The University of the State of New York

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

No. 23-247

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

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

Law Offices of Adam Dayan, PLLC, attorneys for respondents, by Amled Pérez, 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 the decision of an impartial hearing officer (IHO) which found that it failed to offer an appropriate educational program to the student and ordered it to reimburse respondent (the parent), in part, for the costs of the student's tuition at Reach for the Stars—Learning Center (RFTS-LC) for the 2022-23 school year and for the costs of a privately obtained evaluation.[1] The appeal must be sustained in part.

[1] According to the hearing record, RFTS-LC worked in conjunction with Reach for the Stars Learning and Developing, LLC (RFTS-LD) to provide services to students (see Parent Ex. P at p. 1). In addition, the evidence reflects that while RFTS-LC had operated for approximately two decades, RFTS-LD took over RFTS-LC in 2021 (see Tr. pp. 250-52). For purposes of this decision, when described collectively or when not specified which entity was referenced, RFTS-LD and/or RFTS-LC will be referred to simply as RFTS. Neither RFTS-LD nor RFTS-LC has been approved by the Commissioner of Education as a school or agency with which districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

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]).[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[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

[2] Similarly, when a preschool student in New York is eligible for special education services, the IDEA calls for the creation of an IEP, which is delegated to a local Committee on Preschool Special Education (CPSE) that includes, but is not limited to, parents, teachers, an individual who can interpret the instructional implications of evaluation results, and a chairperson that falls within statutory criteria (Educ. Law § 4410; see 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.1[mm], 200.3, 200.4[d][2], 200.16; see also 34 CFR 300.804).

evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

Given the limited issues on appeal, a full recitation of the student's educational history is unnecessary. Briefly, however, the student in this case was evaluated and initially found eligible for special education as a preschool student with a disability in May 2022 by a CPSE (see Parent Exs. C at pp. 1; E at pp. 2-5). The May 2022 CPSE developed an IEP for the 2022-23 school year (see generally Parent Ex. C).

In a letter to the district dated June 8, 2022—which the parent sent to a CPSE administrator via email on June 8, 2022—the parent indicated that, while the student's evaluations had "revealed that his developmental age" and his "communication skills" were delayed, the evaluations did not include any "specific recommendations about academic or educational supports needed in school . . . to ensure he progress[ed]" (Parent Ex. D at p. 1; see Dist. Ex. 6 at pp. 3-5).[3] The parent further indicated that subsequent related services' evaluations for occupational therapy (OT), physical therapy (PT), and speech-language therapy completed in April 2022 also did not include any "frequency recommendations" for the student (Parent Ex. D at p. 1). According to the parent, she took the student for a "more comprehensive" evaluation in May 2022, and attached a "summary letter" composed by the evaluator, who had diagnosed the student as having an autism spectrum disorder and an expressive language disorder, which, according to the parent, the "previous evaluation did not mention" (id.). The parent noted that the privately obtained evaluation included recommendations for the student, such as applied behavior analysis (ABA) and parent training with ABA, and that the student had been receiving "private ABA, OT and [speech-language therapy]" (id.). The parent also noted that the student needed to continue to receive these services once he "age[d] out of [the] E[arly] I[ntervention]" Program (EIP) services (id.).[4] Additionally, the parent indicated that she had received the CPSE IEP, but it did not include a "disability classification," "recommendations for any services and no 12-month services" (id.). As a result, the parent indicated that she had "absolutely no information about what program [or] services the CPSE [wa]s putting in place" for the student as of "July 1, 2022" and she was "very concerned" (id.).

[3] The CPSE administrator was the same individual who had attended the May 2022 CPSE meeting to develop the student's 2022-23 IEP as both the CPSE administrator and the district representative (compare Parent Ex. E at p. 1, with Parent Ex. C at p. 2).

[4] Generally, a student's eligibility for EIP services ends as of his or her third birthday (see 20 U.S.C. § 1432[5][A]; 34 CFR 303.211[a]); however, State law provides that children in EIPs who are evaluated by the district's CPSE before their third birthday and found to be eligible for preschool educational services under the IDEA, and turn three years of age on or before the last day of August, are eligible to continue receiving EI services until the first day of September of the same calendar year if their parents so elect (see Pub. Health Law § 2541[8][a][i]). [23-238] The student in this case turned three years old in June 2022 (see Parent Ex. C at p. 1).

In response to the parent's June 8, 2022 letter, the CPSE administrator sent an email to the parent on June 8, 2022 (see Parent Ex. E at p. 1). In the email, the CPSE administrator confirmed a conversation she had with the parent and forwarded another email previously sent to the parent on May 12, 2022, which had the "attached paperwork" from the CPSE meeting held that day (id. at pp. 1-2). The CPSE administrator noted that, pursuant to the paperwork already sent to the parent, the student's "[c]lassification" was "preschool student with a disability" (id.). The CPSE administrator also noted that attempts had been made to "try to find [a] placement" for the student at "several schools," however, given the time of year, "most schools [we]re filled for July" (id.).

Thereafter, in a letter to the district dated June 21, 2022 (sent via email), the parent repeated much of the same information from her previous letter to the CPSE administrator, dated June 8, 2022 (compare Parent Ex. B, with Parent Ex. D). For example, the parent reiterated that the student's evaluations had not included any recommendations, she had obtained a "more comprehensive assessment" of the student, and that the CPSE IEP had not included any disability classification, recommendation for services, or a recommendation for 12-month services (compare Parent Ex. B at p. 1, with Parent Ex. D at p. 1). The parent also noted that the student's May 2022 IEP did not reflect his need for ABA and did not indicate a date for implementation of the program (see Parent Ex. B at p. 1). Next, the parent detailed her visit to one "possible placement" and her attempt to visit a second location (id. at p. 2). Having determined that the district failed to provide a "proper program with ABA and the required supports for July 2022," the parent notified the district of her intentions to unilaterally place the student at RFTS-LC "as of the first day of school" for the 2022-23 school year and to seek funding for the costs of the student's tuition from the district (id. at p. 2). The parent requested that the district provide the student with transportation with the appropriate accommodations, or she would seek funding from the district for those costs as well (id.).

According to the evidence in the hearing record, the student began attending RFTS-LC on July 6, 2022 (see Parent Exs. S at p. 1; T). On September 16, 2022, the parent executed an enrollment contract with RFTS-LD for the student's attendance during the 2022-23 school year from July 6, 2022 through June 30, 2023 (see Parent Ex. P at pp. 1, 4).

On September 28, 2022, the parent sent the CPSE administrator a copy of the student's completed May 2022 evaluation report (see Parent Ex. L at p. 1). A CPSE reconvened on October 13, 2022 to review and discuss the parent's privately obtained May 2022 evaluation of the student and developed an IEP for the student (October 2022 IEP) (see Parent Ex. M at p. 1; see also Parent Ex. N at pp. 1-2). In a letter dated October 19, 2022, the parent informed the district (including the CPSE administrator) of her concerns with the October 2022 IEP, and by due process complaint notice dated October 31, 2022, alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2022-23 school year (see Parent Exs. A at pp. 1-9; O at pp. 1-2). As relief for the district's failure to offer the student a FAPE, the parent sought an order directing the district to directly or prospectively fund the costs of the student's tuition at RFTS-LC for the 2022-23 school year and to reimburse the parent for the costs of the student's May 2022 evaluation (see Parent Ex. A at p. 10).

A. Impartial Hearing Officer Decision

On January 3, 2023, the parties proceeded to an impartial hearing, which concluded on August 9, 2023, after 10 total days of proceedings (see Tr. pp. 1-311). Following the conclusion of the impartial hearing, both parties submitted closing briefs to the IHO for consideration (see generally IHO Exs. I-II). In a decision dated October 4, 2023, the IHO found that the district failed to offer the student a FAPE for the 2022-23 school year and that RFTS-LC was an appropriate unilateral placement; although the IHO found equitable considerations weighed in favor of the parent's requested relief, the IHO limited the relief awarded to the parent to reimbursement or funding of the "actual costs associated with the placement of the student at [RFTS] for the 2022/23 school year" (see IHO Decision at pp. 7-18 [emphasis in original]).

As part of the IHO's analysis of whether RFTS-LC was an appropriate unilateral placement, the IHO noted that, although the district's cross-examination of the parent's witnesses "did not generate a material challenge" to its appropriateness, the district "did generate a material challenge as to the accuracy of the records as to [the student's] attendance correlating to billing for services allegedly rendered" (IHO Decision at pp. 14-15). More specifically, the IHO found that the district had established that the student—on approximately four days between July 2022 and March 2023—was absent or had left RFTS-LC early, yet the session logs used to document services delivered to the student had reflected that RFTS-LC still delivered services to the student on those same dates (id. at p. 15). However, the IHO rejected the district's contention that these discrepancies led to the wholesale conclusion that the billing or service records were riddled with other errors, noting that there were no other discrepancies "brought forth in an evidentiary manner" at the impartial hearing (id.).

Next, the IHO indicated that witness testimony offered by the parent at the impartial hearing had "acknowledged issues with billing" in his testimony, and thereafter, the parent attempted to offer "an additional affidavit" from the very same witness "explaining costs for the 2022/23 school year and correcting the previously noted inconsistencies" (IHO Decision at p. 15). However, the IHO sustained the district's objection to its admission, and found that the "subsequent affidavit [wa]s not deemed credible" (id.). In light of the evidence presented, the IHO concluded that the parent was entitled to an award "reduced to account for the aforementioned proven discrepancies" and that the district was "only to fund [the student's] services upon proof of actual services rendered" to him (id. at p. 16).

After examining the appropriateness of the parent's unilateral placement, the IHO turned to the issue of whether the parent was entitled to be reimbursed for the costs of the privately obtained May 2022 evaluation of the student (see IHO Decision at p. 16). The IHO concluded that the parent was entitled to be reimbursed for the costs of the evaluation because the district "failed to raise any dispute to said requested reimbursement relief" (id.). Next, the IHO found that the parent was entitled to transportation for the student because the district similarly "failed to raise any dispute to said requested reimbursement relief" (id.).

Turning, next, to the question of equitable considerations, the IHO found that, based on the evidence in the hearing record, the parent "cooperated with the [district] and [ha]d not interfere[d] with the [district's] obligation to provide a FAPE" for the 2022-23 school year (IHO Decision at p. 17). Specifically, the IHO noted that the parent attended two CPSE meetings, visited preschools

suggested by the district, and "timely" notified the district of her intentions to unilaterally place the student at RFTS-LC for the 2022-23 school year (id.). The IHO also found that the parent's financial situation limited her ability to pay the student's tuition at RFTS-LC (id. at pp. 17-18). Overall, the IHO concluded that the evidence in the hearing record supported a finding that equitable considerations weighed in favor of the parent's requested relief (id. at p. 18).

In light of these findings, the IHO ordered the following as relief: the district—upon the presentation of "proof of services rendered to the student"—shall "directly fund [or] reimburse the costs for services actually rendered to the student at [RFTS-LC] for the 2022[-]23 school year at reasonable market rates" and that such award "take into account the aforementioned proven discrepancies in the record keeping" (IHO Decision at p. 19 [emphasis in original]). In addition, the IHO ordered the district to reimburse the parent for the costs of the privately obtained May 2022 evaluation and to provide appropriate round-trip transportation for the student to attend RFTS-LC (id.).

IV. Appeal for State-Level Review

The district appeals, arguing that the IHO erred by ordering the district to fund the student's services at RFTS-LC that were "'actually rendered.'" The district contends that the evidence in the hearing record is unclear with respect to what services were actually rendered to the student at RFTS-LC. The district also contends that the costs for the student's services at RFTS-LC were excessive, especially given the student's attendance and progress. Additionally, the district asserts that the services rendered at RFTS-LC are segregable and exceed the level of services required for a FAPE. As a final point, the district argues that the IHO erred by ordering the district to reimburse the parent for the costs of the privately obtained May 2022 evaluation of the student. As relief, the district seeks to overturn the IHO's awarded relief and to reduce the segregable RFTS services costs accordingly.

In an answer, the parent responds to the district's allegations and generally argues to uphold the IHO's decision in its entirety. The parent attaches additional documentary evidence for consideration on appeal.

The district submits a reply to the parent's answer, and therein, objects to the consideration of the parent's additional documentary evidence.

V. Applicable Standards

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see generally Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 239 [2009]; Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206-07 [1982]). A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; T.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 151, 160

[2d Cir. 2014]; R.E. v. New York City Dep't of Educ., 694 F.3d 167, 189-90 [2d Cir. 2012]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 [2d Cir. 2012]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]).

A 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. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 252 [2d Cir. 2009]). 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 v. Arlington Cent. Sch. Dist., 489 F.3d 105, 111 [2d Cir. 2007]; 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).

A private school placement must be "proper under the Act" (Carter, 510 U.S. at 12, 15; Burlington, 471 U.S. at 370), i.e., the private school offered an educational program which met the student's special education needs (see Gagliardo, 489 F.3d at 112, 115; Walczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998]). A parent's failure to select a program approved by the State in favor of an unapproved option is not itself a bar to reimbursement (Carter, 510 U.S. at 14). The private school need not employ certified special education teachers or have its own IEP for the student (Carter, 510 U.S. at 13-14). Parents seeking reimbursement "bear the burden of demonstrating that their private placement was appropriate, even if the IEP was inappropriate" (Gagliardo, 489 F.3d at 112; see M.S. v. Bd. of Educ. of the City Sch. Dist. of Yonkers, 231 F.3d 96, 104 [2d Cir. 2000]). "Subject to certain limited exceptions, 'the same considerations and criteria that apply in determining whether the [s]chool [d]istrict's placement is appropriate should be considered in determining the appropriateness of the parents' placement'" (Gagliardo, 489 F.3d at 112, quoting Frank G. v. Bd. of Educ. of Hyde Park, 459 F.3d 356, 364 [2d Cir. 2006]; see Rowley, 458 U.S. at 207). Parents need not show that the placement provides every special service necessary to maximize the student's potential (Frank G., 459 F.3d at 364-65). When determining whether a unilateral placement is appropriate, "[u]ltimately, the issue turns on" whether the placement is "reasonably calculated to enable the child to receive educational benefits" (Frank G., 459 F.3d at 364; see Gagliardo, 489 F.3d at 115; Berger v. Medina City Sch. Dist., 348 F.3d 513, 522 [6th Cir. 2003] ["evidence of academic progress at a private school does not itself establish that the private placement offers adequate and appropriate education under the IDEA"]). A private placement is appropriate if it provides instruction specially designed to meet the unique needs of a student (20 U.S.C. § 1401[29]; Educ. Law § 4401[1]; 34 CFR 300.39[a][1]; 8 NYCRR 200.1[ww]; Hardison v. Bd. of Educ. of the Oneonta City Sch. Dist., 773 F.3d 372, 386 [2d Cir. 2014]; C.L. v. Scarsdale Union Free Sch. Dist., 744 F.3d 826, 836 [2d Cir. 2014]; Gagliardo, 489 F.3d at 114-15; Frank G., 459 F.3d at 365).

The Second Circuit has set forth the standard for determining whether parents have carried their burden of demonstrating the appropriateness of their unilateral placement.

> No one factor is necessarily dispositive in determining whether parents' unilateral placement is reasonably calculated to enable the child to receive educational benefits. Grades, test scores, and regular advancement may constitute evidence that a child is receiving educational benefit, but courts assessing the propriety of a unilateral placement consider the totality of the circumstances in determining whether that placement reasonably serves a child's individual needs. To qualify for reimbursement under the IDEA, parents need not show that a private placement furnishes every special service necessary to maximize their child's potential. They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction.

(Gagliardo, 489 F.3d at 112, quoting Frank G., 459 F.3d at 364-65).

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

1. Scope of Review

Although the IHO found that the district failed to offer the student a FAPE for the 2022-23 school year and that the parent sustained her burden to establish the appropriateness of the student's unilateral placement at RFTS-LC for the 2022-23 school year, the district has not appealed either of these adverse determinations; as a result, these determinations have become final and binding on the parties and will not be reviewed on appeal (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; see M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6-*7, *10 [S.D.N.Y. Mar. 21, 2013]).

2. Additional Documentary Evidence

As noted, the parent attached additional documentary evidence with the answer for consideration on appeal (see generally Answer Ex. LL). The district objects to its consideration (see generally Reply). Generally, documentary evidence not presented at an impartial hearing is considered in an appeal from an IHO's decision only if such additional evidence could not have been offered at the time of the impartial hearing and the evidence is necessary in order to render a decision (see, e.g., Application of a Student with a Disability, Appeal No. 08-030; Application of a Student with a Disability, Appeal No. 08-003; see also 8 NYCRR 279.10[b]; L.K. v. Ne. Sch. Dist., 932 F. Supp. 2d 467, 488-89 [S.D.N.Y. 2013] [holding that additional evidence is necessary only if, without such evidence, the SRO is unable to render a decision]).

The parent's additional documentary evidence consists of the same evidence proffered by the parent on the final day of the impartial hearing, which the IHO purposefully excluded at that time and which the IHO subsequently determined was not credible (compare Answer ¶ 3, and Answer Ex. LL, with Tr. pp. 304-07, and IHO Decision at p. 16). Generally, an SRO gives due deference to the credibility findings of an IHO unless non-testimonial evidence in the hearing record justifies a contrary conclusion or the hearing record, read in its entirety, compels a contrary conclusion (see Carlisle Area Sch. v. Scott P., 62 F.3d 520, 524, 528-29 [3d Cir. 1995]; P.G. v City Sch. Dist. of New York, 2015 WL 787008, at *16 [S.D.N.Y. Feb. 25, 2015]; M.W. v. New York City Dep't of Educ., 869 F. Supp. 2d 320, 330 [E.D.N.Y. 2012], aff'd, 725 F.3d 131 [2d Cir. 2013]; Bd. of Educ. of Hicksville Union Free Sch. Dist. v. Schaefer, 84 A.D.3d 795, 796 [2d Dep't 2011]). Here, the hearing record lacks a compelling reason to reverse IHO II's determination on credibility. The parent offers no explanation or argument as to why the IHO's finding regarding the credibility of parent exhibit LL should be disturbed, and points to no other non-testimonial evidence to justify a conclusion contrary to the IHO's determination at this juncture. Instead, the parent contends that exhibit LL could be used by the district's "Implementation Unit to determine the cost of services 'actually rendered,'" and the total cost of the student's program at RFTS-LC for the 2022-23 school year (Answer ¶ 3).[5] In light of the IHO's credibility finding in the decision, coupled with the IHO's preclusion of the same evidence offered at the impartial hearing and the parent's stated rationale for its consideration on appeal, I decline to exercise my discretion to accept and consider the additional documentary evidence on appeal as it is not now needed to render a decision.

B. Equitable Considerations

The district contends that the IHO erred by awarding any reimbursement or funding relief to the parent because the parent's evidence was unreliable with regard to the student's attendance and with regard to what services were actually rendered at RFTS-LC during the 2022-23 school year; the cost of the RFTS-LC services were excessive in light of the student's attendance and progress; and the RFTS-LC services were segregable and exceeded the level of services required to offer a FAPE to the student.

The final criterion for a reimbursement award is that the parents' claim must be supported by equitable considerations. Equitable considerations are relevant to fashioning relief under the IDEA (Burlington, 471 U.S. at 374; R.E., 694 F.3d at 185, 194; M.C. v. Voluntown Bd. of Educ., 226 F.3d 60, 68 [2d Cir. 2000]; see Carter, 510 U.S. at 16 ["Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable"]; L.K.

[5] There is no evidence in the hearing record that describes how the district's "Implementation Unit" functions or interacts with parents and their representatives, but the essence of the parent's reasoning is inescapable, which is to delegate the function of determining appropriate equitable relief in this proceeding back to a subset of school district officials who operate the unit, as if this is merely a ministerial matter to be effectuated. But that would only prompt the question of why this proceeding is necessary at all. The district clearly has an opposing viewpoint with regard to relief insofar as its belief that services billed to the parent by RFTS-LD cost too much and there is allegedly inadequate proof of how much of the programming was delivered, and the parent does not explain her view of how the district's Implementation Unit would resolve such disputes between warring litigants.

v. New York City Dep't of Educ., 674 Fed. App'x 100, 101 [2d Cir. Jan. 19, 2017]). With respect to equitable considerations, the IDEA also provides that reimbursement may be reduced or denied when parents fail to raise the appropriateness of an IEP in a timely manner, fail to make their child available for evaluation by the district, or upon a finding of unreasonableness with respect to the actions taken by the parents (20 U.S.C. § 1412[a][10][C][iii]; 34 CFR 300.148[d]; E.M. v. New York City Dep't of Educ., 758 F.3d 442, 461 [2d Cir. 2014] [identifying factors relevant to equitable considerations, including whether the withdrawal of the student from public school was justified, whether the parent provided adequate notice, whether the amount of the private school tuition was reasonable, possible scholarships or other financial aid from the private school, and any fraud or collusion on the part of the parent or private school]; C.L., 744 F.3d at 840 [noting that "[i]mportant to the equitable consideration is whether the parents obstructed or were uncooperative in the school district's efforts to meet its obligations under the IDEA"]).

Before turning to the merits of the district's arguments, it must be noted that while it appears that the IHO examined the accuracy of the student's attendance record correlating to the billing for services within the same section of the decision analyzing the appropriateness of the student's unilateral placement at RFTS-LC, these issues more properly relate to whether equitable considerations weighed in favor of the parent's requested relief and not to the appropriateness of the unilateral placement (see IHO Decision at pp. 13-15). Notably however, the IHO did not appear to factor this issue into the analysis of the appropriateness of the unilateral placement, but rather, considered it as a factor when ordering the relief awarded to the parent (id. at pp. 15-16, 19). To be clear, the IHO separately addressed equitable considerations in the decision, and found that the parent cooperated with the district and that she did not interfere with the district's obligation to offer the student a FAPE for the 2022-23 school year (id. at pp. 18-19). The IHO also found that the parent timely notified the district of her intention to unilaterally place the student at RFTS-LC and established that she had limited financial means to pay the cost of the student's tuition (id. at p. 18). Thus, to the extent that the district has not appealed the IHO's findings on equitable considerations that the parent timely notified the district of her intentions to unilaterally place the student, that she cooperated with the district and did not interfere with the district's obligations to offer the student a FAPE for the 2022-23 school year, this portion of the IHO's decision has also become final and binding on the parties and will not further be discussed. Accordingly, the remaining dispute on equitable grounds at issue relates to the cost of the services delivered by RFTS-LC.

1. Reliability of Evidence

Initially, the district asserts that the hearing record does not clearly indicate when the student began receiving services at RFTS-LC. In support of this assertion, the district points to inconsistent dates on some of the parent's documentary evidence, and argues that the evidence is unreliable with regard to when the student began receiving services at RFTS-LC; as a result, the district alleges that the evidence does not support a finding that the student attended or received services at RFTS-LC in July and August 2022, but instead, began the program in September 2022. Given the unreliable evidence, the district argues that any consideration of the IHO's awarded relief should be necessarily limited to the services actually rendered from September 2022 through June 2023.

The parent denies the district's assertions, arguing that the district has only now raised this argument for the first time on appeal and did not raise this argument for the IHO's consideration in a response to the due process complaint notice, in its opening or closing statements at the impartial hearing, or in its closing brief.

Upon review, the weight of the evidence in the hearing record supports a conclusion that the student began attending RFTS-LC in July 2022 during the 2022-23 school year. Specifically, the evidence reflects that the parent's 10-day notice of unilateral placement, dated June 21, 2022, informed the district that she intended to place the student at RFTS-LC "as of the first day of school" for the 2022-23 school year (Parent Ex. B at pp. 1-2); the express contract language obligated the parent to pay the cost of the student's tuition from July 6, 2022 through June 30, 2023 (see Parent Ex. P at pp. 1, 4); the attendance record demonstrates that the student began attending RFTS-LC on July 6, 2022 and continued to attend during July and August 2022 (see Parent Ex. T); the RFTS-LC session logs reveal services were delivered to the student from July 6, 2022 through August 18, 2022, as well as for the remainder of the 2022-23 school year reported (through April 2023) (see Parent Ex. S at pp. 1-4, 26); and the services' affidavits from RFTS-LC reflect that the student received services throughout July and August 2022 (see Parent Ex. R at pp. 1-2). In addition, the educational director (director) at RFTS-LC testified that the student began attending RFTS-LC in July 2022 (see Tr. pp. 186-87). She also testified that, although she did not know why the "Core Skills Summary" reflected a February 2022 admissions date for the student—especially since the summary was completed in August 2022—she believed the error could have been related to when RFTS-LC began using that specific curriculum program, which was in February 2022 (see Tr. p. 196; Parent Ex. V at p. 1). Similarly, an RFTS-LD administrator testified about the costs of the student's program from July 2022 through April 2023, and explained that, in the course of reviewing the services' affidavits and having been informed of some discrepancies, that it was possible that other errors could exist, but that those errors could be amended (see Tr. pp. 293-96; Parent Ex. JJ ¶¶ 11-12, 15; see generally Parent Ex. R).

In light of the foregoing evidence, even assuming for the sake of argument that documentary evidence mistakenly showed a date of admission to RFTS-LC as of February 2022, there is no evidence that the parent is seeking an award of tuition reimbursement outside the parameters of the express contract language, which obligates the parent's tuition expenses to those delivered between July 2022 and June 2023 (see generally Tr. pp. 1-311; Parent Exs. A-Z; AA-KK; Dist. Exs. 1-7; IHO Exs. I-II). To the extent that the evidence in the hearing record reflects that two RFTS-LC employees only worked with the student since approximately January 2023 and that RFTS-LC assessed the student's speech-language skills and OT skills after September 2022, this evidence does not equate to a finding that the student was not receiving services in July 2022—nor does the district persuasively link this evidence to such a conclusion. As a result, the district's argument must be rejected.

2. Excessive Costs and Segregable Services at RFTS-LC

Next, the district contends that the costs of the student's services at RFTS-LC, which according to the district could reach up to approximately $532,000 for the 42-week school year portion of the 2022-23, were excessive given the student's attendance and progress, since the inability to provide consistent services is another factor to be considered when balancing equitable considerations. The district also asserts that the student's services were segregable and exceeded

the level of services required to offer a FAPE. Based on these assertions, the district argues that the IHO's award should have been reduced accordingly.

In response, the parent denies the district's assertions, arguing that, even if the student's progress was "not deemed substantial or sufficient," a student's progress made at a unilateral placement is not determinative of whether the unilateral placement is appropriate. The parent also contends that the hearing record is devoid of evidence demonstrating that the RFTS service rates were not reasonable, and the district's attempt to now question the reasonableness of those rates for the first time on appeal based on the student's progress and the alleged unreliability of the service affidavits are merely "a creative attempt to litigate" the matter. The parent asserts that the RFTS service rates are determined prior to the start of the school year and the reasonableness of rates cannot retroactively be deemed unreasonable based on a student's progress, or lack thereof.

Among the factors that may warrant a reduction in tuition under equitable considerations is whether the frequency of the services or the rate for the services were excessive (see E.M., 758 F.3d at 461 [noting that whether the amount of the private school tuition was reasonable is one factor relevant to equitable considerations]). The IHO may consider evidence regarding whether the rate charged by the private agency was unreasonable or regarding any segregable costs charged by the private agency that exceed the level that the student required to receive a FAPE (see L.K. v. New York City Dep't of Educ., 2016 WL 899321, at *7 [S.D.N.Y. Mar. 1, 2016], aff'd in part, 674 Fed. App'x 100).[6] More specifically, while parents are entitled to reimbursement for the cost of an appropriate private placement when a district has failed to offer their child a FAPE, it does not follow that they may take advantage of deficiencies in the district's offered placement to obtain all those services they might wish to provide for their child at the expense of the public fisc, as such results do not achieve the purpose of the IDEA. To the contrary, "[r]eimbursement 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 [emphasis added]; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148). Accordingly, while a parent should not be denied reimbursement for an appropriate program due to the fact that the program provides benefits in addition to those required for the student to receive educational benefits, a reduction from full reimbursement may be considered where a unilateral placement provides services beyond those required to address a student's educational needs (L.K., 674 Fed. App'x at 101; see C.B. v. Garden Grove Unified Sch. Dist., 635 F. 3d 1155, 1160 [9th Cir. 2011] [indicating that "[e]quity surely would permit a reduction from full reimbursement if [a unilateral private placement] provides too much (services beyond required educational needs), or if it provides some things that do not meet educational needs at all (such as purely recreational options), or if it is overpriced"]; Alamo Heights Indep. Sch. Dist. v. State Bd. of Educ., 790 F.2d 1153, 1161

[6] Although the district's arguments do not support finding that the cost of the services provided by RFTS-LD were excessive, it is worth noting that, while the evidence in the hearing record does not support finding that the fees charged by RFTS-LD were excessive, likewise, there is also insufficient evidence in the hearing record to determine that the costs being charged by RFTS-LD were reasonable. In this instance, although I have considered remanding this matter for further development of the hearing record on this issue (see 8 NYCRR 279.10[c] [providing that a State Review Officer is authorized to remand matters back to an IHO to take additional evidence or make additional findings]), neither party has requested a remand or attempted to introduce additional evidence to show an appropriate rate for the services rendered. Accordingly, based on the limited hearing record before me, I will order that the district fund the student's services as provided by RFTS-LD.

[5th Cir. 1986] ["The Burlington rule is not so narrow as to permit reimbursement only when the [unilateral] placement chosen by the parent is found to be the exact proper placement required under the Act. Conversely, when [the student] was at the [unilateral placement], he may have received more 'benefit' than the EAHCA [the predecessor statute to the IDEA] requires"]).

Generally speaking, an excessive cost argument focuses on whether the rate charged for service was reasonable and requires, at a minimum, evidence of not only the rate charged by the unilateral placement, but evidence of reasonable market rates for the same or similar services. In this instance, the hearing record includes evidence of only those rates charged by RFTS-LD, as set forth in the contract addendum, and is otherwise devoid of any evidence regarding reasonable market rates (see Parent Ex. P at p. 5; see generally Tr. pp. 1-311; Parent Exs. A-O; Q-Z; AA-KK; Dist. Exs. 1-7; IHO Exs. I-II). In the district's closing brief, the district did not argue that RFTS-LD charged excessive rates for services, but rather, asserted that the parent participated in the IEP process, but should nevertheless be denied any relief with respect to equitable considerations (see generally IHO Ex. I).

However, now on appeal, the district contends that the "inability to provide consistent services" constitutes another factor to consider in balancing the equities when awarding relief as part of an excessive cost argument (Req. for Rev. ¶ 11). Specifically, the district argues that the student's absences, when coupled with "significant fluctuations" in his progress that did not appear to be attendance based, demonstrated that the rates charged for services at RFTS-LC were excessive and, as an example, notes that when the student received 100 hours per month of ABA in November and December 2022, the cost of the services to the student ranged between approximately $31,000.00 and $35,000.00 with the student "show[ing] inconsistent to little progress during this time" on one of his annual goals (id.).[7] This argument, however cobbled together, does not relate to an excessive cost for services provided by RFTS-LC; instead, it relates more to whether the student received an excessive amount of services—i.e., segregable services—and perhaps the appropriateness of RFTS-LC and the decisions made surrounding the delivery of services to the student, which the district has not otherwise appealed (see generally Req. for Rev. ¶¶ 7-12). Without any evidence to the contrary, the district's argument fails. With regard to excessiveness of costs, it is not this SRO's role to research and construct the appealing party's arguments or guess what they may have intended (see e.g., Gross v. Town of Cicero, Ill., 619 F.3d 697, 704 [7th Cir. 2010] [appellate review does not include researching and constructing the parties' arguments]; Fera v. Baldwin Borough, 2009 WL 3634098, at *3 [3rd Cir. Nov. 4, 2009] [a party on appeal should at least identify the factual issues in dispute]; Garrett v. Selby Connor

[7] Notably, it is well settled that a finding of progress is not required for a determination that a student's unilateral placement is adequate (Scarsdale Union Free Sch. Dist. v. R.C., 2013 WL 563377, at *9-*10 [S.D.N.Y. Feb. 4, 2013] [noting that evidence of academic progress is not dispositive in determining whether a unilateral placement is appropriate]; see M.B. v. Minisink Valley Cent. Sch. Dist., 523 Fed. App'x 76, 78 [2d Cir. Mar. 29, 2013]; D.D-S. v. Southold Union Free Sch. Dist., 506 Fed. App'x 80, 81 [2d Cir. Dec. 26, 2012]; L.K. v. Ne. Sch. Dist., 932 F. Supp. 2d 467, 486-87 [S.D.N.Y. 2013]; C.L. v. Scarsdale Union Free Sch. Dist., 913 F. Supp. 2d 26, 34, 39 [S.D.N.Y. 2012]; G.R. v. New York City Dep't of Educ., 2009 WL 2432369, at *3 [S.D.N.Y. Aug. 7, 2009]; Omidian v. Bd. of Educ. of New Hartford Cent. Sch. Dist., 2009 WL 904077, at *22-*23 [N.D.N.Y. Mar. 31, 2009]; see also Frank G., 459 F.3d at 364). However, while not dispositive, a finding of progress is, nevertheless, a relevant factor to be considered in determining whether a unilateral placement is appropriate (Gagliardo, 489 F.3d at 115, citing Berger, 348 F.3d at 522 and Rafferty v. Cranston Public Sch. Comm., 315 F.3d 21, 26-27 [1st Cir. 2002]).

Maddux & Janer, 425 F.3d 836, 841 [10th Cir. 2005] [generalized assertion of error on appeal is not sufficient]; see generally, Taylor v. Am. Chemistry Council, 576 F.3d 16, 32 n.16 [1st Cir. 2009]; Lance v. Adams, 2011 WL 1813061, at *2 [E.D.Cal. May 6, 2011] [the tribunal need not guess at the parties' intended claims]; Bill Salter Advertising, Inc. v. City of Brewton, AL, 2007 WL 2409819, at *4 n.3 [S.D.Ala. Aug. 23, 2007]). Thus, while the entire hearing record has been carefully reviewed to consider those claims that the district has specifically identified in the request for review (34 CFR 300.514[b][2]; 8 NYCRR 279.8[c]; 12[a]), I will not sift through the district's pleadings, the hearing record, and the IHO's decision for the purpose of trying to justify the district's conclusions that are based upon its speculative opinion that RFTS-LC costs a lot of money.

As a final point, although the district's arguments do not support finding that the cost of the services provided by RFTS-LD were excessive, it is worth noting that, while the evidence in the hearing record does not support finding that the fees charged by RFTS-LD were excessive, likewise, there is also insufficient evidence in the hearing record to determine that the costs being charged by RFTS-LD were reasonable. There is only evidence of the half-hour rate for each service that RFTS-LD would use to bill the parent (Parent Ex. P at p. 5), not whether such half hour rates are reasonable when compared to other ways of obtaining similar educational programming for similar students. In this instance, although the matter could be remanded for further development of the hearing record on this issue (see 8 NYCRR 279.10[c] [providing that a State Review Officer is authorized to remand matters back to an IHO to take additional evidence or make additional findings]), in my view the district should have responded with its own proposed dollar figures and some objective evidence to support its opinion that RFTS-LD charges an unfair amount for the services it provides, but neither party has requested a remand or attempted to introduce additional evidence to show an appropriate rate for the services rendered. Accordingly, based on the limited hearing record before me, I will order that the district fund the student's services actually rendered to the student at the rates set by the RFTS-LD contract addendum.

Turning now to the district's arguments that RFTS-LC's services were segregable and exceeded the level required for a FAPE, as noted in other decisions, the fee-for-service model used by RFTS-LD and RFTS-LC leaves itself particularly vulnerable to the argument that segregable services exceed the level that the student required to receive a FAPE (see L.K., 2016 WL 899321, at *7; Application of a Student with a Disability, Appeal No. 23-190; Application of a Student with a Disability, Appeal No. 23-188; Application of a Student with a Disability, Appeal No. 23-181; Application of the New York City Dep't of Educ., Appeal No. 23-151; Application of the New York City Dep't of Educ., Appeal No. 23-139; Application of the New York City Dep't of Educ., Appeal No. 23-134; Application of a Student with a Disability, Appeal No. 23-130; Application of a Student with a Disability, Appeal No. 23-054). In this matter, the district specifically argues that any relief awarded to the parent must be reduced by the charges for the "'ABA-Assessment and Evaluation' and 'Orton-Gillingham Reading—Intensive' because the [p]arents were not contractually obligated to pay for them" and for any related services charges over-and-above the frequencies and durations recommended in the student's IEP, that is, 1.5 hours per week (Req. for Rev. ¶ 12).

The parent, in response to the district's assertions, argues that, since the IHO found that the district failed to offer the student a FAPE, any argument that RFTS provided too many services cannot be based on the recommendations in the district's IEP for such services. The parent also

asserts that the hearing record contains sufficient evidence of the student's need for an individual ABA program with "PROMPT" speech-language therapy services—which the IHO found appropriate and which the district has not appealed—as well as the appropriateness of Orton-Gillingham reading instruction and the provision of related services' supervision.

Contrary to the district's assertion, the contract addendum lists both the ABA-Assessment and Evaluation service and the Orton-Gillingham Reading—Intensive service, together with each service's respective rate, as a service that could be delivered to the student (see Parent Ex. P at p. 5). Thus, it is difficult to discern how the district even plausibly contends that the parent was not contractually obligated to pay for these services when these specific services were within the contract addendum, along with every other service that could potentially be delivered to the student by RFTS-LC. Next, with regard to the related services and the provision of ABA services and ABA supervision to the student, the hearing record does not include any evidence—nor did the district make this argument to the IHO in its closing brief—that the frequencies and durations of the OT and speech-language therapy, or the ABA and ABA supervision delivered to the student at RFTS-LC were excessive or beyond what was required in order for the student to make progress (see generally Tr. pp. 1-311; Parent Exs. A-Z; AA-KK; Dist. Exs. 1-7; IHO Exs. I-II). Thus, it appears that the district seeks a per se reduction on this basis to any relief awarded to the parent. However, as the court pointed out in L.K., if a district fails to offer a FAPE, parents "will often end up paying for services that go beyond what the school district would have been required to provide if it had fulfilled its obligations under the IDEA in the first place"—but the court further noted that parents "should not be denied full reimbursement in each of these cases, as that would unfairly punish parents for finding an appropriate private placement" (2016 WL 89932, at *7). Rather, the court found that "parents' reimbursement should only be reduced if there are identifiable services, whose costs can reasonably be estimated, that are segregable from the rest of the private program and that exceed the services that constitute a FAPE" (id.). Here, the district does not point to evidence in the hearing record that establishes that the frequency and durations of the related services delivered to the student at RFTS—or for that matter, the related services' supervision—were beyond those required for the student to make progress. Thus, the district's arguments must be dismissed.

C. Independent Educational Evaluation

The district contends that the IHO erred by awarding reimbursement for the cost of the parent's privately obtained May 2022 evaluation of the student because the parent did not express any disagreement with the district evaluations. The parent points to her 10-day notice letter, as well as subsequent letters to the district, as evidence of her disagreement with the district evaluations. The parent also contends that the district did not dispute her request for reimbursement for the evaluation at the impartial hearing. Upon review, the evidence reflects that the IHO erred by awarding the parent reimbursement for the costs of the May 2022 evaluation.

The IDEA and State and federal regulations guarantee parents the right to obtain an IEE (see 20 U.S.C. § 1415[b][1]; 34 CFR 300.502; 8 NYCRR 200.5[g]; 200.16[d][3]), which is defined by State regulation as "an individual evaluation of a student with a disability or a student thought to have a disability, conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student" (8 NYCRR 200.1[z]; see 34 CFR 300.502[a][3][i]). Parents have the right to have an IEE conducted at public expense if the parent expresses

disagreement with an evaluation conducted by the district and requests that an IEE be conducted at public expense (34 CFR 300.502[b]; 8 NYCRR 200.5[g][1]; see K.B. v Pearl Riv. Union Free Sch. Dist., 2012 WL 234392, at *5 [S.D.N.Y. Jan. 13, 2012] [noting that "a prerequisite for an IEE is a disagreement with a specific evaluation conducted by the district"]; R.L. v. Plainville Bd. of Educ., 363 F. Supp. 2d. 222, 234-35 [D. Conn. 2005] [finding parental failure to disagree with an evaluation obtained by a public agency defeated a parent's claim for an IEE at public expense]).[8]

If a parent requests an IEE at public expense, the school district must, without unnecessary delay, either (1) ensure that an IEE is provided at public expense; or (2) initiate an impartial hearing to establish that its evaluation is appropriate or that the evaluation obtained by the parent does not meet the school district criteria (34 CFR 300.502[b][2][i]-[ii]; 8 NYCRR 200.5[g][1][iv]. If a school district's evaluation is determined to be appropriate by an IHO, the parent may still obtain an IEE, although not at public expense (34 CFR 300.502[b][3]; 8 NYCRR 200.5[g][1][v]). Additionally, both federal and State regulations provide that "[a] parent is entitled to only one [IEE] at public expense each time the public agency conducts an evaluation with which the parent disagrees" (34 CFR 300.502[b][5]; 8 NYCRR 200.5[g][1]). The Second Circuit Court of Appeals has recently found that, if a district and a parent agree that a student should be evaluated before the required triennial evaluation "the parent must disagree with any given evaluation before the child's next regularly scheduled evaluation occurs" or "[o]therwise, the parent's disagreement will be rendered irrelevant by the subsequent evaluation" (D.S. v. Trumbull Bd. of Educ., 975 F.3d 152, 170 [2d Cir. 2020]).

The evidence in the hearing record convinces me that the parent did not make her request in a way that the district should have expected the parent was disagreeing with an evaluation conducted by the district or that they were seeking an independent educational evaluation (IEE) at district expense. Moreover, even if the parent appropriately requested an IEE at district expense, the evidence in the hearing record does not support a finding that the evaluations relied on by the CPSE were inappropriate. In the parent's 10-day notice and subsequent letters, the parent noted that the evaluations failed to contain specific program recommendations. However, while a school district is required to ensure that students are evaluated in all areas related to the suspected disability (20 U.S.C. § 1414[b][3][B]; 34 CFR 300.304[c][4]; 8 NYCRR 200.4[b][6][vii]), it is not necessarily required that the district, through its evaluation, "identify the underlying causes" of the student's needs (MB v. City Sch. Dist. of New Rochelle, 2018 WL 1609266, at *12 [S.D.N.Y. Mar. 29, 2018]). Moreover, a CPSE is tasked with making recommendations for a student based on evaluations (34 CFR 300.324[a]; 8 NYCRR 200.4[d][2]); the evaluations need not make specific recommendations in order to be deemed sufficient. Indeed, with respect to initial evaluation of preschool students to determine whether the student is eligible for special education, State regulation specifically provides that "The summary report shall not include a recommendation as to the general type, frequency, location and duration of special education services and programs that should be provided; shall not address the manner in which the preschool student can be provided with instruction or related services in the least restrictive environment;

[8] Guidance from the United States Department of Education's Office of Special Education Programs (OSEP) indicates that, if a parent disagrees with an evaluation because a child was not assessed in a particular area, "the parent has the right to request an IEE to assess the child in that area to determine whether the child has a disability and the nature and extent of the special education and related services that child needs" (Letter to Baus, 65 IDELR 81 [OSEP 2015]; see Letter to Carroll, 68 IDELR 279 [OSEP 2016]).

and shall not make reference to any specific provider of special services or programs" (8 NYCRR 200.16[c][2]).

Here, although there is no question that the parent was seeking to obtain information about the student in order to plan for the student's educational programming, the parent failed to follow the process outlined in the IDEA and its implementing regulations for seeking an IEE in that she did not request district funding of an IEE based on a stated a disagreement with a district evaluation. Accordingly, the hearing record does not support the IHO's award of reimbursement for the costs of the parent's privately obtained May 2022 evaluation and the IHO's award must be vacated.

VII. Conclusion

Having found that the IHO properly limited the parent's relief awarded to the services actually rendered by RFTS-LC, there is no reason to disturb that portion of the IHO's decision. However, the evidence in the hearing record supports a finding that the parent was not entitled to reimbursement for the costs of the privately obtained May 2022 evaluation, and this portion of the IHO's decision must be vacated.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

IT IS ORDERED that the IHO's decision, dated October 4, 2023, is modified by reversing that portion which awarded the parent reimbursement for the costs of the privately obtained May 2022 evaluation.

Dated: **Albany, New York**
January 4, 2024

JUSTYN P. BATES
STATE REVIEW OFFICER