The University of the State of New York

The State Education Department
State Review Officer
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No. 24-375

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:
Liz Vladeck, General Counsel, attorneys for respondent, by Gail Eckstein , 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) reimburse her for the costs of her son's tuition at the Brain Balance School (Brain Balance) 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 decision will not be recited in detail. Briefly, the parent met with the student's pre-kindergarten teacher on or around November 30, 2023 for a parent-teacher conference and soon after sent an undated letter to the district's committee for preschool special education (CPSE) administration requesting "an evaluation for his eligibility for preschool special education," and also specifying the need for an occupational therapy (OT) evaluation as the student needed "special assistance with fine and gross motor skills," and was "having difficulty with tasks that require[d] use of his hands and fingers, as well as issues with his coordination" (Tr. p. 348; Dist. Ex. 3).

After the referral letter was sent to the district, the parent had the student evaluated at a private agency she described as an "OT/ [physical therapy] PT. . . therapy place" as she was

concerned how long the district evaluation process might take and she wanted to get him "something in the interim. . . to get him what he need[ed]" (Tr. p. 350). The private agency evaluated the student on December 14, 2023 and found him eligible for physical therapy (PT) and OT, as "they saw the issues with fine motor skills, the gross motor skills, [and] motor planning" (Tr. p. 350; Parent Ex. H at p. 1). The student began receiving OT and PT from the private agency on January 4, 2024 "twice a week for 30-minute sessions" and continued until February 27, 2024 (Tr. p. 351; Parent Ex. H at pp. 2, 15).

On February 9, 2024, the parent had the student evaluated by Brain Balance, who created a "customized program plan" for the student and thereafter, the student attended Brain Balance for three one-hour sessions per week beginning on March 5, 2024 (Tr. pp. 318, 357; Parent Ex. D).

A March 6, 2024 letter written by the student's pediatrician recommended the student be "treated" at Brain Balance and deemed the program "necessary for his overall improvement" (Parent Ex. B).

On March 7, 2024, a CPSE convened and found the student eligible for special education services as a preschool student with a disability (Dist. Ex. 1 at p. 1). The CPSE recommended that the student receive related services of two 30-minute sessions per week of individual OT, and two 30-minute session per week of individual PT (id.). The district began providing OT sessions to the student on March 22, 2024 and PT sessions on March 25, 2024 (Dist. Ex. 4 ¶ 30).

A. Due Process Complaint Notice

In a due process complaint notice dated April 15, 2024, the parent requested that the district "cover some portion of the expenses" attributed to the student's attendance and services provided by Brain Balance (Parent Ex. I at p. 3). The parent alleged that the services provided by Brain Balance, namely "specialized cognitive, sensory and vestibular therapy," address the "root" of the student's "physical, mental, and emotional impediments" and are necessary to address the student's deficits (id. at pp. 3-4). The parent argued that the district's evaluations of the student's needs were not accurate regarding the extent of his deficits (id. at p. 4). The parent argued that the district's evaluations failed to specifically identify the root cause of the student's deficits within his brain and therefore cannot accurately address the student's needs with the district provided OT and PT alone (id. at pp. 4-5). The parent argued that the student's participation in the "Brain Balance/Melillo" methodology provided greater benefits to the student than "traditional" OT and PT services and improved the student's physical awareness, confidence, intelligibility, and academic performance (id. at pp. 6-7). For relief, the parent requested reimbursement for the private services that the parent obtained for the student at Brain Balance.

B. Impartial Hearing Officer Decision

After two preliminary conferences (Tr. pp. 1-33), an impartial hearing convened before an IHO appointed by the Office of Administrative Trials and Hearings (OATH) on June 11, 2024 and concluded on July 12, 2024, after three days of hearings (Tr. pp. 34-396).[1] In a decision dated

[1] Subsequent to the final day of hearing, the IHO held a status conference to discuss the parent's request to file a "responsive closing" and include additional evidence, which was ultimately denied by the IHO (Tr. pp. 397-421).

August 14, 2024, the IHO summarized the parties' respective positions and the evidence and testimony in the record (IHO Decision at p. 4). The IHO found that the gravamen of the parent's case was that the district's initial evaluation did not speak to the root cause of the student's deficits or why the student might have those deficits and that the IEP neither spoke to primitive reflex retention, nor how the brain imbalance could be addressed (id. at p. 24). The IHO held that the district's responsibilities in evaluating a student did not extend to performing diagnostic testing with the aim of diagnosing a student and, instead, the purpose of the evaluations was to provide "relevant functional, developmental, and academic information about the student" to assist in determining the content of the student's IEP (id.). The IHO concluded that the record was devoid of any evidence that the district did not assess the student or that the assessments conducted did not provide sufficient relevant information for the CPSE to develop the student's IEP (id. at pp. 24-25). Finally, the IHO found that the district is not required to maximize the potential of students with disabilities and that a student is not entitled to any services that go above and beyond what is required to provide a student with a free appropriate public education (FAPE) (id. at p. 28). In sum, the IHO held that the services offered by the district were sufficient to offer the student a FAPE and that the IEP was reasonably calculated to provide some meaningful benefit to the student; the IHO dismissed the parent's complaint (id.).

IV. Appeal for State-Level Review

The parent appeals, alleging that the IHO erred in dismissing her due process complaint notice and that she disagreed with his evidentiary and factual findings. The parent asserts that the IHO's findings regarding the evaluation of the student were erroneous. According to the parent, the IHO failed to address the fact that the student's IEP did not call for "primitive reflex" work, which his pediatrician called for. The parent also disagreed with the IHO's determination that Brain Balance seeks to " maximize" the student's potential.

The district in an answer disputes the allegations set forth in the parent's request for review and requests that the IHO's decision be upheld.

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

The IHO's denial was not appealed by the parent and that determination has 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]).

(Rowley, 458 U.S. at 206-07; T.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 151, 160 [2d Cir. 2014]; R.E. v. New York City Dep't of Educ., 694 F.3d 167, 189-90 [2d Cir. 2012]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 [2d Cir. 2012]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). "'[A]dequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP'" (Walczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998], quoting Rowley, 458 U.S. at 206; see T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 253 [2d Cir. 2009]). The Supreme Court has indicated that "[t]he IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement" (Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 580 U.S. 386, 399 [2017]). While the Second Circuit has emphasized that school districts must comply with the checklist of procedures for developing a student's IEP and indicated that "[m]ultiple procedural violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not" (R.E., 694 F.3d at 190-91), the Court has also explained that not all procedural errors render an IEP legally inadequate under the IDEA (M.H., 685 F.3d at 245; A.C. v. Bd. of Educ. of the Chappaqua Cent. Sch. Dist., 553 F.3d 165, 172 [2d Cir. 2009]; Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]). Under the IDEA, if procedural violations are alleged, an administrative officer may find that a student did not receive a FAPE only if the procedural inadequacies (a) impeded the student's right to a FAPE, (b) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 [2007]; R.E., 694 F.3d at 190; M.H., 685 F.3d at 245).

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

200.6[a][1]; see Newington, 546 F.3d at 114; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132).

An appropriate educational program begins with an IEP that includes a statement of the student's present levels of academic achievement and functional performance (see 34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]), establishes annual goals designed to meet the student's needs resulting from the student's disability and enable him or her to make progress in the general education curriculum (see 34 CFR 300.320[a][2][i], [2][i][A]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (see 34 CFR 300.320[a][4]; 8 NYCRR 200.4[d][2][v]).[2]

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. Evaluative Information

Turning to the parent's contention that the district's evaluation of the student was inadequate because the evaluation and the resulting IEP did not address the root cause of the student's deficits, such as primitive reflexes, a brief review of the district's assessments of the student provides the context that relates to the sufficiency of recommendations of the March 2024 CPSE, particularly here, where a review of the parent's due process complaint notice shows that the parent only alleged deficiency with the IEP is the evaluative information relied upon by the March 2024 CPSE (see Parent Ex. I pp. 2-3).

The evidence shows that the CPSE administrator provided direct testimony by affidavit that in preparation for the March 2024 CPSE meeting, she reviewed the following assessments of

[2] 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).

the student which were all conducted in January 2024: an educational evaluation; a psychological evaluation; a social history; a speech-language evaluation; an OT evaluation; and a PT evaluation (Dist. Ex. 4 ¶ 19). The parent did not appear to provide the CPSE with evaluative information obtained from the private providers that assessed the student prior to the CPSE meeting despite having the opportunity to do so, but the parent did raise the prospect of using services from Brain Balance during the CSE meeting (see Tr. pp. 66-69, 77-80, 375; see also Dist. Exs. 1; 4 at ¶ 19). Therefore, the CPSE was unable to consider the private providers' evaluation of the student as they did not appear to be presented by the parents at the time of the meeting. The CPSE administrator testified on cross-examination that the goal was to create an IEP that addressed the student's weaknesses in the most inclusive environment (Tr. pp. 59, 65). She also testified that the purpose of the district's evaluation was to identify the developmental delay rather than identify the "root" cause of the delay or why the student has the deficits (Tr. p. 72).

According to the March 2024 IEP, administration of the Developmental Assessment of Young Children, Second Edition (DAYC-2) yielded a low average score (18th percentile) on the general development index, and average scores on the cognitive, social emotional, receptive and expressive language, and gross motor indexes (Dist. Ex. 1 at p. 2). The March 2024 IEP also reflected that administration of the Stanford-Binet Intelligence Scales, Fifth Edition (SB-5), yielded a score in the high average range on the quantitative reasoning factor, scores in the average range on visual-spatial processing and working memory factors, , a low average score on the knowledge factor, and a score in the borderline/delayed range on the SB-5 fluid reasoning factor (id.). The student's overall performance on the SB-5 yielded a full-scale IQ in the average range (id). With regard to the student's adaptive behavior, the March 2024 IEP indicated that he scored in the adequate range in communication, socialization, motor skills and daily living skill domains on the Vineland Adaptive Behavior Scales, Third Edition (Vineland-III) (id.).

Turning to the student's language development, the March 2024 IEP indicated that administration of the Goldman-Fristoe Test of Articulation 3 (GFTA-3) yielded a standard score of 91 (27th percentile) and that the student's "[a]uditory and oral motor skills were adequate for speech purposes" (Dist. Ex. 1 at p. 2). Administration of the Preschool Language Scales-5 (PLS-5) to assess the student's receptive and expressive language skills yielded a standard score of 104 on the auditory comprehension subtest, a standard score of 94 on the expressive communication subtest, resulting in a total language standard score of 99 (47th percentile) (id.). According to the IEP, the speech-language pathologist indicated that the student presented as a "friendly, happy, social child," was attentive throughout the session, and exhibited appropriate eye contact and social skills (id. at p. 4). The speech-language pathologist also noted that the student participated in reciprocal conversation, "answering various social and factual questions using phrases and sentences" and that his "speech intelligibility was adequate" (id.).

With regard to the student's physical development, the March 2024 IEP reflected that the student presented with delays related to grasp, fine motor skills, visual motor integration "(rooted primarily in his fine motor difficulties and attention)," difficulties with sensory motor skill development, and had decreased strength and endurance in his upper body and core (Dist. Ex. 1 at pp. 2-3). Per parent and evaluator report, some of the student's movements were awkward and uncoordinated and he had difficulty with some gross motor movement patterns including throwing and catching a ball or riding his scooter (id. at p. 5). He also had difficulty with motor planning tasks, including dressing, using utensils when eating, and writing or pre-writing activities (id.).

The student scored in the second percentile in the area of grasping, and in the 25th percentile in visual motor integration on the Peabody Developmental Motor Scales-Second Edition: Complete Set (PDMS-2) (id. at p. 2). The student was able to demonstrate jumping forward 20 inches, could jump up vertically in place, and was able to run 30 feet forward in five seconds but stumbled and fell when he tried to stop running (id. at p. 5). The student was able to jump down from a raised surface, could gallop 10 feet but was unable to demonstrate skipping, jumping and spinning in place, or jumping laterally (id.). Assessment of the student's gross motor skills on the PDMS-2 yielded below average scores in stationary, locomotion, and object manipulation (id. at p. 3). The gross motor narrative contained in the March 2024 IEP stated that the testing data indicated that the student was functioning "nearly two standard deviations below the mean for his age group" (id. at p. 3). The March 2024 IEP noted that the parent and the teacher both indicated their main concern was the student's motor skill development (id. at p. 4).

Socially, the student's classroom teacher reported the student followed the classroom rules and classroom routines, and he transitioned easily between activities (Dist. Ex. 1 at p. 4). She noted that he engaged in classroom activities, was able to complete independent tasks, and could sit and attend during group activities and lessons (id.). However, she reported that he did not answer questions posed to the group, or raise his hand to volunteer information, but would respond to questions when called upon (id.). According to the March 2024 IEP, the student's teacher indicated that the student had adequate receptive and expressive language skills, but expressed concern regarding his pragmatic skills due to shyness (id.). The teacher noted that the student was able to follow verbal directions whether directed to him specifically or posed to the group (id.). The student was able to compose phrases and sentences but was shy and did not ask for help when struggling with a task (id.). If help was offered, he accepted it willingly, but he did not "spontaneously communicate wants/needs in the classroom" or "initiate conversation with teachers or classmates" (id.). The student engaged in cooperative play, interacted appropriately, and was able to share and takes turns with classmates (id.).

The March 2024 IEP described the student during the evaluation process as interested and engaged in the evaluation, noting that he made eye contact and warmed up quickly (Dist. Ex. 1 at p. 3). His parent was present for the evaluation process and the student was described as cooperative during the assessment, attending to all tasks asked of him with some mild distraction and redirections (id.). The March IEP noted that the student presented as mildly anxious as he "continually asked what was next and worried about how much work [was]. . . left to complete," but noted that he waited "patiently, with reminders, between subtests" (id.).

In developing the recommendations for a student's IEP, the CSE must consider the results of the initial or most recent evaluation; the student's strengths; the concerns of the parents for enhancing the education of their child; the academic, developmental, and functional needs of the student, including, as appropriate, the student's performance on any general State or district-wide assessments as well as any special factors as set forth in federal and State regulations (34 CFR 300.324[a]; 8 NYCRR 200.4[d][2]). A CSE must consider independent educational evaluations whether obtained at public or private expense, provided that such evaluations meet the district's criteria, in any decision made with respect to the provision of a FAPE to a student (34 CFR 300.502[c]; 8 NYCRR 200.5[g][1][vi]). However, consideration does not require substantive discussion, or that every member of the CSE read the document, or that the CSE accord the private evaluation any particular weight or adopt their recommendations (Mr. P. v. W. Hartford Bd. of

Educ., 885 F.3d 735, 753 [2d Cir. 2018], citing T.S. v. Ridgefield Bd. of Educ., 10 F.3d 87, 89-90 [2d Cir. 1993]; Watson v. Kingston City Sch. Dist., 325 F. Supp. 2d 141, 145 [N.D.N.Y. 2004] [noting that even if a district relies on a privately obtained evaluation to determine a student's levels of functional performance, it need not adopt wholesale the ultimate recommendations made by the private evaluator], aff'd, 142 Fed. App'x 9 [2d Cir. July 25, 2005]; see Michael P. v. Dep't of Educ., State of Hawaii, 656 F.3d 1057, 1066 n.9 [9th Cir. 2011]; K.E. v. Indep. Sch. Dist. No. 15, 647 F.3d 795, 805-06 [8th Cir. 2011]; Evans v. Dist. No. 17, 841 F.2d 824, 830 [8th Cir. 1988]; James D. v. Bd. of Educ. of Aptakisic-Tripp Community Consol. Sch. Dist. No. 102, 642 F. Supp. 2d 804, 818 [N.D. Ill. 2009]).

As previously noted, the March 2024 CPSE recommended that the student receive related services of two 30-minute sessions per week of individual OT, and two 30-minute session per week of individual PT (Dist. Ex. 1 at p.1). The March 2024 IEP included three goals in OT to address his core strength and balance, sensory processing skills, and grasping for improved success in fine and visual motor activities (id. at pp. 8-9). The IEP also included three PT goals to address improving the student's gait patterns for safe navigation, increasing upper and lower muscle strength, and improving trunk control during ambulation, running and standing (id. at pp. 9-10).

The IHO noted that the thrust of the parent's contentions was that the district did not detail the root causes of the student's delays in the evaluation of the student and therefore failed to reflect those causes in the student's IEP (IHO Decision at pp. 24, 28). However, the IHO correctly found that the purpose of the evaluation of the student did not extend that far and that the district was required to "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, which may assist in determining, among other things the content of the student's IEP" (id.). In this case, the IHO was correct that while the district's evaluation must be "sufficiently comprehensive to identify all of the student's special education needs," the district did not fail to comply with its obligations just because the evaluations "weren't sufficient to identify the underlying causes" of the student's deficits (see MB v. City Sch. Dist. of New Rochelle, 2018 WL 1609266, at *12 [S.D.N.Y. Mar. 29, 2018]). Furthermore, the parent does not challenge the IHO's findings that the IEP was likely to produce progress and that it was reasonably calculated to enable the student to receive meaningful benefits (IHO Decision at pp. 23, 25), even if it did not provide everything the parent might have desired.

In summary, as described above, the evidence supports the IHO's findings that the district assessed the student thoroughly as part of an initial evaluation without procedural error and within regulatory timelines and that the March 2024 CPSE relied upon then-current evaluative information and input from the parent to develop an appropriate IEP for the student. The evidence does not lead me to conclude that any of IHO's determinations should be disturbed or that the student was denied a FAPE.

VII. Conclusion

The evidence in the hearing record establishes that the district sustained its burden to establish that it offered the student a FAPE for the 2023-24 school year, therefore, the necessary inquiry is at an end.

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

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
November 8, 2024

JUSTYN P. BATES
STATE REVIEW OFFICER