e.g., Application of a Student with a Disability, Appeal No. 24-524 [finding that the district failed to prove that the recommended placement, which limited the student's special class instruction to ELA and math and assigned the student to ninth-grade general education classes for science and social studies, was sufficiently supportive to meet the student's needs where the IEP acknowledged that the student could not participate in the general education curriculum]). In other words, the evidence in the hearing record does not support the IHO's determination that the November 2022 IEP offered the student a FAPE. Given that the November 2022 IEP was the only IEP in place for the 2023-24 school year, I find that the district denied the student a FAPE for the entire 2023-24 school year.

Having found that the student was denied a FAPE for the 2023-24 school year, it is not necessary to address the additional grounds alleged by the parents in their cross-appeal in support of their claim that the district denied the student a FAPE for the 2023-24 school year, including their claims that the assigned school was not capable of implementing the November 2022 IEP.

VII. Conclusion

In summary, the district's purported failure to hold an annual review meeting during the 2023-24 school year was outside the scope of the impartial hearing and, thus, the IHO erred in determining that the district denied the student a FAPE on that basis. However, review of the hearing record leads me to conclude that the IHO erred in determining that the November 2022 IEP offered the student a FAPE; and, given that the November 2022 IEP was the only IEP in place for the 2023-24 school year, I find that the district denied the student a FAPE for the entire 2023-24 school year. Finally, as neither the appropriateness of SINAI as a unilateral placement for the student for the 2023-24 school year nor equitable considerations are disputed on appeal, the parents are entitled to funding of the cost of the student's tuition at SINAI for the entire 2023-24 school year.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

THE CROSS-APPEAL IS SUSTAINED.

IT IS ORDERED that the IHO's decision, dated January 13, 2025, is modified to find that the student was denied a FAPE for the entire 2023-24 school year;

IT IS FURTHER ORDERED that the district shall reimburse the parents for the tuition paid to SINAI in the amount of \$1,500.00, and the district shall fund the student's remaining tuition balance for the 2023-24 school year, in the amount of \$118,500.00, by direct payment to SINAI.

Dated: **Albany, New York**
 August 14, 2025

STEVEN KROLAK
STATE REVIEW OFFICER