



# The University of the State of New York

## The State Education Department

State Review Officer

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No. 24-208

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

### **Appearances:**

Law Offices of Bonnie Spiro Schinagle, attorneys for petitioner, by Bonnie Schinagle, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Irene Dimoh, Esq.

## **DECISION**

### **I. Introduction**

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from a decision of an impartial hearing officer (IHO) which denied her request that respondent (the district) fund the costs of her son's tuition at The Academy for Young Minds (AYM) for the 2023-24 school year. The appeal must be dismissed.

### **II. Overview—Administrative Procedures**

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law § 4402; *see* 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[l]).

New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding "any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student" (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][6]-[7]; 34 CFR 300.503[a][1]-[2], 300.507[a][1]). First, after an opportunity to engage in a resolution process, the parties appear at an impartial hearing conducted at the local level before an IHO (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j]). An IHO typically conducts a trial-type hearing regarding the matters in dispute in which the parties have the right to be accompanied and advised by counsel and certain other individuals with special knowledge or training; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed five business days before the hearing; and obtain a verbatim record of the proceeding (20 U.S.C. § 1415[f][2][A], [h][1]-[3]; 34 CFR 300.512[a][1]-[4]; 8 NYCRR 200.5[j][3][v], [vii], [xii]). The IHO must render and transmit a final written decision in the matter to the parties not later than 45 days after the expiration period or adjusted period for the resolution process (34 CFR 300.510[b][2], [c], 300.515[a]; 8 NYCRR 200.5[j][5]). A party may seek a specific extension of time of the 45-day timeline, which the IHO may grant in accordance with State and federal regulations (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5]). The decision of the IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]).

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

### **III. Facts and Procedural History**

The parties' familiarity with this matter is presumed and, therefore, the facts and procedural history of the case and the IHO's decision will not be recited in detail here.

The student attended a 12:1+1 special class in a district public school from kindergarten through fifth grade (see Parent Ex. I at p. 3).

A CSE convened on June 16, 2023, found the student eligible for special education as a student with a speech or language impairment, and developed an IEP for the student for the 2023-

24 school year (sixth grade) (see Dist. Ex. 1).<sup>1</sup> The CSE recommended that the student attend a 12:1+1 special class placement for ten periods per week in both math and English language arts (ELA), two periods per week in social studies, and three periods per week in sciences in a district non-specialized school and receive related services as follows: one 30-minute session per week of counseling services in a group of three, one 30-minute session of occupational therapy (OT) per week in a group of two, one 30-minute session per week of individual speech-language therapy, and two 30-minute sessions per week of speech-language therapy in a group of three (id. at pp. 17-18, 21). In a prior written notice dated June 20, 2023, the district summarized the recommendations of the June 2023 CSE (Dist. Ex. 2).

On August 17, 2023, the parent signed an enrollment contract with AYM for the student's attendance at AYM during the 2023-24 school year starting on September 11, 2023 (Parent Ex. C).<sup>2</sup> In a letter dated August 21, 2023, the parent through her attorney informed the district of her concerns regarding the program recommended by the June 2023 CSE and indicated that she had not received a complete copy of the June 2023 IEP, a copy of the procedural safeguards notice, or a prior written notice (Parent Ex. B at p. 1). The parent also notified the district of her intent to enroll the student at AYM and seek tuition and specialized transportation from the district through a due process proceeding (id. at pp. 1-2).

#### **A. Due Process Complaint Notice**

In a due process complaint notice dated January 28, 2024, the parent alleged that the district denied the student a free appropriate public education (FAPE) for the 2023-24 school year raising the following allegations: the district failed to assess the student in all areas of suspected disability; the district removed related service sessions from the student's programming without evaluating the student first; the program developed for the 2023-24 school year was not reasonable calculated to allow the student to make progress, was similar to programs offered in past school years, and did not provide the specialized instruction and supports necessitated by the student's unique needs; the annual goals included in the June 2023 IEP were not reasonably calculated to allow the student to make meaningful progress; and the parent was denied the right of meaningful participation and was not notified of her rights (Parent Ex. A at p. 1 & ¶¶ 9-16). The parent also alleged that AYM was appropriate and that the equitable considerations weighed in favor of her requested relief (id. at ¶¶ 18-28). As relief, the parent requested an order directing the district to fund the student's tuition at AYM for the 2023-24 school year and to provide the student with specialized transportation to and from AYM (id. at p. 5).

#### **B. Impartial Hearing Officer Decision**

An impartial hearing convened before the Office of Administrative Trials and Hearings (OATH) on April 10, 2024, and concluded on May 1, 2024, after two days of proceeding inclusive of a status conference (see Tr. pp. 1-128). In a decision dated May 12, 2024, the IHO found that

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<sup>1</sup> The student's eligibility for special education as a student with a speech or language impairment is not in dispute (see 34 CFR 300.8[c][11]; 8 NYCRR 200.1[zz][11]).

<sup>2</sup> AYM has not been approved by the Commissioner of Education as a school with which districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

the district offered the student a FAPE for the 2023-24 school year and dismissed the parent's due process complaint notice with prejudice (IHO Decision at pp. 11-12).<sup>3</sup> The IHO determined that: the district assessed the student for all suspected disabilities; the district appropriately removed physical therapy (PT) as a related service and reduced the number of OT sessions due to the student's progress; that the parent was afforded an opportunity to participate in the IEP process; and that the June 2023 IEP including the annual goals were reasonably calculated to allow the student to make meaningful progress (*id.* at pp. 8-11).

#### IV. Appeal for State-Level Review

The parties' familiarity with the particular issues for review on appeal in the parent's request for review and the district's answer thereto is also presumed and, therefore, the allegations and arguments will not be recited in detail here.<sup>4, 5</sup>

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<sup>3</sup> The IHO's decision does contain conflicting statements: the IHO on the third page of the decision stated "[i]n light of the foregoing and as more fully discussed below, I find that a) the [district] failed to meet its burden that it offered the student FAPE for the school year at issue" but then on the eleventh page of the decision after the analysis section where the IHO addressed each of the parent's claims raised in the due process complaint notice, the IHO stated "[f]or the reasons stated above and contained within the record, I do not find that the June 16, 2023, IEP [wa]s substantively deficient. I do find that the IEP [wa]s reasonably calculated . . . to enable the student to make progress appropriate with his abilities . . . and enable[d] him to make progress," and "[h]aving determined that the evidence in the hearing record support[ed a] finding that the district offered the student a FAPE for the 2023-2024 school year, it is unnecessary to reach the issue of whether the Private School was an appropriate unilateral placement" (*compare* IHO Decision at p 3, *with* IHO Decision at p. 11). Given the substantive findings made by the IHO in the decision, it is clear that the IHO's original statement on the third page of the decision was inadvertent and review of the decision in its entirety shows that the IHO determined that the district offered the student a FAPE for the 2023-24 school year (*see* IHO Decision at pp. 8-11). Therefore, the purported findings on the third page are disregarded and will not be further reviewed.

<sup>4</sup> The parent submitted a reply to the district's answer. State regulation limits the scope of a reply to "any claims raised for review by the answer . . . that were not addressed in the request for review, to any procedural defenses interposed in an answer . . . or to any additional documentary evidence served with the answer" (8 NYCRR 279.6[a]). In this instance, the parent's reply merely reasserts many of the same allegations as raised in the request for review and does not appear to address any of the issues permitted in a reply; accordingly, the parent's reply will be disregarded, including the two proposed documents to be considered on appeal: a copy of the student's IEP dated November 25, 2019 and a copy of the student's IEP dated September 21, 2022 (Reply Exs. A-B).

<sup>5</sup> The parent in her request for review alleges that the student was offered a new school location but that the IHO failed to consider evidence regarding "the new placement or its ability to implement the IEP" (Req. For Rev. ¶ 14). However, a review of the due process complaint notice demonstrates that the parent did not raise an allegation regarding the assigned public school's ability to implement the June 2023 IEP (*see* Parent Ex. A), and the parent did not thereafter obtain the district's agreement to expand the scope of issues or the IHO's permission to amend the due process complaint notice (*see* 20 U.S.C. § 1415[c][2][E][i][II]; [f][3][B]; 34 CFR 300.508[d][3]; 300.511[d]; 8 NYCRR 200.5[j][1]); nor did the district, through the questioning of its witnesses, "open the door" to the issue under the holding of *M.H. v. New York City Department of Education* (685 F.3d 217, 250-51 [2d Cir. 2012]; *see also* *B.M. v. New York City Dep't of Educ.*, 596 Fed. App'x 57, 59 [2d Cir. June 18, 2014]; *D.B. v. New York City Dep't of Educ.*, 966 F. Supp. 2d 315, 327-28 [S.D.N.Y. 2013]; *N.K. v. New York City Dep't of Educ.*, 961 F. Supp. 2d 577, 584-86 [S.D.N.Y. 2013]; *A.M. v. New York City Dep't of Educ.*, 964 F. Supp. 2d 270, 282-84 [S.D.N.Y. 2013]; *J.C.S. v. Blind Brook-Rye Union Free Sch. Dist.*, 2013 WL 3975942, \*9 [S.D.N.Y. Aug. 5, 2013]). Although the district inquired of one of its witness on direct examination whether the school at which the special education teacher was employed "could [implement] all of the related services and the program

The following issues presented on appeal must be resolved on appeal in order to render a decision in this case:

1. Whether the IHO erred in determining that the June 2023 IEP recommended an educational placement that was appropriate to address the student's needs and would have likely allowed the student to make meaningful progress during the 2023-24 school year;

2. Whether the IHO erred in determining that the annual goals in the June 2023 IEP were appropriate to address the student's needs;

3. Whether the IHO erred in determining the parent was afforded the ability to meaningfully participate in the educational planning for the student for the 2023-24 school year; and

4. Whether the IHO erred by failing to address the appropriateness of AYM and equitable considerations.

## V. Applicable Standards

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see generally Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 239 [2009]; Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206-07 [1982]).

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; T.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 151, 160 [2d Cir. 2014]; R.E. v. New York City Dep't of Educ., 694 F.3d 167, 189-90 [2d Cir. 2012]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 [2d Cir. 2012]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). "[A]dequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP" (Walczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998], quoting Rowley, 458 U.S. at 206; see T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 253 [2d Cir. 2009]).

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that were listed" (Tr. p. 51), it is undisputed that the student was assigned to attend a different public school location for the 2023-24 school year (see Tr. p. 108), and the district did not pursue through direct examination of its own witnesses the issue of the assigned public school's ability to implement the IEP. Even if the issue was broached, the Second Circuit has held that claims regarding an assigned school's ability to implement an IEP must be based on more than mere speculation that the school would not adequately adhere to the IEP (M.O. v. New York City Dep't of Educ., 793 F.3d 236, 245 [2d Cir. 2015]; see Y.F. v. New York City Dep't of Educ., 659 Fed App'x 5 [2d Cir. Aug. 24, 2016]). Here, the parent has not made any nonspeculative allegations about the assigned school's ability to implement the student's IEP in either the due process complaint notice or on appeal. Accordingly, the parent's allegation that the IHO failed to consider the assigned school's ability to implement the IEP will not be further discussed.

The Supreme Court has indicated that "[t]he IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement" (Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 580 U.S. 386, 399 [2017]). While the Second Circuit has emphasized that school districts must comply with the checklist of procedures for developing a student's IEP and indicated that "[m]ultiple procedural violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not" (R.E., 694 F.3d at 190-91), the Court has also explained that not all procedural errors render an IEP legally inadequate under the IDEA (M.H., 685 F.3d at 245; A.C. v. Bd. of Educ. of the Chappaqua Cent. Sch. Dist., 553 F.3d 165, 172 [2d Cir. 2009]; Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]). Under the IDEA, if procedural violations are alleged, an administrative officer may find that a student did not receive a FAPE only if the procedural inadequacies (a) impeded the student's right to a FAPE, (b) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 [2007]; R.E., 694 F.3d at 190; M.H., 685 F.3d at 245).

The IDEA directs that, in general, an IHO's decision must be made on substantive grounds based on a determination of whether the student received a FAPE (20 U.S.C. § 1415[f][3][E][i]). A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction" (Rowley, 458 U.S. at 203). However, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP" (Walczak, 142 F.3d at 130; see Rowley, 458 U.S. at 189). "The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created" (Endrew F., 580 U.S. at 404). The statute ensures an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents" (Walczak, 142 F.3d at 132, quoting Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 [2d Cir. 1989] [citations omitted]; see Grim, 346 F.3d at 379). Additionally, school districts are not required to "maximize" the potential of students with disabilities (Rowley, 458 U.S. at 189, 199; Grim, 346 F.3d at 379; Walczak, 142 F.3d at 132). Nonetheless, a school district must provide "an IEP that is 'likely to produce progress, not regression,' and . . . affords the student with an opportunity greater than mere 'trivial advancement'" (Cerra, 427 F.3d at 195, quoting Walczak, 142 F.3d at 130 [citations omitted]; see T.P., 554 F.3d at 254; P. v. Newington Bd. of Educ., 546 F.3d 111, 118-19 [2d Cir. 2008]). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]; see Endrew F., 580 U.S. at 403 [holding that the IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances"]; Rowley, 458 U.S. at 192). The student's recommended program must also be provided in the least restrictive environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 CFR 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see Newington, 546 F.3d at 114; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132).

An appropriate educational program begins with an IEP that includes a statement of the student's present levels of academic achievement and functional performance (see 34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]), establishes annual goals designed to meet the student's needs resulting from the student's disability and enable him or her to make progress in the general education curriculum (see 34 CFR 300.320[a][2][i], [2][i][A]; 8 NYCRR 200.4[d][2][iii]), and

provides for the use of appropriate special education services (see 34 CFR 300.320[a][4]; 8 NYCRR 200.4[d][2][v]).<sup>6</sup>

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

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

## **VI. Discussion**

### **A. CSE Process – Parent Participation**

The parent argues that the IHO erred in her determination that the district afforded the parent the ability to meaningfully participate in the educational planning for the student for the 2023-24 school year. More specifically, the parent alleges that the district did not respond to her concerns regarding the student's progress and that her concerns were not incorporated into the June 2023 IEP, that the annual goals were not discussed during the June 2023 CSE meeting, and that she was never advised of her legal rights or presented with a procedural safeguards notice.

The IDEA sets forth procedural safeguards that include providing parents an opportunity "to participate in meetings with respect to the identification, evaluation, and educational placement of the child" (20 U.S.C. §1415[b][1]). Federal and State regulations governing parental participation require that school districts take steps to ensure that parents are present at their child's IEP meetings or are afforded the opportunity to participate (34 CFR 300.322; 8 NYCRR 200.5[d]). Although school districts must provide an opportunity for parents to participate in the development of their child's IEP, mere parental disagreement with a school district's proposed IEP and placement recommendation does not amount to a denial of meaningful participation (see E.H. v. Bd. of Educ., 361 Fed. App'x 156, 160 [2d Cir. 2009]; E.F. v. New York City Dep't of Educ., 2013 WL 4495676, at \*17 [E.D.N.Y. Aug. 19, 2013] [holding that "as long as the parents are listened to," the right to participate in the development of the IEP is not impeded, "even if the [district]

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

ultimately decides not to follow the parents' suggestions"]; DiRocco v. Bd. of Educ., 2013 WL 25959, at \*18-\*20 [S.D.N.Y. Jan. 2, 2013]; P.K. v. Bedford Cent. Sch. Dist., 569 F. Supp. 2d 371, 383 [S.D.N.Y. 2008] ["[a] professional disagreement is not an IDEA violation"]; Sch. For Language and Comm'n Development v. New York State Dep't of Educ., 2006 WL 2792754, at \*7 [E.D.N.Y. Sept. 26, 2006] [finding that "[m]eaningful participation does not require deferral to parent choice"]).

The IHO, after properly describing the procedural safeguards set forth under the IDEA and the federal and State regulations governing parental participation, including appropriate case law, determined the record demonstrated that the parent was afforded an opportunity to participate in the IEP process (IHO Decision at pp. 9-10). Specifically, the IHO determined that "the parent was present during the IEP meeting and provided input" and that "prior to the IEP meeting, the record prove[d] that the school staff and the parent remained in close contact throughout the school year" (id. at p. 10). In sum, the IHO found that the evidence did not show that the district significantly impeded the parent's participation in the decision-making process which would amount to a denial of a FAPE (id.).

In addition to the IHO's findings, the evidence shows that the June 2023 IEP reported the parent's concerns at the time of the meeting (Dist. Ex. 1 at pp. 4-5, 7). The IEP stated that the student's father was "concerned that [the student] d[id]n't like to read or write at home" and needed "frequent reminders to remain on task" (id. at pp. 4, 5). The IEP stated that the father's goal was for the student to be able to "write three sentences without support" and "understand the concept of division as sharing" (id. at p. 4). During the impartial hearing, the parent testified that she expressed concerns at the June 2023 CSE meeting about the student's behavior and ability to work independently (Parent Ex. M ¶ 4). However, as discussed further below, the district was aware of the student's rate of progress and his behavioral needs and recommended appropriate supports and services related thereto (see Dist. Exs. 1 at pp. 2-5; 3 at p. 1).

Regarding the parent's contention that the annual goals were not discussed during the CSE meeting, the student's special education teacher testified that the goals for the June 2023 IEP were developed in collaboration between herself and the service providers (Tr. p. 41). The assistant principal who attended the June 2023 IEP meeting as the district representative also testified that the June 2023 CSE spoke about the measurable goals and confirmed that the goals were created in collaboration between the student's special education teacher and his related service providers (Tr. pp. 49, 53-54). The parent, on the other hand, testified that no one discussed the goals with her (Tr. p. 101). Nevertheless, there is no evidence that the parent attempted to raise or discuss specific concerns related to the student's annual IEP goals during the CSE meeting and was rebuffed by other members of the CSE. Here, while the evidence in the hearing record suggests that the annual goals ultimately included in the June 2023 IEP may not have been discussed at great length during the CSE meeting, the weight of the evidence in the hearing record indicates that, because the parent attended the June 2023 CSE meeting and participated in the meeting and the annual goals were appropriate to meet the student's needs, any failure to discuss the particular annual goals included in the June 2023 IEP at the CSE meeting did not significantly impede the parent's opportunity to participate in the development of the student's IEP (see E.A.M. v. New York City Dep't of Educ., 2012 WL 4571794, at \* 8 [S.D.N.Y. Sept. 29, 2012] [recognizing that the IDEA does not require that annual goals be drafted at the CSE meeting]).



Finally, regarding the procedural safeguards notice, under the IDEA and federal and State regulations, a district must provide parents with a copy of a procedural safeguards notice annually (20 U.S.C. § 1415[d][1][A]; 34 CFR 300.504[a]; 8 NYCRR 200.5[f][3]).<sup>7</sup> The hearing record shows that a prior written notice dated June 20, 2023 sent by the district provided the parent information regarding her protection under the procedural safeguards, where such information could be found on the district's website, and contact information for a district employee who could provide a copy if requested (Dist. Ex. 2 at pp. 2-3). Although the parent alleges that she did not receive notice of her rights, it is undisputed that she timely filed a due process complaint notice to pursue her rights concerning the 2023-24 school year (Parent Ex. A).

Accordingly, the evidence in the hearing record supports the IHO's decision that the parent was afforded meaningful participation in the creation of the student's June 2023 IEP.

### **B. June 2023 IEP**

On appeal, the parent argues that the IHO erred in determining that the 12:1+1 special class placement with related services recommended in the June 2023 IEP was appropriate to address the student's needs and would have allowed the student to make meaningful progress during the 2023-24 school year. According to the parent, the June 2023 IEP annual goals were not appropriate, and the recommended programming did not address the student's lack of progress in English, his nominal progress in math, or his interfering behaviors/impaired social engagement.

The IHO addressed the parent's claims that the June 2023 IEP was substantively deficient due to issues with the present levels of performance and annual goals and determined that the hearing record did not support such conclusion (IHO Decision at p. 10). After appropriately describing the federal and State regulations that govern the IEP process, the IHO described what information the June 2023 CSE considered when making its recommendations, noting the CSE considered results from a psychoeducational evaluation, a social history, and input from the student's special education teacher, district assistant principal, physical therapist, and his parent (id.; see Dist. Exs 1 at pp. 1-7; 2 at p. 2). The IHO noted that the June 2023 CSE did not consider the student's March 2023 private neuropsychological evaluation because the parent "refused to provide it" (IHO Decision at p. 10).

The IHO also set forth the factual background that included details regarding the student's specific diagnosis and the academic areas the student was struggling with; a detailed description of a March 2023 private neuropsychological evaluation with a description of the neuropsychologist's findings, recommendations, and opinions and also indicated that such evaluation was not shared with the district even after it was requested by the student's special education teacher (IHO Decision at p. 4; see Parent Ex. I). Next, the IHO described the June 2023 CSE meeting conducted to create the student's IEP for the 2023-24 school year and noted the CSE considered a psychoeducational evaluation and input from the student's special education teacher and related services providers, and recommended the student continue in a 12:1+1 special class with related services of counseling, OT and speech-language therapy (IHO Decision at pp. 4-5; see Dist. Exs. 1; 3; 4). The IHO then provided a description of the student's June 2022

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<sup>7</sup> A district may place a copy of the procedural safeguards notice on its website if such website exists (8 NYCRR 200.5[f][4]; see 20 U.S.C. § 1415[d][1][B]).

psychoeducational evaluation and results; and a description of the actions taken by the district and the parents after the June 2023 CSE meeting, specifically, that the district sent a prior written notice that summarized what was considered at the June 2023 CSE meeting, a description of the proposed program and reasons why other programs were considered but not recommended, and that the parents sent a letter to the CSE about their disagreement with the June 2023 IEP and their intention to enroll the student at a private school and seek funding for tuition (IHO Decision at p. 6; see Parent Exs. B-C; Dist. Exs. 2-3).

In sum, the IHO determined the June 2023 IEP was "reasonably calculated, based on the information the [district] had at the time, to enable the student to make progress appropriate with his abilities" and that the IEP "establishe[d] annual goals designed to meet the student's needs . . . and enable him to make progress" (IHO Decision at p. 11). Here, as further described below, there is insufficient basis to disturb the IHO's determination that the June IEP was designed to allow the student to make progress given his specific needs and offered the student a FAPE.

### **1. The Student's Needs**

A discussion of the student's needs is warranted to address the issues on appeal. According to the prior written notice dated June 20, 2023 and the June 2023 IEP itself, the June 2023 CSE used State assessment, teacher assessment, and running record information, along with a 2022 social history and a June 2022 psychoeducational evaluation to determine the student's needs (Dist. Exs. 1 at pp. 1-2; 2 at p. 2).<sup>8</sup>

The district conducted the June 2022 psychoeducational evaluation to address the parent's concern about the student's limited "progress since first grade" (Dist. Ex. 3 at p. 1). The report indicated the parent "request[ed] more supportive services" because of the student's "minimal academic progress" (id.). According to the report, the student received services in preschool "in an 8:1:2 setting" and then, upon entering kindergarten, the student was recommended for "a 12:1:1" classroom (id.). In both preschool and kindergarten, the report indicated the student received speech-language therapy, OT, and PT (id.).

The June 2022 psychoeducational report indicated that the student, who was in fourth grade at the time, "was very impulsive" during testing, had "a short attention span[,] and was distracted by any visual stimuli" (Dist. Ex. 3 at pp. 1, 3). Additionally, the report indicated the student "attempted tasks but quickly lost interest" and that his "strategies to solve problems were limited and ineffective" (id. at p. 3). The report also indicated the student displayed a variety of "awkward" body movements "consistently . . . throughout the evaluation" and that he "appeared unaware of them" (id.). Additionally, the report indicated the student demonstrated "poor" executive functioning skills and "extreme difficulty maintaining self-control" as well as "regulating impulsive behaviors" (id. at p. 13).

According to the June 2022 psychoeducational report, the student's full-scale IQ and verbal comprehension scores on the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V) were "in the [e]xtremely [l]ow range" (Dist. Ex. 3 at p. 4). In addition, the student's visual-spatial

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<sup>8</sup> As noted by the IHO, the March 2023 private neuropsychological evaluation was not made available to the June 2023 CSE (IHO Decision at p. 4; see Tr. pp. 32-34, 51, 106-07, 109-10; Parent Ex. I).

skills were within the "[v]ery [l]ow range" and his fluid reasoning skills were within the "[l]ow [a]verage range," which the report indicated represented relative strengths for the student (id. at pp. 4, 5). In addition, the report indicated that the student demonstrated "very weak working memory skills" and "[r]elative weaknesses in mental control and speed of visual scanning" that could "create challenges as [the student] engage[d] in more complex cognitive processes" (id. at pp. 5, 6).

The June 2022 psychoeducational report also reflected assessments of the student's social/emotional and adaptive skills (Dist. Ex. 3 at pp. 6-9). The student's teacher completed the Behavior Assessment System for Children, Third Edition (BASC-3) rating form and the results indicated clinically significant behaviors related to the student's hyperactivity, school problems, attention problems, learning problems, atypicality, adaptive skills, leadership, and functional communication (id. at pp. 6-8). In addition, the student received "[e]xtremely [e]levated" scores on the executive functioning, attentional control, and behavioral control indexes (id. at p. 8). The June 2022 psychoeducational report also included results from an interview with the parent using the Vineland Adaptive Behavior Scales that indicated the student's overall adaptive behavior was "well below" peers his age (id. at pp. 8-9).

Next, the June 2022 psychoeducational report indicated the parent and teacher were interviewed using the Gilliam Autism Rating Scale, Third Edition (GARS-3) to address concerns regarding the student's "delays in social development" (Dist. Ex. 3 at p. 9). According to the results of the GARS-3 parent scale, the student's results fell within the "[v]ery [l]ikely range" and the results of the teacher scale "fell within the [p]robable [r]ange" (id.). Further, the report "indicated that the parent . . . reported more symptoms associated with the diagnosis of Autism than the teacher" and, as such, "the classification of Autism w[as] . . . reserved" (id.).

The summary of the June 2022 psychoeducational report indicated that the student "ha[d] made minimal growth in a 12:1:1 setting" with "the support of speech[-]language, occupational, physical, and counseling services" (Dist. Ex. 3 at p. 13). Similarly, the June 2023 IEP indicated multiple times that the student's progress was limited (Dist. Ex. 1 at pp. 2, 3, 4). Further, the June 2023 IEP indicated the student's "expected rate of progress [was] less than his general education peers" (id. at p. 4).

The present levels of performance in the June 2023 IEP indicated that the student "function[ed] [four] years below grade level in all subject areas," "communicate[d] his wants and needs," "ke[pt] his desk neat and organized," and, "[w]ith reminders . . . pack[ed] and unpack[ed] himself" (Dist. Ex. 1 at pp. 2, 4). The IEP reported the student had some "difficulty transitioning" between classrooms with all his required materials without "frequent reminders" and that he required repetition of "simple directions" (id. at p. 2). Additionally, the student exhibited "significant receptive and expressive language delays that directly affect[ed] his academic performance" in conjunction with speech sound distortions (id. at p. 4).

In reading, the June 2023 IEP indicated the student "ha[d] not progressed past a [Teachers College] level C throughout his school career and as such ha[d] significant difficulty meaningfully participating in grade level curriculum" (Dist. Ex. 1 at p. 3). The IEP indicated the student did not demonstrate automatic reading even when he "kn[e]w all of the sounds" and that he "need[ed] to say each sound and then blend them to make a word" (id.). Further, the IEP indicated the student

was "unable to comprehend grade level material due to his cognitive delays," and that he had difficulty with his ability to provide details about his answers, identify the main idea or retell a story, and make logical predictions (id.).

The June 2023 IEP indicated that the student's writing was at a kindergarten level, though he "made progress on his goals and [was] participating more in the writing process" (Dist. Ex. 1 at p. 3). According to the IEP, the student wrote dictated sentences and developed ideas for writing, but he had difficulty with organization (id.). The June 2023 IEP indicated the student required "significant teacher assistance" with writing tasks, and he was "unable to participate in most tasks unless they [were] significantly modified to a [k]indergarten level" (id.).

According to the June 2023 IEP, the student's math functioning was at a first grade level (Dist. Ex. 1 at p. 2). The IEP indicated the student "made minimal progress since his last IEP," that he was "highly distractible," and required "many reminders to start and stay on task" (id.). According to the June 2023 IEP, the student's "ability to recall information from one lesson to another [was] limited" and that he did not "advocate for himself when he [was] unsure" (id.). The IEP indicated the student had limited understanding of the base-ten number system," difficulty identifying place value, and "representing whole numbers and decimals when reading [and] writing" (id.). The June 2023 IEP indicated that in math, the student "made some success" with individual support, small group instruction, direct instruction, modeling, repetition, manipulatives, and guided practice (id. at pp. 2-3).

Socially, the June 2023 IEP described the student as "a sweet and friendly boy" who "g[ot] along easily with peers" although the student's relationships with peers were "superficial" (Dist. Ex. 1 at p. 5). According to the IEP, the student focused on conversational topics that were not "of interest" to his peers and he "d[id] not take the social cues that his peers" offered (id.). The IEP reported the student "ha[d] difficulty with providing personal space to peers and adults" (id.). In counseling, the IEP indicated the student "demonstrated some progress in expressing his emotions" and "developing his problem-solving skills" related to conflicts (id.). The IEP reported the student demonstrated difficulty with "understanding social cues and recognizing that his peers may not always share his" interests (id.). According to the IEP, the student "generally g[ot] along with his peers, but they often need[ed] to remind him to stay focused on the task at hand" (id.).

Throughout the academic achievement section, the June 2023 IEP indicated the student benefitted from direct instruction, small group instruction, direct modeling, use of manipulatives, guided practice, "a structured phonics program," explicit instruction, individualized teaching, graphic organizers, positive reinforcement, repetition of information, visual prompts, verbal scaffolds, and reminders (see Dist. Ex. 1 at pp. 3-4). The June 2023 IEP indicated that the student's "academic, cognitive, language, and motor delays warrant[ed] an individualized[,] small[,] structured setting . . . to progress in the general education curriculum" (id. at p. 8).

## **2. Annual Goals**

The parent argues that the IHO erred in finding the June 2023 IEP was appropriate as there was no evidence presented by the district to explain how the annual goals were appropriate for the student.

An IEP must include a written statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and meet each of the student's other educational needs that result from the student's disability (see 20 U.S.C. § 1414[d][1][A][i][II]; 34 CFR 300.320[a][2][i]; 8 NYCRR 200.4[d][2][iii]). Each annual goal shall include the evaluative criteria, evaluation procedures and schedules to be used to measure progress toward meeting the annual goal during the period beginning with placement and ending with the next scheduled review by the committee (8 NYCRR 200.4[d][2][iii][b]; see 20 U.S.C. § 1414[d][1][A][i][III]; 34 CFR 300.320[a][3]).

The IHO determined that the annual goals were designed to meet the student's needs resulting from his disabilities and enable him to make progress, noting that the student's special education teacher testified that the student's goals were appropriate based on her knowledge of the student's present levels and abilities (IHO Decision at p. 11).<sup>9</sup> Further, the IHO noted that "[w]hile the parent's school witness testified that the [June 2023 IEP annual] goals were inappropriate, the majority of the goals identified by [AYM] were the same or substantially similar to those developed by the [June 2023 CSE]" and the student "did make progress towards the goals the district developed" while attending AYM (id.).

There is insufficient basis in the hearing record to disturb the IHO's determination that the annual goals were appropriate. The evidence shows that, throughout the June 2023 IEP present levels of performance, the student's primary needs were described as his ability to decode words, understand place value, and organize and develop details in his writing, as well as his significant receptive and expressive language delays, his need for consistent reminders due to frequent distraction, his limited understanding of social cues, and his executive functioning and sensory processing skills (Dist. Ex. 1 at pp. 2-6). The 12 annual goals included in the June 2023 IEP addressed the needs of the student as identified in the present levels of performance including his math, decoding, reading, writing, OT, speech-language therapy, and counseling needs (id. at pp. 9-16). Specifically, review of the recommended annual goals shows that they addressed needs such as the student's ability to add and subtract up to 100,000; accurately decode and encode CVC words; develop a personal narrative; identify the problem and solution of a story; engage in a task for 10 minutes; plan and execute a three-step task; decode words using phonics rules; produce target phonemes; recognize and interpret social cues; exhibit age-appropriate social skills; and answer comprehension questions (id. at pp. 9-16).<sup>10</sup>

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<sup>9</sup> On appeal the parent asserts that the IHO erred in finding that the student's special education teacher testified that the June 2023 IEP annual goals were appropriate, alleging that the special education teacher "was never questioned about the IEP goals." When asked about the evaluative information the June 2023 considered, the special education teacher replied that one of the pieces of information was the progress monitoring toward the student's IEP annual goals (Tr. p. 34). While not directly testifying that the June 2023 IEP annual goals were appropriate per se, the special education teacher concluded that the student "did make progress within the program" (id.).

<sup>10</sup> A comparison of the student's AYM annual goals the June 2023 IEP annual goals shows that most were similar, such as adding and subtracting up to 1,000 compared to 100,000, or copied verbatim, such as the student will "exhibit age-appropriate social skills, demonstrating an improvement in his overall social abilities" (compare Parent Exs. D; E; F; G, with Dist. Ex. 1 at pp. 9-16).

There is no dispute that the student had cognitive and social/emotional delays that required a significant amount of special education services to address, and the CSE identified those needs and created academic goals to address the student's needs consistent with his individual circumstances. To the extent the parent argues that the IHO "glossed over the fact that many of the goals admitted that progress was expected to be 'gradual' or 'incremental,'" review of the five academic goals shows that they do include those qualifiers (Dist. Ex. 1 at pp. 9-12). However, the special education teacher testified that the "progress that children make are at different rates of speed," and that the student had made "gains and they were consistent with his ability level" (Tr. p. 34).

Accordingly, the evidence in the hearing record leads to the overall conclusion that the annual goals in the June 2023 IEP aligned with and targeted the student's needs identified in the present levels of performance, appropriately addressed the student's needs, and were sufficiently specific and measurable to guide instruction and to evaluate the student's progress over the course of the school year (see D.A.B. v. New York City Dep't of Educ., 973 F. Supp. 2d 344, 359-61 [S.D.N.Y. 2013]; E.F. v. New York City Dept. of Educ., 2013 WL 4495676, at \*18-\*19 [E.D.N.Y. Aug. 19, 2013]; D.B., 966 F. Supp. 2d at 334-35). Thus, the IHO's determination that the annual goals contained in the student's June 2023 IEP were appropriate is satisfactorily supported by the evidence in the hearing record.

### **3. 12:1+1 Special Class Placement**

The parent argues that the IHO ignored the description of the student's "intrusive behavior" and that the district failed to explain how the June 2023 IEP addressed this need or would have allowed the student to make meaningful progress given the student's minimal progress under similar IEPs in years prior.

As discussed above, the June 2023 IEP described the student's needs related to executive functioning, impulsivity, attention, and social interaction skills (see Dist. Ex. 1 at pp. 2, 4, 5, 7). The student's special education teacher testified the student was a sweet, kind student but had a very low frustration level (Tr. pp. 25, 30). The special educational teacher further testified the student could and would verbalize when a task was too difficult and that he expressed concern when he didn't understand the task (Tr. p. 25). She also testified that the student was easily distractible and needed prompts and redirection to remain on task (Tr. pp. 25-26). On cross-examination, the student's special education teacher further testified that, when the student became overwhelmed, he would do breathing exercises and talk about what part of the task was hard to enable him to self-regulate himself and continue with the task (Tr. p. 39).

To address the student's management needs, the June 2023 CSE recommended the use of modeling, repetition, visuals, refocusing prompts, breaks, extended time, positive reinforcement, immediate feedback, movement breaks, individual instruction, explicit direct instruction, and texts read if they were not on the student's functional level (Dist. Ex. 1 at p. 7). Additionally, the June 2023 CSE developed annual goals to improve the student's recognition and interpretation of social cues, and exhibit age-appropriate social skills, and recommended that he receive counseling services in a group setting (id. at pp. 15, 17). The evidence shows that the student had low frustration levels and was highly distractible, but that contrary to the parent's assertion on appeal,

the June 2023 IEP detailed strategies, goals, and services to use to assist the student through his frustration and keep him on track during classwork (*id.* at pp. 2-5, 7, 15, 17).

Turning to the June 2023 CSE's programming recommendations, consisting of a 12-month 12:1+1 special class placement with related services, State regulation provides that "the maximum class size for special classes containing students whose management needs interfere with the instructional process, to the extent that an additional adult is needed within the classroom to assist in the instruction of such students, shall not exceed 12 students, with one or more supplementary school personnel assigned to each class during periods of instruction" (8 NYCRR 200.6[h][4][i]).

In the June 2023 prior written notice, the district indicated the CSE considered general education, related services only, and integrated co-teaching services for the student (Dist. Ex. 2 at p. 2). However, the CSE rejected those options due to the student's "difficulty learning and retaining information" and indicated that the student was eligible for an extended school year program "due to [the student's] regression after holidays and long week[ends]" (*id.*).

The parent argues that the IHO erred by allowing testimony from the student's special education teacher during the 2022-23 school year regarding the student's progress during such school year arguing the testimony was prejudicial. However, the student's special education teacher testified that she "created the IEP" and attended the June 2023 CSE meeting (Tr. pp. 25, 30). The special education teacher testified that during the 2022-23 school year the student "ma[de] progress within [the district's] program" that was "consistent with his ability level" (Tr. p. 34). The special education teacher further testified that the student was able to make progress due to the "structured small-group setting" and "one-on-one support" that provided "differentiation and modeling manipulatives" as well as "the use of prompts and redirection" (*id.*).

It is well settled that a student's progress under a prior IEP is a relevant area of inquiry for purposes of determining whether an IEP has been appropriately developed, particularly if the parents express concern with respect to the student's rate of progress (see H.C. v. Katonah-Lewisboro Union Free Sch. Dist., 528 Fed. App'x 64, 66-67 [2d Cir. 2013]; Adrienne D. v. Lakeland Cent. Sch. Dist., 686 F.Supp.2d 361, 368 [S.D.N.Y. 2010]; M.C. v. Rye Neck Union Free Sch. Dist., 2008 WL 4449338, \*14-\*16 [S.D.N.Y. Sept. 29, 2008]; see also "Guide to Quality Individualized Education Program (IEP) Development and Implementation," Office of Special Educ. Mem. [Revised Sept. 2023], available at <https://www.nysed.gov/sites/default/files/programs/special-education/guide-to-quality-iep-development-and-implementation.pdf>). The fact that a student has not made progress under a particular IEP does not automatically render that IEP inappropriate, nor does the fact that an IEP offered in a subsequent school year which is the same or similar to a prior IEP render it inappropriate, provided it is based upon consideration of the student's current needs at the time the IEP is formulated (see Thompson R2-J Sch. Dist. v. Luke P., 540 F.3d 1143, 1153-54 [10th Cir.2008]; Carlisle Area Sch. Dist. v. Scott P., 62 F.3d 520, 530 [3d Cir. 1995]; S.H. v. Eastchester Union Free Sch. Dist., 2011 WL 6108523, at \*10 [S.D.N.Y. Dec. 8, 2011]; D. D-S. v. Southold Union Free Sch. Dist., 2011 WL 3919040, at \*12 [E.D.N.Y. Sept. 2, 2011], *aff'd*, 506 Fed. App'x 80 [2d Cir. 2012]; J.G. v. Kiryas Joel Union Free Sch. Dist., 777 F. Supp. 2d 606, 650 [S.D.N.Y. 2011]). Conversely, "if a student had failed to make any progress under an IEP in one year, courts have been "hard pressed" to understand how the subsequent year's IEP could be appropriate if it was simply a copy of the IEP which failed to produce any gains in a prior year (Carlisle Area Sch. Dist., 62 F.3d at 534 [noting, however, that

the two IEPs at issue in the case were not identical]; N.G. v. E.L. Haynes Pub. Charter Sch., 2021 WL 3507557, at \*9 [D.D.C. July 30, 2021]; James D. v. Bd. of Educ. of Aptakistic-Tripp Cmty. Consol. Sch. Dist. No. 102, 642 F. Supp. 2d 804, 827 [N.D. Ill. 2009]).

According to the June 2023 IEP, the student was functioning below grade level in all subject areas and his "expected rate of progress w[ill] be less than his general education peers,' indicating that "[h]is needs [were] best served in a small class setting with the support of related services" including speech-language therapy, OT, and counseling (Dist. Ex. 1 at p. 4). While the June 2023 IEP indicated the student had difficulty accessing the grade-level curriculum, it also reported the student had made some "success" when working 1:1 with a teacher in math, "accomplish[ed] some of his goals from last year" in reading, and made progress toward his writing goals (id. at pp. 2, 3). For example, the June 2023 IEP indicated the student met last year's math goal to add and subtract up to the hundreds place as well as his reading goal "to answer basic wh questions from a lower level book" (id. at pp. 2, 3). The June 2023 IEP reported the student "made progress on his [writing] goals and [was] participating more in the writing process" (id. at p. 3). In addition, the June 2023 IEP indicated the student demonstrated growth in his ability to express his emotions and with his problem-solving skills (id. at p. 5). Further, the June 2023 IEP reported that the student met his PT goals and was discharged from the related service, and that the student no longer required an individual OT session because of his progress in fine motor and visual-perceptual skills (id. at pp. 6, 7).

Thus, the evidence in the hearing record reveals that, consistent with the IHO's finding, the student made progress during the 2022-23 school year commensurate with his abilities, and, therefore, the district's recommendation for a similar program for the 2023-24 school year, with modifications responsive to the student's needs, was reasonably calculated to enable the student to make appropriate progress in light of his circumstances and offered the student a FAPE.

## **VII. Conclusion**

Having determined that the evidence in the hearing record supports the IHO's determination that the district did not deny the student a FAPE, the necessary inquiry is at an end, and it is not necessary to reach a determination of whether AYM was an appropriate unilateral placement for the 2023-24 school year or whether equitable considerations supports the parent's requested relief (M.C. v. Voluntown Bd. of Educ., 226 F.3d 60, 66 [2d Cir. 2000]).

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

**THE APPEAL IS DISMISSED.**

**Dated: Albany, New York  
July 31, 2024**

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**JUSTYN P. BATES  
STATE REVIEW OFFICER**