The University of the State of New York

The State Education Department
State Review Officer
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No. 17-040

Application of a STUDENT WITH A DISABILITY, by her parent, for review of a determination of a hearing officer relating to the provision of educational services by the Board of Education of the Massapequa Union Free School District

Appearances:
Guercio & Guercio, LLP, attorneys for respondent, Randy Glasser, Esq., of counsel

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 the decision of an impartial hearing officer (IHO) which granted respondent's (the district's) motion to dismiss the parent's due process complaint notice, dated February 27, 2017, with prejudice. The appeal must be sustained, and for reasons explained more fully below, this matter must be remanded to the IHO for further administrative proceedings.[1]

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

[1] In September 2016, Part 279 of the Practice Regulations was amended, which became effective January 1, 2017, and are applicable to all appeals served upon an opposing party on or after January 1, 2017 (see N.Y. Reg., Sept. 28, 2016, at pp. 37-38; N.Y. Reg., June 29, 2016, at pp. 49-52; N.Y. Reg., Jan. 27, 2016, at pp. 24-26). Although some of the relevant events at issue in this appeal occurred before the effective date of the 2016 amendments, the new provisions of Part 279 apply, as the request for review was served upon the opposing party after January 1, 2017; therefore, citations contained in this decision are to the amended provisions of Part 279 unless otherwise specified.

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[a]). 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

In this case, the student's educational history, as well as the procedural history of this matter, are described in some detail in a related appeal simultaneously filed by the parent; as such, the parties' familiarity will be presumed (see Application of a Student with a Disability, Appeal No. 17-039 [decided herewith]). Briefly, however, the CSE convened on November 9, 2016 for a

"[p]rogram [r]eview" pursuant to the parent's request (IHO Ex. 1 at p. 5).[2, 3] As reported in the comments section of the November 2016 IEP, the student had "not attended school this year" due to the parent's "disagreement with the recommended placement" (id.). Acknowledging the parent's concerns, the November 2016 CSE discussed "sending additional packets" to other BOCES' locations, as well as "resending packets" to outside school districts "who may have appropriate openings" for the student (id.). According to the comments in the IEP, the parent agreed to "send out the packets but stated that she want[ed] [the student] educated in the district's 8:1:4 class" (id.). The CSE discussed "how an in district placement [was] not appropriate" given the student's "current functioning levels and needs" (id. at pp. 5-6). As a result, the parent "requested home instruction with related services as an interim placement while packets [were] being sent out to other programs," which the CSE agreed to and memorialized in the November 2016 IEP (id. at pp. 5-6, 16). Based upon the IEP, the student—in addition to the home-based services previously recommended—would receive five 60-minute sessions per week of individual home instruction; four 30-minute sessions per week of individual, home-based speech-language therapy; four 30-minute sessions per week of individual, home-based occupational therapy (OT) (id.).[4] The parent agreed with the provision of these services (id. at p. 6).

A. Due Process Complaint Notice

In a February 2017 due process complaint notice, the parent alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2016-17 school year (see IHO Ex. 1 at pp. 1, 3-4).[5] Specifically, the parent "disput[ed]" the November 2016 IEP and alleged that the district failed to provide the student with a "proper level of necessary school day services" (id. at p. 3). In addition, the parent asserted that the student did not receive speech-language therapy services "from the beginning of the 2016-2017 school year until on or about November 21st, 2016," and requested compensatory educational services—consisting of 46 30-minute sessions of speech-language therapy—for the district's failure to provide these services (id.).

[2] Although the IHO never scheduled—or held—either a prehearing conference or impartial hearing dates in this matter, the district submitted a hearing record to the Office of State Review related to this appeal, which consists of documents identified as IHO exhibits (see IHO Exs. 1-9). However, it is altogether unclear how the IHO entered these documents into evidence when neither party appeared at an impartial hearing. Regardless, for ease of reference, citations in the decision will be to the IHO exhibits submitted by the district.

[3] When the November 2016 CSE convened, the same parties were already engaged in an impartial hearing (impartial hearing 1) concerning the same student to resolve issues raised by the parent in two due process complaint notices (dated May 2016 and August 2016), which the IHO consolidated pursuant to State regulation (see IHO Ex. 2 at pp. 1-3). Near the conclusion of impartial hearing 1, the parent prepared and filed a due process complaint notice, dated February 27, 2017 (February 2017 due process complaint notice) (see IHO Exs. 1 at p. 1; 2 at pp. 1-3; see generally Application of a Student with a Disability, Appeal No. 17-039).

[4] The November 2016 IEP indicates that in August 2016, "[a]n amendment was signed" that provided the student with five 120-minute sessions per week of individual home-based ABA instruction; two 30-minute sessions per week of individual home-based speech-language therapy; and two 30-minute sessions per week of individual home-based OT (IHO Ex. 1 at pp. 5-6, 16). The November 2016 IEP appears to indicate that the services agreed to be provided to the student by home instruction at the November 2016 CSE meeting would be in addition to those home-based services added via amendment in August (id.).

[5] The parent incorporated a copy of the student's November 2016 IEP within the February 2017 due process complaint notice (see IHO Ex. 1 at pp. 5-18).

Similarly, the parent alleged that the student did not receive OT services "from the beginning of the 2016-2017 school year until December 5th, 2016," and requested compensatory educational services—consisting of 50 30-minute sessions of OT—for the district's failure to provide these services (id.). Next, the parent alleged that the summer 2015 and summer 2016 services were not appropriate for the student, noting that although the student did not "master" all of the annual goals worked on during the 2014-15 school year, she only worked on a "portion" of the annual goals during the summer sessions (id.). The parent also alleged that the district failed to offer the student a "placement/program" in the least restrictive environment (LRE) "within her home district with access and interaction to non-disabled peers" (id. at p. 4). Additionally, the parent alleged that the district continued to "deny [the student] access to education in the in district class of 8:1:4," and the parent requested an "appropriate placement in the LRE" within the district for the student and "compensatory related services and instruction as compensatory relief" (id.). The parent further asserted that she had to "employ[] services providers in the area of Speech, OT and ABA since the district failed to provide the services" mandated on the student's IEP for the 2016-17 school year, and the parent requested "compensation" for these services (id.). The parent also asserted that the district failed to fully evaluate the student in all areas of suspected disability, including but not limited to, the following areas: speech-language, OT, cognitive functional evaluations, neuropsychological, and physical therapy (PT) (id.). Overall, the parent alleged that the district failed to offer the student a FAPE "since September 2016" (id.).

In addition to the foregoing, the parent included a "Proposed Solution" in the February 2017 due process complaint notice (IHO Ex. 1 at p. 19). Here, the parent specifically requested the following as the relief "to the extent known and available at the time of filing:" all the relief in the due process complaint notice, 350 hours of compensatory ABA instruction, 46 sessions of compensatory speech-language therapy, 50 sessions of compensatory OT, and $750,000.00 to "compensate for stress, [the] financial burden of bringing this action and out of pocket educational expenses, as well as detriment to [the student's] education due to a large lapse of time without necessary services, supports and social interaction with non-disabled/typical peers" (id.). Finally, the parent requested that the district place the student in an in-district program with access to nondisabled peers with a "1:1" teaching assistant (id.).

B. Events Post-Dating the Due Process Complaint Notice

Pursuant to State regulation, the IHO presiding over impartial hearing 1 was assigned to hear the matter initiated by the parent's February 2017 due process complaint notice (see IHO Ex. 2 at pp. 1-2; 8 NYCRR 200.5[j][3][ii][a][1]-[2]). In an interim decision, dated March 2, 2017, the IHO declined to consolidate the parent's February 27, 2017 due process complaint notice with the issues presented for resolution at impartial hearing 1 (see IHO Ex. 2 at pp. 1, 3-4).[6]

On or about March 7, 2017, the district moved to dismiss the parent's May 2016, August 2016, and February 2017 due process complaint notices (see IHO Ex. 4 at pp. 1, 4, 6). Without admitting liability and, at the same time, reserving "all rights and defenses," the district argued that the parent's case was moot because it offered to provide the student with all of the relief requested in the parent's May 2016 and August 2016 due process complaint notices, to wit: an in-district,

[6] Consistent with State regulation, the IHO remained assigned as the IHO presiding over the parent's February 2017 due process complaint notice as a separate matter (see 8 NYCRR 200.5[j][3][ii][a][2]).

8:1+4 special class placement for the student with 2.5 hours per day of discrete trials and a 1:1 teaching assistant; 750 "makeup hours of ABA instruction;" 136 30-minute "makeup sessions" of speech-language therapy; 198 hours of "makeup ABA" special education itinerant teacher (SEIT) services at home; 140 30-minute sessions of "makeup [OT];" 5 30-minute sessions per week each of individual speech-language therapy, OT, and PT; and to evaluate the student in all areas of suspected disability (compare IHO Ex. 4 at pp. 1, 3-4, with IHO Ex. 4 at p. 4). In a footnote within the motion to dismiss, the district explained that the services offered to the student also rendered the parent's "new due process complaint" notice—which the parent hand-delivered to the district at impartial hearing 1 on February 27, 2017—moot (IHO Ex. 4 at p. 4 n.1; see IHO Ex. 4 at Ex. A at pp. 2-3; IHO Ex. 4 at Ex. B at p. 20).

On or about March 17, 2017, the parent's advocate responded to the district's motion to dismiss (see IHO Ex. 5 at p. 1). The parent's advocate, among other things, denied the district's assertion that the services offered to the student rendered the parent's May 2016 and August 2016 due process complaint notices moot, noting that the district had "not offered a stipulation of settlement which the parent ha[d] agreed to" (id. at pp. 1-2). The parent's advocate also argued that the parent requested a CSE meeting, which was scheduled for March 24, 2017, and the parent's due process complaint notices could not be rendered moot "based upon what the district has claimed they will offer at said CSE meeting" (id. at p. 1). Additionally, the parent's advocate noted that the IHO had no authority to "uphold the decisions made at a CSE meeting" and that the parent sought a ruling on whether the district failed to offer the student a FAPE for the "past two years" (id.).

On March 24, 2017, the CSE convened to conduct a "[p]rogram [r]eview" (IHO Ex. 7 at p. 1). The parent and the parent's advocate attended the March 2017 CSE meeting (id.). At the CSE meeting, the parent rejected the Board of Cooperative Educational Services' (BOCES') 8:1+1 special class discussed at a February 2017 CSE meeting (id.). As noted in the comments section of the IEP, the March 2017 CSE then discussed and proposed an in-district, 8:1+4 special class placement and related services, as well as updated evaluations of the student "in all areas of suspected disability" when she began transitioning into the "new school environment" (id.). The parent rejected the in-district, 8:1+4 special class placement and the updated evaluations of the student, but she asked the CSE to "consider [the student's] acceptance" into a program in another school district (id. at p. 2). The director of special education from the other school district, who attended the CSE meeting, discussed the student's acceptance into a "12:1:1 integrated class," which the parent agreed with and accepted (id.). The March 2017 CSE also recommended the following related services: five 30-minute sessions per week of individual speech-language therapy; five 30-minute sessions per week of individual OT; five 30-minute sessions per week of individual PT; the services of a full-time, 1:1 teaching assistant; the use of an augmentative communication device; and 10 hours per week of behavior consultant services (direct and indirect services) to assist the student's transition into the new school environment (id. at pp. 1-2, 11-12). The March 2017 IEP also included recommendations for the following home-based services: five 120-minute sessions per week of individual ABA services, two 30-minute sessions per week of individual speech-language therapy, two 30-minute sessions per week of individual OT, and two 60-minute sessions per month of parent counseling and training (id. at pp. 1-2, 11).

In addition to the foregoing, the CSE noted within the comments section of the March 2017 IEP that it "discussed make up hours for previously missed sessions" for the student (IHO Ex. 7 at

p. 2). The March 2017 CSE further noted in the comments section of the IEP that the "make-up services will not expire until completed," and thereafter, indicated that the "make-up hours" included the following: 750 make up hours of ABA instruction; 136 30-minute make up sessions of speech therapy; 198 hours of makeup ABA SEIT services in the home; and 140 30-minute sessions of makeup OT (id.). In addition, the March 2017 CSE indicated that the "[m]akeups" could be "completed at home and . . . on weekdays up to 8 pm; on weekends and on school breaks, with the exception of federal holidays" (id.).

By letter dated April 7, 2017, the district forwarded copies of the March 2017 IEP, together with a corresponding prior written notice, to the IHO pursuant to the IHO's request during impartial hearing 1 (see IHO Exs. 6-8). Within the April 2017 letter, the district reiterated its request to dismiss the parent's May 2016, August 2016, and February 2017 due process complaint notices with prejudice, and as moot, given that "no live dispute remain[ed]" (IHO Ex. 6 at p. 1).

C. Impartial Hearing Officer Decision

In a decision dated May 4, 2017, the IHO granted the district's motion to dismiss the parent's February 2017 due process complaint notice with prejudice (see IHO Decision at pp. 1-2, 6-7).[7] After setting forth the procedural history and other related actions still pending, the IHO analyzed whether "any underlying dispute" remained by examining the claims in the February 2017 due process complaint notice, as well as the relief specified by the parent (id. at pp. 1-3). The IHO then described the district's motion to dismiss, including the special education program, related services, and "makeup" services the district offered to provide to the student in advance of preparing and submitting its written motion to dismiss the action as moot (id. at pp. 3-4; compare IHO Ex. 4 at p. 4, with IHO Ex. 4 at Ex. A at pp. 1-2).

With respect to the motion to dismiss, the IHO indicated that the district argued for dismissal based upon mootness, basing its argument solely on the contention that the district had "agreed to provide the parent with everything demanded" in the due process complaint notices (IHO Decision at p. 3). The IHO also noted that, in response to the district's motion, the parent's advocate argued that the IHO did not have "authority to uphold decisions made at a CSE meeting"; the due process complaint notice "could not be dismissed in advance of the March 24, 2017 [CSE] meeting, based on a promise of an offer to be made at the meeting"; and finally, the parent was "entitled to a ruling on the accusation" that the district failed to offer the student a FAPE (id. at p. 4).

Next, the IHO indicated that based upon the documentation provided to the IHO following an April 5, 2017 telephone conference call, the IHO concluded that the district's "action at the March 24, 2017 [CSE] meeting operate[d] to address all the parent's demands for programmatic and service relief" in the due process complaint notice (IHO Decision at pp. 5-6). While noting the parent's objection to dismissal as the "district's failure to concede that it had not provided FAPE to [the student]," the IHO ultimately determined—relying solely upon an SRO decision cited by the district—that the district's offer to provide all of the relief requested by the parent left "no remaining dispute regarding the student's identification, evaluation, eligibility, or educational

[7] The IHO's decision in this case substantially mirrored the decision issued in impartial hearing 1 (compare IHO Decision at pp. 1-7, with IHO Ex. 9 at pp. 1-7).

placement" of the student (id. at pp. 6-7). Additionally, the IHO noted that although the district did not "admit failure on its part," this was "not relevant to a decision concerning the relief sought by the parent" (id. at p. 7). Finally, the IHO indicated that the parent's claims for "compensation for 'employee services' in speech, OT, and ABA and for $750,000 to compensate for stress, unspecified financial expenses, and detriment to the [student's] education" were "beyond the authority of an IHO" (id. at p. 7). Consequently, the IHO dismissed these claims for relief, and dismissed the February 2017 due process complaint notice with prejudice (id.).[8]

IV. Appeal for State-Level Review

The parent appeals, and initially asserts that the IHO failed to hold any impartial hearing dates in this matter, and further, that she had a "right to establish an administrative record." Turning to the enumerated issues in the request for review, the parent alleges that the IHO violated her "due process rights" by dismissing the case without holding any hearing dates or "establishing an appropriate hearing record." The parent next asserts that the IHO erred in failing to address or rule on the issue of pendency. Additionally, the parent alleges that the IHO erred by failing to grant relief to the student, who was without an appropriate program from August 2016 through April 2017. The parent also alleges that the IHO erred in dismissing her request for "monetary damages" as beyond the IHO's authority, when the IHO admitted during impartial hearing 1 that she possessed the "authority to rule on out of pocket expenses." Next, the parent argues that the IHO erred in declining to issue a determination regarding whether the district failed to offer the student a FAPE, which was the "crux of the case." The parent also argues that the IHO erred by dismissing the case based upon the CSE's decision to provide services to the student, which the IHO had "no authority to enforce" and which would force the parent to proceed to another impartial hearing in order to exhaust these claims "instead of being able to go straight to court." Finally, the parent reserves her right to challenge the program and placement recommendations in the March 2017 IEP, which the parent acknowledges were beyond the scope of the parent's "initial hearing request."

As relief, the parent seeks to overturn, annul, or reverse the IHO's decision and requests that the matter be remanded to the same IHO—or to a new IHO—to establish an "appropriate hearing record for review." The parent also seeks "additional relief of compensatory special education instruction hours, monetary reimbursement," and any other relief deemed appropriate by the IHO.

In an answer, the district responds to the parent's allegations. Primarily, the district asserts that the parent's request for review must be dismissed for failing to comply with the regulations

[8] As a reminder to the IHO, amendments to Part 279 of the Practice Regulations became effective for appeals initiated on or after January 1, 2017 (see N.Y. Reg., Sept. 28, 2016, at pp. 37-38; N.Y. Reg., June 29, 2016, at pp. 49-52; N.Y. Reg., Jan. 27, 2016, at pp. 24-26). Upon reviewing the IHO's decision in this case, it appears that the appeal notice on the last page continues to reflect appeal timeframes and practices that were in effect prior to the effective date of the new regulations, and thus, may no longer accurately set forth timeframes or practices for appeals (compare IHO Decision at p. 8, with 8 NYCRR 279.2, 279.4, 279.5, 279.8, 279.9, 279.11, and 279.13).

governing practice before the Office of State Review.[9] The district also argues that the parent's request for review must be dismissed on the bases of improper forum shopping, raising issues for the first time on appeal, a remand to the IHO is not appropriate or necessary to complete the hearing record, the IHO's decision was appropriate, the parent's case is moot, and any delay in the impartial hearing process resulted from the behavior of the parent's advocate.[10] Overall, the district generally argues to dismiss the parent's request for review and to uphold the IHO's decision in its entirety.

V. Applicable Standards

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see generally Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 239 [2009]; Bd. of Educ. v. Rowley, 458 U.S. 176, 180-83, 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; 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. Florida 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 recently 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. __, 137 S. Ct. 988, 999 [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

[9] As one argument on this point, the district asserts that the parent's request for review must be dismissed because it failed to include the required verification pursuant to 8 NYCRR 279.7(d). However, contrary to the district's assertion, the parent's request for review filed with the Office of State Review did include the necessary verification; thus, the district's argument is without merit and will not be further addressed.

[10] The district contends, in part, that the parent's reservation of rights to challenge the program and placement recommendations in the March 2017 IEP must be disregarded or deemed abandoned by an SRO since the parent did not raise this claim in the underlying due process complaint notices. However, the parent recognized that these issues were beyond the scope of her "initial request" and that, generally, the hearing record did not include evidence to make a determination on these issues. In addition, a plain reading of this portion of the parent's request for review does not reveal that the parent sought any determination on these issues on appeal, but rather, sought only to reserve her right to challenge the same. As such, this argument, too, is without merit and will not be further addressed.

(M.H., 685 F.3d at 245; A.C. v. Bd. of Educ., 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., 137 S. Ct. at 1001). 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., 137 S. Ct. at 1001 [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 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]).[11]

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]). 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; Gagliardo, 489 F.3d at 111; Cerra, 427 F.3d at 192). "Reimbursement merely requires [a district] to belatedly pay expenses that it should have paid all along and would have borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148).

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

VI. Discussion

A. Preliminary Matters—Compliance with Practice Regulations

The district contends that the parent's request for review must be dismissed because it does not include the proper notice with the specific regulatory language (8 NYCRR 279.3) and fails to include the proper endorsement with the parent's name, mailing address, and telephone number (8 NYCRR 279.7[a]). The district further asserts that the request for review must be dismissed because it does not clearly indicate the reasons for challenging the IHO's decision (8 NYCRR 279.4[a]), and fails to comply with the requirements set forth in 8 NYCRR 279.8(c).

Each request for review filed with the Office of State Review must contain a "Notice of Request for Review," the content of which is set forth in State regulation and generally notifies a responding party of the requirements with respect to preparing, serving, and filing an answer to the request for review (8 NYCRR 279.3).[12] State regulations further provide that a request for review "shall clearly specify the reasons for challenging the [IHO's] decision, identify the findings, conclusions, and order to which exceptions are taken, or the failure or refusal to make a finding, and shall indicate what relief should be granted by the [SRO] to the petitioner" (8 NYCRR 279.4[a]). In relevant part, all papers—including a request for review—submitted to the Office of

[11] The Supreme Court recently 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., 137 S. Ct. at 1000).

[12] This is a separate filing from the notice of intention to seek review (compare 8 NYCRR 279.2, with 8 NYCRR 279.3).

State Review related to an appeal must "be endorsed with the name, mailing address, and telephone number of the party submitting the same" (8 NYCRR 279.7[a]).

Additionally, the request for review "must conform to the form requirements in section 279.8 of this Part" (8 NYCRR 279.4[a]). State regulation requires, in relevant part, that a request for review shall set forth:

> (1) the specific relief sought in the underlying action or proceeding;
>
> (2) 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, and identifying the precise rulings, failures to rule, or refusals to rule presented for review; and
>
> (3) citations to the record on appeal, and identification of the relevant page number(s) in the hearing decision, hearing transcript, exhibit number or letter and, if the exhibit consists of multiple pages, the exhibit page number.

(8 NYCRR 279.8[c][1]-[3]).

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]).

Turning to the district's specific contentions, although the district correctly indicates that the parent did not serve a "Notice of Request for Review," it is unclear how the absence of such notice requires a dismissal of the parent's request for review when the district timely prepared, served, and filed an answer responding to the allegations in the parent's request for review (8 NYCRR 279.3). Moreover, the district does not otherwise allege how the absence of such notice compromised or prejudiced its ability to timely prepare, serve, or file an answer. With regard to the district's contentions relative to the form and content of the request for review, I decline to dismiss the parent's request for review on these grounds, given that the district was able to respond to the allegations raised in the request for review in an answer and there is no indication that it suffered any prejudice as a result (see Application of a Student with a Disability, Appeal No. 17-015; Application of a Student with a Disability, Appeal No. 16-040; Application of a Student with a Disability, Appeal No. 15-069; Application of a Student with a Disability, Appeal No. 15-058). In this instance, while the failure to comply with practice regulations will not ultimately result in a dismissal of the parent's appeal, the parent is cautioned that, while a singular failure to comply with the practice requirements of Part 279 may not warrant an SRO exercising his or her discretion to dismiss a request for review (8 NYCRR 279.8[a]; 279.13; see Application of a Student with a

Disability, Appeal No. 16-040), an SRO may be more inclined to do so after a party's repeated failure to comply with the practice requirements (see Application of a Student with a Disability, Appeal No. 17-015; Application of a Student with a Disability, Appeal No. 16-040).[13]

B. Unaddressed Issues and Remand

For essentially the same reasons set forth in Application of a Student with a Disability, Appeal No. 17-039, and explained more fully below, this matter must be remanded for further administrative proceedings. Here—as in the parent's related appeal—the IHO determined that the "district action" at the March 2017 CSE meeting "operate[d] to address all the parent's demands for programmatic and service relief" in the due process complaint notices—which left "no remaining dispute regarding the student's identification, evaluation, eligibility, or educational placement" or in other words, rendered the parent's case moot—and thus, the IHO did not address any of the specific issues raised by the parent in the February 2017 due process complaint notice

[13] For future reference, the parent is reminded that newly enacted regulations governing the practice before the Office of State Review were amended and became effective for appeals filed on or after January 1, 2017 (see N.Y. Reg., Sept. 28, 2016, at pp. 37-38; N.Y. Reg., June 29, 2016, at pp. 49-52; N.Y. Reg., Jan. 27, 2016, at pp. 24-26). Instructions about the amended practice regulations—as well as forms consistent with the amended practice regulations—have been provided on the Office of State Review's website under the links titled "Revised 2017 Appeals Process" and "Revised Regulations (effective 1/1/2017)" (see http://www.sro.nysed.gov).

(IHO Decision at pp. 2-7; see Application of a Student with a Disability, Appeal No. 17-039).[14] However, the parent correctly argues that the IHO erred in granting the district's motion to dismiss because, contrary to the IHO's finding, the "district action" at the March 2017 CSE meeting did not operate to address "all" of the parent's demands for relief.

When comparing the relief requested by the parent in the May 2016, August 2016, and February 2017 due process complaint notices with the "make-up hours" set forth in the March 2017 IEP, it appears that the March 2017 CSE offered make-up hours or services that directly corresponded to the compensatory educational services and/or make-up services quantitatively identified by the parent (compare IHO Ex. 7 at pp. 1-2, with IHO Ex. 1 at pp. 1, 19, and IHO Ex.

[14] Notwithstanding this determination, the IHO did not refer to any legal standard she applied in order to reach this conclusion (see generally IHO Decision). The relevant law establishes that a dispute between parties must at all stages be "real and live," and not "academic," or it risks becoming moot (see Lillbask v. State of Conn. Dep't of Educ., 397 F.3d 77, 84 [2d Cir. 2005]; Toth v. New York City Dep't of Educ., 2017 WL 78483, at *9 [E.D.N.Y. Jan. 9, 2017]; F.O. v. New York City Dep't of Educ., 899 F. Supp. 2d 251, 254 [S.D.N.Y. 2012]; Patskin v. Bd. of Educ., 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]; Student X v. New York City Dep't of Educ., 2008 WL 4890440, at *12 [E.D.N.Y. Oct. 30, 2008]; J.N. v. Depew Union Free Sch. Dist., 2008 WL 4501940, at *3-*4 [W.D.N.Y. Sept. 30, 2008]; see also Coleman v. Daines, 19 N.Y.3d 1087, 1090 [2012]; Hearst Corp. v. Clyne, 50 N.Y.2d 707, 714 [1980]). In general, cases dealing with issues such as desired changes in IEPs, specific placements, and implementation disputes may become moot at the end of the school year because no meaningful relief can be granted (see, e.g., V.M. v. N. Colonie Cent. Sch. Dist., 954 F. Supp. 2d 102, 119-21 [N.D.N.Y. 2013]; M.S. v. New York City Dep't of Educ., 734 F. Supp. 2d 271, 280-81 [E.D.N.Y. 2010]; Patskin, 583 F. Supp. 2d at 428-29; J.N., 2008 WL 4501940, at *3-*4; but see A.A. v. Walled Lake Consol. Schs., 2017 WL 2591906, at *6-*9 [E.D. Mich. June 15, 2017] [considering question of the "potential mootness of a claim for declaratory relief"]). Furthermore, while the parent claims that the district's failure to admit that it did not offer the student a FAPE is "the crux of the case," a party's "unwillingness to admit liability is insufficient, standing alone, to make [a] case a live controversy," where the party has otherwise agreed to fully resolve the dispute (McCauley v. Trans Union, L.L.C., 402 F.3d 340, 341-42 [2d Cir. 2005]). However, in most instances, a claim for compensatory education will not be rendered moot (see Mason v. Schenectady City Sch. Dist., 879 F. Supp. 215, 219 [N.D.N.Y. 1993] [demand for compensation to correct past wrongs remains as a live controversy even if parents are satisfied with student's current placement]; but see Toth, 2017 WL 78483, at *10 [finding the matter moot where the student had been receiving at-home therapy pursuant to resolution agreements, which was "the very compensatory education that [the parent] sought"]). Additionally, a claim may not be moot despite the end of a school year for which the student's IEP was written, if the conduct complained of is "capable of repetition, yet evading review" (see Honig v. Doe, 484 U.S. 305, 318-23 [1987]; Lillbask, 397 F.3d at 84-85; Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1040 [5th Cir. 1989]). The "capable of repetition, yet evading review" exception applies only in limited situations (City of Los Angeles v. Lyons, 461 U.S. 95, 109 [1983]), and is severely circumscribed (Knaust v. City of Kingston, 157 F.3d 86, 88 [2d Cir. 1998]). It must be apparent that "the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration" (Murphy v. Hunt, 455 U.S. 478, 482 [1982]; see Knaust, 157 F.3d at 88). Many IEP disputes escape a finding of mootness due to the short duration of the school year facing the comparatively long litigation process (see Lillbask, 397 F.3d at 85). Controversies are "capable of repetition" when there is a reasonable expectation that the same complaining party would be subjected to the same action again (Weinstein v. Bradford, 423 U.S. 147, 149 [1975]; see Hearst Corp., 50 N.Y.2d at 714-15; see also L.K. v. New York City Dep't of Educ., 674 Fed. App'x 100, 102 [2d Cir. Jan. 19, 2017]). To create a reasonable expectation of recurrence, repetition must be more than theoretically possible (Murphy, 455 U.S. at 482; Russman v. Bd. of Educ., 260 F.3d 114, 120 [2d Cir. 2001]). Mere speculation that the parties will be involved in a dispute over the same issue does not rise to the level of a reasonable expectation or demonstrated probability of recurrence (Russman, 260 F.3d at 120; but see A.A., 2017 WL 2591906, at *7-*9 [finding that the controversy as to "whether and to what extent the [s]tudent can be mainstreamed" constituted a "recurring controversy [that] will evade review during the effective period of each IEP for the [s]tudent"]).

9 at pp. 3-4).[15] For example, the parent requested 400 hours of compensatory ABA instruction in the May 2016 due process complaint notice and 350 hours of compensatory ABA instruction in the February 2017 due process complaint notice, for a total of 750 hours of compensatory ABA instruction (see IHO Exs. 1 at p. 19; 9 at p. 3). In the March 2017 IEP, the CSE indicated that the student would receive "750 makeup hours of ABA instruction" (IHO Ex. 7 at p. 2). The same analysis holds true for the parent's request for speech-language therapy, where she sought 90 sessions in the May 2016 due process complaint notice and 46 sessions in the February 2017 due process complaint notice for a total of 136 sessions and the March 2017 CSE indicated that the student would receive "136 [30-]minute make up sessions of speech therapy" (IHO Exs. 1 at pp. 1, 19; 7 at p. 2; 9 at p. 3). In the May 2016 due process complaint notice, the parent requested 198 hours of ABA SEIT make up hours in the home, and in the March 2017 IEP, the CSE indicated that the student would receive "198 hours of makeup ABA SEIT services in the home" (IHO Exs. 7 at p. 2; 9 at p. 3). As for OT, the parent requested 90 sessions in the May 2016 due process complaint notice and 50 sessions in the February 2017 due process complaint notice for a total of 140 sessions, and the March 2017 CSE indicated that the student would receive "140 [30-]minute sessions of makeup [OT]" (IHO Exs. 1 at pp. 1, 19; 7 at p. 2; 9 at p. 3).[16] Finding that the foregoing relief constituted all of the parent's demands—including the relief requested in the February 2017 due process complaint notice—the IHO granted the district's motion to dismiss the February 2017 due process complaint notice (see IHO Decision at pp. 3-7).

But the parent's February 2017 due process complaint notice also included requests for relief that were not quantitatively identified, which neither the district nor the IHO identified or addressed or which the IHO otherwise improperly dismissed. For example, the parent alleged in the February 2017 due process complaint notice that she requested "compensatory related services and instruction as compensatory relief" for the district's alleged failure to offer the student an "appropriate placement/program in the LRE setting within her home district with access and interaction to non-disabled peers" (IHO Ex. 1 at p. 4). A review of the March 2017 IEP does not reveal whether, or if, the CSE addressed this demand for relief despite offering to provide the student with a total of "750 makeup hours of ABA instruction" (compare IHO Ex. 1 at p. 4, with IHO Ex. 7 at p. 2). Similarly, the parent asserted in the February 2017 due process complaint notice that she had to "employ[] services providers in the area of Speech, OT and ABA since the district failed to provide the services" mandated on the student's IEP for the 2016-17 school year, and the parent requested "compensation" for these "out of pocket educational expenses" (IHO Ex. 1 at pp. 4, 19). The March 2017 IEP did not address the parent's request to be reimbursed for out-of-pocket educational expenses because the IHO dismissed the parent's claims for "compensation for 'employee services' in speech, OT, and ABA and for $750,000 to compensate for stress, unspecified financial expenses, and detriment to the [student's] education" as "beyond the authority

[15] While the IHO declined to consolidate the issues raised in the parent's February 2017 due process complaint with the impartial hearing already in progress, it is necessary to include references to the relief requested in the May 2016 and August 2016 due process complaint notices for the sole purpose of illustrating the relief contemplated by the district as the basis for its motion to dismiss and the IHO's decision to grant such motion.

[16] In addition, the March 2017 IEP included recommendations—consistent with the parent's relief requested in the August 2016 due process complaint notice—for programmatic changes to the student's IEP: namely, school-based related services consisting of a total of five 30-minute sessions per week each of speech-language therapy, OT, and PT; as well as the services of a full-time, 1:1 teaching assistant (see IHO Exs. 7 at pp. 1-2, 11; 9 at pp. 3-4; Application of a Student with a Disability, Appeal No. 17-039).

of an IHO" (IHO Decision at p. 7; see IHO Ex. 7 at pp. 1-2). While the IHO may have correctly dismissed the parent's requests for monetary damages as relief to "compensate for stress, unspecified financial expenses, and detriment to the [student's] education," an IHO may—upon finding that the district failed to offer the student a FAPE and upon the presentation of sufficient evidence—award the parent reimbursement for the costs of any out-of-pocket educational expenses she incurred (see Carter, 510 U.S. 7; Burlington, 471 U.S. at 370-71; Gagliardo, 489 F.3d at 111; Cerra, 427 F.3d at 192; see also 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148). As such, the IHO improperly dismissed the parent's request to be reimbursed for the costs of her out-of-pocket expenses (see IHO Decision at p. 7). In light of the due process complaint notice identifying additional demands for relief that remained unaddressed by the March 2017 IEP—and which the parent continues to press on appeal, including her request to be reimbursed for out-of-pocket expenses and additional compensatory educational services—the IHO's decision granting the district's motion to dismiss must be vacated.

Next, and contrary to the district's arguments, the matter must be remanded for further administrative proceedings. This is especially true where, as here, the IHO dismissed the parent's case without holding any impartial hearing and without providing either party an opportunity to testify, to present witnesses, or to present documentary evidence, and thus, failing to create an administrative hearing record with regard to any of these issues (see generally IHO Exs. 1-9).[17] Absent such evidence, a meaningful review of the parties' dispute is not possible with the current state of the hearing record. Therefore, I find it appropriate to remand this matter to the IHO for a determination on the merits of these remaining issues and requests for relief set forth in the parent's February 2017 due process complaint notice (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]). Furthermore, the IHO is strongly encouraged to conduct a prehearing conference for the purpose of clarifying and narrowing these issues, as well as the remaining requests for relief (8 NYCRR 200.5[j][3][xi]). Additionally, the IHO is reminded that any relief awarded to the parent must be predicated upon a finding that the district did not offer the student a FAPE. Should the IHO ultimately conclude that the district failed to offer the student a FAPE, it would be reasonable for the IHO to consider the make-up services and/or compensatory educational services the district offered to provide to the student—as set forth in the March 2017 IEP—when crafting an award of compensatory educational services as an equitable remedy that is tailored to meet the unique circumstances of this case (see Wenger v. Canastota, 979 F. Supp. 147 [N.D.N.Y. 1997]).

If either of the parties chooses to appeal the IHO's decision after remand, the merits of all claims contested on appeal will be addressed at that time (cf. D.N. v. New York City Dep't of

[17] As a reminder, while impartial hearing rights include the right of both a parent and a district to "present evidence and confront, cross-examine, and compel the attendance of witnesses" (34 CFR 300.512[a][2]; see 8 NYCRR 200.5[j][3][xii]), State regulation requires that an IHO "exclude evidence that he or she determines to be irrelevant, immaterial, unreliable, or unduly repetitious" (8 NYCRR 200.5[j][3][xii][c]).

Educ., 905 F. Supp. 2d 582, 589 [S.D.N.Y. 2012] [remanding unaddressed claims to the SRO and, as a consequence, declining to reach the merits of the issues reviewed by the IHO and the SRO]).

VII. Conclusion

As discussed above, while the district offered to provide the parent with much of the relief she sought in the February 2017 due process complaint notice, the IHO erred in finding that no dispute remained relating to the relief sought by the parent. In particular, as detailed above, the makeup services offered by the district in the March 2017 IEP did not clearly address the parent's requests for compensatory relief that were not quantified in her due process complaint notice or her request for reimbursement of out-of-pocket expenses. Accordingly, the matter must be remanded to the IHO for a determination on the merits of the parent's claims with respect to whether the district offered the student a FAPE with respect to the issues set forth in the parent's February 2017 due process complaint notice. If the IHO determines that the district failed to offer the student a FAPE, she must then determine what, if any, relief is warranted under the circumstances of this case, keeping in mind the principle that equitable considerations are relevant to fashioning relief under the IDEA (see Doe v. E. Lyme Bd. of Educ., 790 F.3d 440, 454 [2d Cir. 2015]; E.M. v. New York City Dep't of Educ., 758 F.3d 442, 461 [2d Cir. 2014]).

THE APPEAL IS SUSTAINED.

IT IS ORDERED that that the matter be remanded to the same IHO who issued the May 4, 2017, decision to determine whether the district offered the student a FAPE based upon the issues set forth in the parent's February 2017 due process complaint notice, and therefore, whether the parent is entitled to the outstanding relief identified herein; and

IT IS FURTHER ORDERED that if the IHO who issued the May 4, 2017 decision is not available, another IHO shall be appointed in accordance with the district's rotational selection procedures and State regulations.

Dated: **Albany, New York**
July 19, 2017

CAROL H. HAUGE
STATE REVIEW OFFICER