



The University of the State of New York

The State Education Department

State Review Officer

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No. 24-418

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 Lauren A. Baum, PC, attorneys for petitioner, by Matthew Finizio, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Thomas W. MacLeod, 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 the decision of an impartial hearing officer (IHO) which determined that respondent (the district) offered her son an appropriate educational program and denied her request to be reimbursed for the costs of her son's tuition at the Hamaspik School (Hamaspik) for the 2022-23 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[a]). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

Given the limited issues to be resolved in this appeal, a lengthy recitation of the student's educational history is unwarranted. Briefly, the evidence in the hearing record reveals that, during the 2021-22 school year, the student in this matter attended a nonpublic school for students with special needs in an ungraded classroom (see Dist. Exs. 6 at p. 1; 7 at p. 1; 8 at p. 1). At the nonpublic school, the student received occupational therapy (OT), physical therapy (PT), speech-language therapy, instruction using applied behavior analysis (ABA) principles, and 1:1 paraprofessional services (Dist. Ex. 8 at p. 1; see generally Dist. Exs. 9-12).¹

¹ In addition to receiving OT, PT, and speech-language therapy during the 2021-22 school year, evidence reflects that the student also received "aquatic, animal, and music therapy" (Dist. Ex. 8 at p. 1).

On April 7, 2022, a CSE convened for the student's annual review and developed an IEP for the 2022-23 school year (see Dist. Ex. 1 at pp. 1, 28; see generally Dist. Ex. 5). Finding that the student remained eligible for special education as a student with an intellectual disability, the April 2022 CSE recommended 12-month programming, consisting of a 12:1+1 special class placement in a specialized school with two 30-minute sessions per week of individual OT, one 30-minute session per week of OT in a group, two 30-minute sessions per week of PT in a group, three 30-minute sessions per week of individual speech-language therapy, one 30-minute session per week of group speech-language therapy, and adapted physical education (see Dist. Ex. 1 at pp. 22-24, 27).²

In a prior written notice dated June 10, 2022, the district informed the parent of the special education program recommended for the student in the April 2022 IEP (see Dist. Ex. 2 at p. 1). In a school location letter also dated June 10, 2022, the district informed the parent of the specific public school (assigned public school site) within which the student's April 2022 IEP would be implemented during the 2022-23 school year (see Dist. Ex. 3 at p. 1).

In a letter dated August 22, 2022, the parent notified the district of her disagreements with the student's April 2022 IEP, as well as her concerns with the assigned public school site (see Parent Ex. B at pp. 1-2). The parent also notified the district of her intentions to enroll the student at Hamaspik for the 2022-23 school year and to seek public funding for the costs of that placement, including transportation costs if the district did not arrange for round-trip transportation (*id.* at pp. 2-3).

On September 8, 2022, the parents executed a "School Contract—Academic Year—2022/2023" with Hamaspik for the student's attendance during the 2022-23 school year (10-month program) (see Parent Ex. N at pp. 1, 8).³ Evidence in the hearing record reflects that the student attended Hamaspik during the 2022-23 school year from September 7, 2022 through June 21, 2023, in a 6:1+3 special class placement and received related services consisting of OT, PT, and speech-language therapy (see generally Parent Exs. D-O).

A. Due Process Complaint Notice

By due process complaint notice dated April 6, 2024, the parent alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2022-23 school year (see Parent Ex. A at p. 1). As relief, the parent sought an order directing the district to fund the costs of the student's attendance at Hamaspik for the 2022-23 school year (*id.* at p. 4).

B. Impartial Hearing Officer Decision

On August 21, 2024, the parties proceeded to an impartial hearing before an IHO with the Office of Administrative Trials and Hearings (OATH) (see Tr. p. 1). In a decision dated August 21, 2024, the IHO found that the district offered the student a FAPE for the 2022-23 school year

² The student's eligibility for special education programs and related services as a student with an intellectual disability is not in dispute (see 34 CFR 300.8[c][6]; 8 NYCRR 200.1[zz][7]).

³ The Commissioner of Education has not approved Hamaspik as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7)).

(see IHO Decision at pp. 3-4). Specifically, the IHO found that review of the hearing record supported the district school psychologist's testimony that the April 2022 IEP annual goals were appropriate, the evidence did not support a finding that the student required behavior paraprofessional support, and that the assistant principal of the assigned school site "credibly testified that the public school placement was able to implement the [s]tudent's IEP as written" (id.). Next, the IHO also gave "credit" to the school psychologist's professional opinion that the district's 12:1+1 special class placement "was a more appropriate placement for the student" than the Hamaspik programming consisting of a 6:1+1 setting with 1:1 paraprofessional services (id. at p. 4).⁴ Further, the IHO determined that there were "no equitable considerations against the [p]arent" (id.). The IHO denied the parent's claim for tuition reimbursement for the student's unilateral placement at Hamaspik for the 2022-23 school year (id. at p. 5).

IV. Appeal for State-Level Review

The parent appeals, alleging that the IHO erred by improperly weighing the testimonial evidence elicited from the district's witnesses at the impartial hearing. More specifically, the parent contends that the district school psychologist, who had no personal knowledge of the student or his needs, failed to provide a cogent rationale demonstrating that the April 2022 IEP was reasonably calculated to enable the student to make appropriate progress. The parent further contends that the district school psychologist had not observed the student prior to the April 2022 CSE meeting, she could not recall specifics from the April 2022 CSE meeting, and instead, she testified about general practices. According to the parent, notwithstanding the evaluative information available to the CSE and the parent's concerns, the April 2022 CSE recommended a 12:1+1 special class placement in a specialized school. The parent additionally argues that the short length of the April 2022 CSE meeting precluded an adequate discussion of the reports available to the CSE, the student's functioning levels, and annual goals. In addition, the parent argues that the student's neuropsychological evaluation did not support the recommendations made by the April 2022 CSE.⁵

Next, the parent asserts that the IHO improperly weighed the testimony elicited from the district's witness from the assigned public school site. The parent also asserts that she sustained her burden to establish the appropriateness of the student's unilateral placement at Hamaspik for the 2022-23 school year, even though the IHO did not reach this issue. As relief, the parent seeks to reverse the IHO's finding that the district offered the student a FAPE for the 2022-23 school year, and a finding that Hamaspik was an appropriate unilateral placement.⁶

⁴ The student attended a 6:1+3 class at Hamaspik during the 2022-23 school year (compare IHO Decision at p. 4, with Parent Exs. E at p. 1, and Parent Ex. I at p. 1).

⁵ It appears that the parent mistakenly refers to a "neuropsychological evaluation" in the request for review, as the hearing record does not include this type of evaluation and the parent cites to the January 2022 psychoeducational evaluation of the student (Req. for Rev. at p. 5; see generally Tr. pp. 1-173; Parent Exs. A-S; Dist. Exs. 1-14; IHO Exs. I-IV).

⁶ Notably, the parent does not raise or assert any challenges to the evaluative information relied upon by the April 2022 CSE in the development of the student's IEP, or to any portions of the April 2022 IEP—i.e., the present levels of performance, annual goals, management needs, 12-month programming, and related service recommendations—except with regard to the recommendation for a 12:1+1 special class placement and the CSE's

In an answer, the district responds to the parent's allegations and generally argues to uphold the IHO's decision in its entirety.

V. Applicable Standards

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

rationale for such recommendation as a basis to conclude that the IHO erred (see Req. for Rev. ¶ 1[A]). State regulations governing practice before the Office of State Review provide that a request for review "shall clearly specify the reasons for challenging the [IHO's] decision, identify the findings, conclusions, and orders to which exceptions are taken, or the failure or refusal to make a finding, and shall indicate what relief should be granted by the [SRO] to the petitioner" (8 NYCRR 279.4[a]). Additionally, State regulation provides that a request for review must set forth "a clear and concise statement of the issues presented for review and the grounds for reversal or modification to be advanced, with each issue numbered and set forth separately," and further specify that "any issue not identified in a party's request for review, answer, or answer with cross-appeal shall be deemed abandoned and will not be addressed by a State Review Officer" (8 NYCRR 279.8[c][2], [4]). Further, an IHO's decision is final and binding upon the parties unless appealed to a State Review Officer (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]).

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]).⁷

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

⁷ 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).

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

Turning first to the parent's contentions regarding the weight the IHO afforded to the district school psychologist's testimony with respect to the development of the student's April 2022 IEP, a review of the evidence in the hearing record does not support the parent's assertions. Moreover, a review of the evidence in the hearing record demonstrates that, even absent testimony from the district witness, the IHO properly concluded that the district met its burden to establish that the April 2022 IEP offered the student a FAPE for the 2022-23 school year.

A. Preliminary Matters—Credibility Determinations

Initially, to the extent that the language in the IHO's decision represents credibility determinations with respect to the district witnesses' respective testimony (see IHO Decision at p. 4), an SRO generally 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 parent does not point to any non-testimonial evidence in the hearing record that would justify a conclusion contrary to the IHO's credibility determinations, or that the hearing record, when read as a whole, compelled a contrary conclusion (see generally Req. for Rev.; Tr. pp. 1-173; Parent Exs. A-S; Dist. Exs. 1-14; IHO Exs. I-IV).

B. April 2022 IEP

As noted above, the parent argues that the IHO improperly weighed the district school psychologist's testimony to reach the determination that the district offered the student a FAPE.

As previously noted, a CSE convened in April 2022 to develop the student's IEP for the 2022-23 school year (see Dist Ex. 1 at pp. 1, 28). Evidence in the hearing record reflects that the April 2022 CSE members included a district school psychologist (who also served as the district representative), a district special education teacher, a district curriculum supervisor, the parent, and an educational supervisor from the student's then-current nonpublic school (id. at pp. 30-31; see Dist. Ex. 13 ¶ 7). The district school psychologist testified that, to develop the April 2022 IEP, the CSE used the "[r]aw data" from the nonpublic school progress reports and a psychoeducational

evaluation report when developing the student's April 2022 IEP (Dist. Ex. 13 ¶¶ 1, 6, 11, 12; see Dist. Ex. 5 at p. 1).

At the impartial hearing, the district school psychologist who attended the April 2022 CSE meeting candidly stated that she could not recall the specifics of this particular meeting or specifically discussing the annual goals in the IEP, and noted that she generally held over approximately 100 CSE meetings per year (see Tr. pp. 56-57, 72).⁸ She testified that, prior the April 2022 CSE meeting, she reviewed a January 2022 psychoeducational evaluation report, as well as progress reports from the student's then-current nonpublic school, which included "progress reports for every service" the student was receiving (Tr. p. 57; see Dist. Ex. 13 ¶ 6; see generally Dist. Exs. 7-12). When asked if the January 2022 psychoeducational evaluation was discussed at the meeting, the school psychologist testified that "if [the CSE] ha[d] new testing, it[wa]s always discussed in a meeting," and therefore, she was confident that it was discussed (Tr. pp. 57-58).

The district school psychologist testified that, at the time of the April 2022 CSE meeting, she understood that the majority of the classrooms at the student's then-current nonpublic school consisted of six students and that every student had a "one-to-one paraprofessional for learning at the school, where they d[id] ABA" (Tr. pp. 58-59). When asked about the April 2022 CSE's decision to recommend a 12:1+1 special class, especially having known that the student's then-current classroom consisted of only six students, the school psychologist noted that the student's attendance in "that type of class" did not mean that it was the "most appropriate" for him (Tr. p. 60). The school psychologist explained that the student's then-current school used "paraprofessionals for teaching," which was "inappropriate" because they were "not teachers"; in addition, she noted that, having worked in district specialized schools herself, she knew "what the classes look[ed] like," and believed the student would "do very well" in a 12:1+1 special class (id.). More specifically, the school psychologist testified that specialized schools were "tailored to students who ha[d] intellectual disabilities," and the "support offered to those types of students . . . would [have] be[en] more appropriate" for the student (Tr. pp. 60-61). When questioned further about the number of students in the recommended special class placement, the school psychologist indicated that, even though she could not recall "if she had ever observed the student," the psychologist who conducted the psychoeducational evaluation included a "section about their behavioral observations during the evaluation" (Tr. p. 61). She also acknowledged that the psychologist who conducted the student's evaluation had not attended the April 2022 CSE meeting (id.).

When asked why the April 2022 CSE determined that the student did not meet the "criteria for a behavior support paraprofessional," as noted in the meeting minutes, the district school psychologist testified that a student's "behavior ha[d] to interfere with your learning or the learning of others so severely that you need an adult with you throughout the day, to keep safe, [and] to manage behavior" (Tr. pp. 73-74; Dist. Ex. 5 at pp. 2-3). As to this specific student, the school psychologist testified that, "based on all the information [she] received and heard in the meeting,

⁸ After being referred to the April 2022 CSE meeting minutes, the district school psychologist could still not recall with any specificity a discussion of the annual goals, notwithstanding that the meeting minutes reflected that the goals had been discussed (see Tr. pp. 72-73; Dist. Ex. 5 at pp. 1-2). The school psychologist reminded the parent's attorney during cross-examination that the April 2022 CSE meeting was held "two years ago" and she would "love to have a memory like that" (Tr. pp. 72-73).

[the student] would not meet that criteria" (Tr. pp. 74-75). The school psychologist also testified that although the student was receiving the support of a one-to-one paraprofessional at his then-current nonpublic school, it was not to address the student's behavior but rather, to receive ABA, and every student at the particular nonpublic school had a one-to-one paraprofessional (see Tr. p. 75). She further noted that the April 2022 CSE did not consider a functional behavior assessment (FBA)—or conduct an FBA prior to the CSE meeting—because it was unnecessary (see Tr. p. 76). When examining the April 2022 IEP, the school psychologist testified that the CSE noted that, as management needs, the CSE recommended the use of "[c]lass wide positive behavioral supports" and a "[t]oken economy," which, as further noted in the IEP, would be "utilized to support and incentivize appropriate classroom behavior for all students" (Tr. pp. 78-79; Dist. Ex. 1 at p. 6). She explained that, "in a small, structured class, that c[ould] be done by the teacher" and therefore, the student did not need an "individual behavior plan" (Tr. p. 79). She further explained that, in public schools, "if the behavior c[ould]not be met by the teacher or the teaching assistant in the classroom, then the team would work to . . . conduct an FBA and see if an individual behavior plan would be necessary" (id.).

With respect to the April 2022 CSE's decision to recommend a 12:1+1 special class placement, rather than a 6:1+1 special class with a one-to-one paraprofessional, the district school psychologist testified that a 6:1+1 special class was "very restrictive" and provided the student with "very few peers" in the classroom (Tr. p. 80). She noted that the 12:1+1 special class was "designed for children with intellectual disabilities, so the teachers underst[oo]d the children" (id.). She further noted that the student "could manage a class like that" (id.). With regard to her opinion that the 12:1+1 special class was "still small enough to meet his needs," the school psychologist testified that she had based her opinion on the "progress reports and the information," noting that the student had "no significant behaviors," he was able to "engage in the classroom," and she believed, having seen these classes, that "his profile fit that" of a 12:1+1 special class (Tr. p. 81). The school psychologist also testified that she relied on information from the January 2022 psychoeducational evaluation report, even though it did not include a specific placement recommendation (see Tr. pp. 81-82).

Review of the student's April 2022 IEP shows that it included information from the January 2022 psychoeducational evaluation report (compare Dist. Ex. 1 at pp. 1-2, with Dist. Ex. 6). Administration of cognitive assessments to the student yielded scores in the moderately delayed range, with a full scale intelligence quotient (IQ) of 40 (see Dist. Ex. 1 at p. 1). Achievement testing administered to the student indicated that his academic skills were in the extremely low range, and measures of the student's adaptive behavior, including communication, daily living, socialization, and motor skills, yielded scores below the first percentile (id. at pp. 1-2). As reflected in the April 2022 IEP, during testing the student identified some letters of the alphabet but did not write them, and he identified some numbers but did not demonstrate understanding of number order, addition, or subtraction (id. at p. 2). The student identified shapes and objects shown to him, had difficulty verbally stating colors and animals that he knew, and repeated three word sentences modeled for him (id.).

Progress report information reflected in the April 2022 IEP indicated that regarding communication skills, the student identified objects, actions, body parts and clothing, and understood some basic concepts such as slow/fast, wet/dry, and first/last; however, he had difficulty identifying objects based on attributes, understanding negatives in sentences, answering when, where, and why questions, and following two-step directions without cues and prompts (see

Dist. Ex. 1 at pp. 2-3). Expressively, the student used gestures and one to two word phrases, requiring prompts and cues to expand his utterances (*id.* at p. 3). The student answered yes/no questions, used some pronouns, and basic adjectives to describe common objects (*id.*). He had difficulty using plurals, possessives and correct verb tenses, inconsistently stated object functions, and had difficulty describing an object based on its features (*id.*). Additionally, the student presented with numerous articulation errors and phonological processes that affected his speech intelligibility and ability to produce multisyllabic words (*id.* at p. 4).

According to the April 2022 IEP, during group instruction the student had difficulty maintaining focus in the presence of stimuli, needed prompts to focus on the instructor and task, and needed reminders to wait before touching lesson materials (*see* Dist. Ex. 1 at p. 4). The student struggled with following group directions and often needed instructions repeated (*id.*). He was described as self-directed, and his ability to maintain joint attention was emerging (*id.*). Socially, the student was described as "friendly," and who "love[d] interacting with his peers and teachers" (*id.*). The student engaged in independent play for periods of time, and interactive play for a few minutes (*id.*). He had difficulty maintaining personal space around adults and peers, needed prompts to use full sentences in conversation, and had difficulty requesting help and taking turns during game play (*id.*).

With regard to the student's motor skills, the April 2022 IEP indicated that the student presented "with overall fair fine motor skills" and would benefit from hand strengthening and fine motor manipulation play to improve scissor, handwriting, puzzle, and coloring skills (*see* Dist. Ex. 1 at p. 5). The student needed assistance with some clothing fasteners and using utensils (*id.*). He could "remain dry by following a toileting schedule" and needed assistance with other toileting skills (*id.*). The student ascended stairs using a reciprocal pattern and handrails, but had difficulty descending stairs and performing jumping jacks (*id.*). According to the IEP, the parent reported that there were "no new concerns" regarding the student's health (*id.* at p. 6).

The April 2022 CSE developed annual goals and corresponding short-term objectives to improve the student's receptive language skills, expressive language skills, pragmatic language skills, articulation skills, gross motor skills, balance and strength, bilateral coordination and visual perceptual skills, functional shoulder/arm/hand control, self-care skills, basic reading, writing, and math skills, social/social communication skills, attention, and ability to follow directions in group settings (*see* Dist. Ex. 1 at pp. 8-22).

The April 2022 CSE concluded that the student presented with global delays and needed to "attend a small, supportive special education classroom where the curriculum w[ould] be broken down and taught to him at his level" (Dist. Ex. 1 at p. 6). Accordingly, the CSE recommended 12-month programming consisting of a 12:1+1 special class placement in a specialized school (*id.* at pp. 22, 24, 27). 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]; "Continuum of Special Education Services for School-Age Students with Disabilities," at pp. 15-16, Office of Special Educ. [Nov. 2013], available at <http://www.p12.nysed.gov/specialed/publications/policy/continuum-schoolage-revNov13.pdf>). By way of comparison, State regulation also indicates that the maximum class size for special classes containing students whose management needs are

determined to be intensive or highly intensive and requiring a significant or high degree of individualized attention and intervention shall not exceed eight or six students, respectively, with one or more supplementary school personnel assigned to each class during periods of instruction"(8 NYCRR 200.6[h][4][ii][a]-[b]).

In addition to the 12:1+1 special class placement, the April 2022 CSE addressed the student's fine and gross motor delays, receptive language delays, limited expressive language skills, and social communication deficits, by recommending related services of OT, PT, and speech-language therapy (see Dist. Ex. 1 at p. 6). Therefore, the CSE recommended that the student receive two 30-minute sessions per week of individual OT, one 30-minute session per week of OT in a group, two 30-minute sessions per week of PT in a group, three 30-minute sessions per week of individual speech-language therapy, one 30-minute session per week of group speech-language therapy, and five periods per week of adapted physical education (id. at pp. 22-23).

On appeal, the parent argues that the IHO gave inappropriate weight to the evidence and testimony provided by the district school psychologist, including that the school psychologist lacked personal knowledge of the student and that there were "glaring concerns" about her memory. Specifically, the parent asserts that the school psychologist failed to provide "a cogent and responsive explanation" for the April 2022 CSE's recommendations. However, contrary to the parent's assertion, a review of the district school psychologist's testimony shows that she explained the April 2022 CSE's rationale for its recommendations. For example, she testified that the CSE developed the student's management needs and annual goals from the nonpublic school progress reports and data from the psychoeducational evaluation, as well as with input from the parent and nonpublic school representative (see Dist. Ex. 13 ¶¶ 7, 12-13, 15). She further testified that the 12:1+1 special class placement in a specialized school placement was "a small, structured class that cater[ed] to students with intellectual disabilities," criteria which the student met, and that the student "would have been situated in a program with peers who ha[d] a similar cognitive level" (id. ¶ 10).

Also, review of the April 2022 IEP shows that the CSE explained its rationale for the student's recommendations, including consideration of other placements such as a 12:1+1 special class in a community school (rejected as the student required a 12-month "learning environment" and more specialized instruction to meet his needs), as well as considering 6:1+1 and 8:1+1 special classes in a specialized school (rejected as "too restrictive" for the student's then-current needs as he did not require "such an intensive adult[to]student ratio") (Dist. Ex. 1 at p. 30).⁹ According to

⁹ The only criticism I have relates to the school psychologist's point about restrictiveness. The reference in the IEP and the school psychologist's testimony to the greater restrictiveness of other student-to-staff special class ratios generally conflates the student's need for additional adult support within a classroom with the student's placement in the LRE, which relates to the disabled student's opportunities to interact with nondisabled peers—and not a student's opportunity to interact with other disabled peers in a special class with more students in it (see R.B. v. New York City Dep't of Educ., 603 Fed. App'x 36, 40 [2d Cir. Mar. 19, 2015] [explaining that the requirement that students be educated in the LRE applies to the type of classroom setting, not the level of additional support a student receives within a placement with the goal of integrating children with disabilities into the same classrooms as children without disabilities]; T.C. v. New York City Dep't of Educ., 2016 WL 1261137, at *7 [S.D.N.Y. Mar. 30, 2016] [noting that "restrictiveness" pertains to the extent to which disabled students are educated with non-disabled students, not to the size of the student-staff ratio in special classes]). Thus, the CSE was not changing the restrictiveness of the placement based on the change in student to staff ratio in this case, but the statement in the IEP that the student did not require a more

the April 2022 CSE meeting minutes, the CSE discussed the 12:1+1 special class placement recommendation, and the parent's concern about "how [the student] would manage without a one-to-one paraprofessional," to which district staff explained that he did "not meet [district] criteria for a behavior support paraprofessional" (Dist. Ex. 5 at p. 2). Additionally, according to the CSE meeting minutes, district staff explained to the parent that "ABA methodology [wa]s not noted on a student's IEP, because teachers ha[d] the opportunity to be trained in different methodologies and it [wa]s left to their discretion to choose what [wa]s most appropriate for each student" (*id.* at p. 3). Therefore, the hearing record contains sufficient evidence demonstrating that the April 2022 CSE, including the district school psychologist, provided a cogent rationale for the student's recommendations in the April 2022 IEP.

Further, the parent argues that the school psychologist did not base her opinion that the student did not require 1:1 paraprofessional services and instruction using ABA on "personal knowledge," of the student and questioned how "in-depth the discussion of the recommendation and provided reports" could have been, given that the CSE meeting "lasted 26 minutes." Review of the nonpublic school initial educational report shows that, during the 2021-22 school year, the student received 1:1 support from a paraprofessional and instruction using ABA methods (*see* Dist. Ex. 8 at p. 1). According to the nonpublic school report, the paraprofessional implemented the student's behavior plan and sensory protocol to "decrease problem behaviors" (*id.*). The report indicated that the student had a hard time maintaining focus; became distracted; and needed prompts to focus on the instructor, reminders to wait before touching materials, and instructions repeated (*id.* at pp. 3-4). However, the report also indicated that the student learned in both 1:1 and group instructional sessions, sat through 30-minute group lessons with reinforcement, followed directions, answered questions, and completed his work (*id.* at p. 2). He also benefitted from praise from his teachers (*id.*). The student "remained dry by following a toileting schedule," although he needed assistance with some aspects of toileting (*id.* at p. 3).

Regarding instruction using ABA methods, the nonpublic school educational report indicated that the student worked 1:1 at a table, using "a series of discrete antecedent-behavior-consequence learning trials to acquire skills" and that the student benefitted "tremendously" from that individualized program (Dist. Ex. 8 at p. 4). However, according to the report, during that type of instruction the student engaged in behaviors such as putting his head down, acting silly, and refusing to do work to escape demands he perceived as difficult (*id.*). Additionally, at times the student escaped demands by standing on chairs, leaving the classroom, or sitting under the table (*id.*).

Although the April 2022 CSE did not recommend 1:1 paraprofessional services or instruction using ABA in the student's IEP, the CSE did identify and recommend supports and services to address the student's management needs, including hand-strengthening exercises, walking in front of an adult when descending stairs, and using prompts to speak loudly and use full sentences, a toileting schedule, and a visual schedule, as well as providing redirection, prompts and reminders, praise and encouragement, tasks broken down, small group instruction when

intensive level of adult support is accurate (Dist. Ex. 1 at p. 30). The school psychologist's view that having a greater number of peers in a special class might be of some benefit to the student was nevertheless a permissible consideration, even if it did not result in a less restrictive environment, and this criticism does not change my view that the district proposed an appropriate setting for the student.

learning new material, repetition and review, class wide positive behavior supports, a token economy, questions and directions repeated, rephrased, and clarified, reminders to request breaks, and frequent breaks throughout the day (see Dist. Ex. 1 at p. 6). Some of the strategies recommended, such as prompts, redirection, visual schedules, tasks broken down, behavior supports, and a token economy, are similar in nature to the ABA supports provided to the student at the nonpublic school (compare Dist. Ex. 8, with Dist. Ex. 1 at p. 6).

Next, the parent alleges that the district school psychologist had difficulty recalling the "specifics" of the meeting. The school psychologist testified that her duties included developing IEPs, holding IEP meetings, and reviewing progress reports (see Dist. Ex. 13 ¶ 4). She also testified that she generally held over approximately 100 CSE meetings per year (see Tr. pp. 56-57, 72). Therefore, it should not be surprising that the school psychologist, who was testifying approximately two years after the April 2022 CSE meeting on June 21, 2024, and who held over 100 CSE meetings in a school year, did not necessarily recall personal knowledge about the student or specifics of a CSE meeting held on April 7, 2022 (compare Tr. pp. 52-57, 72, 74, with Dist. Ex. 1 at p. 28). In addition, the evidence in the hearing record demonstrates that the April 2022 CSE considered and relied upon evaluative information obtained from the student's most recent psychoeducational evaluation report, as well as progress reports from his then-current nonpublic school and individuals who were far more familiar with the student—including his parent and the educational supervisor from the nonpublic school. The evidence in the hearing record also demonstrates that the parent participated at the April 2022 CSE meeting. And to be clear, a determination of whether the district offered the student a FAPE for the 2022-23 school year does not rely on specific individuals having personal knowledge about the student.

Finally, to the extent the parent's arguments could be construed as requiring the district to replicate the type of nonpublic school programming the student was receiving at the time of the April 2022 CSE meeting, districts are not required to replicate the identical setting used in private schools (see, e.g., M.C. v. Mamaroneck Union Free Sch. Dist., 2018 WL 4997516, at *28 [S.D.N.Y. Sept. 28, 2018]; Z.D. v. Niskayuna Cent. Sch. Dist., 2009 WL 1748794, at *6 [N.D.N.Y. June 19, 2009]; Watson, 325 F. Supp. 2d at 145). Therefore, an independent review of the April 2022 IEP and the testimonial evidence elicited from the district school psychologist, as described above, supports the IHO's finding that the April 2022 IEP appropriately addressed the student's special education needs and therefore, was reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

C. Assigned Public School Site

The parent asserts on appeal that the IHO improperly weighed the testimony of the district assistant principal of the assigned public school site when determining whether the district offered the student a FAPE for the 2022-23 school year.

To meet its legal obligations, a district must have an IEP in effect at the beginning of each school year for each child in its jurisdiction with a disability (34 CFR 300.323 [a]; 8 NYCRR 200.4 [e][1][ii]; Cerra, 427 F.3d at 194; K.L. v. New York City Dep't of Educ., 2012 WL 4017822, at *13 [S.D.N.Y. Aug. 23, 3012], aff'd, 530 Fed. App'x 81, 2013 WL 3814669 [2d Cir. July 24, 2013]; B.P. v. New York City Dep't of Educ., 841 F. Supp.2d 605, 614 [E.D.N.Y. 2012]; Tarlowe v. New York City Bd. of Educ., 2008 WL 2736027, at *6 [S.D.N.Y. July 3, 2008] [stating that "[a]n education department's delay does not violate the IDEA so long as the department 'still ha[s]

time to find an appropriate placement . . . for the beginning of the school year in September"], quoting Bettinger v. New York City Bd. of Educ., 2007 WL 4208560, at *8 n.26 [S.D.N.Y. Nov. 20, 2007]). Thereafter, and once a parent consents to a district's provision of special education services, such services must be provided by the district in conformity with the student's IEP (20 U.S.C. § 1401 [9][D]; 34 CFR 300.17 [d]; see 20 U.S.C. § 1414 [d]; 34 CFR 300.320). When determining how to implement a student's IEP, the assignment of a particular school is an administrative decision, provided it is made in conformance with the CSE's educational placement recommendation (see M.O. v. New York City Dep't of Educ., 793 F.3d 236, 244-45 [2d Cir. 2015]; K.L.A. v. Windham Southeast Supervisory Union, 371 Fed. App'x 151, 154 [2d Cir. Mar. 30, 2010]; T.Y. v. New York City Dep't of Educ., 584 F.3d 412, 420 [2d Cir. 2009]; White v. Ascension Parish Sch. Bd., 343 F.3d 373, 379 [5th Cir. 2003]; see also Veazey v. Ascension Parish Sch. Bd., 121 Fed. App'x 552, 553 [5th Cir. Jan. 5, 2005]; A.W. v. Fairfax Co. Sch. Bd., 372 F.3d 674, 682 [4th Cir. 2004]; Concerned Parents & Citizens for the Continuing Educ. at Malcolm X Pub. Sch. 79 v. New York City Bd. of Educ., 629 F.2d 751, 756 [2d Cir. 1980]; Tarlowe, 2008 WL 2736027, at *6; Placements, 71 Fed. Reg. 46588 [Aug. 14, 2006]). There is no requirement in the IDEA that an IEP name a specific school location (see, e.g., T.Y., 584 F.3d at 420).

Moreover, while parents are entitled to participate in the determination of the type of placement their child will attend, the IDEA confers no rights on parents with regard to school site selection (C.F. v. New York City Dep't of Educ., 746 F.3d 68, 79 [2d Cir. Mar. 4, 2014]; see Luo v. Baldwin Union Free Sch. Dist., 2013 WL 1182232, at *5 [E.D.N.Y. Mar. 21, 2013], aff'd, 556 Fed. App'x 1 [2d Cir. Dec. 23, 2013]; J.L. v. City Sch. Dist. of New York, 2013 WL 625064, at *10 [S.D.N.Y. Feb. 20, 2013]; see also R.E., 694 F.3d at 191–92 [finding that a district may select a specific public school site without the advice of the parents]; F.L. v. New York City Dep't of Educ., 2012 WL 4891748, at *11 [S.D.N.Y. Oct. 16, 2012] [noting that parents are not procedurally entitled to participate in decisions regarding public school site selection], aff'd, 553 Fed. App'x 2 [2d Cir. Jan. 8, 2014]). On the other hand, there is district court authority indicating that a parent has a right to obtain information about an assigned public school site (see H.L. v. New York City Dep't of Educ., 2019 WL 181307, at *9 [S.D.N.Y. Jan. 11, 2019] [noting that "[i]n light of M.O., courts have found that parents have the right to obtain timely and relevant information regarding school placement, in order to evaluate whether the IEP can be implemented at the proposed location"]; F.B. v. New York City Dep't of Educ., 2015 WL 5564446, at *11-*18 [S.D.N.Y. Sept. 21, 2015] [finding that the parents "had at least a procedural right to inquire whether the proposed school location had the resources set forth in the IEP"]; V.S. v. New York City Dep't of Educ., 25 F. Supp. 3d 295, 299-301 [E.D.N.Y. 2014] [finding that the "parent's right to meaningfully participate in the school selection process" should be considered rather than the "parent's right to determine the actual school selection"]; C.U. v. New York City Dep't of Educ., 2014 WL 2207997, at *14-*16 [S.D.N.Y. May 27, 2014] [holding that "parents have the procedural right to evaluate the school assignment" and "acquire relevant information about" it]).

The parent's objections to the weight the IHO afforded the assistant principal's testimony focused on her lack of personal knowledge of the student and that her testimony lacked specificity regarding how the student's particular IEP would have been implemented had he attended the assigned public school. However, with respect to the assigned school's capacity to implement the April 2022 IEP, the Second Circuit has explained that "[s]peculation that the school district will not adequately adhere to the IEP is not an appropriate basis for unilateral placement" (R.E., 694 F.3d at 195; see E.H. v. New York City Dep't of Educ., 611 Fed. App'x 728, 731 [2d Cir. May 8,

2015]; R.B. v. New York City Dep't of Educ., 603 Fed. App'x 36, 40 [2d Cir. Mar. 19, 2015] ["declining to entertain the parents' speculation that the 'bricks-and-mortar' institution to which their son was assigned would have been unable to implement his IEP"], quoting T.Y., 584 F.3d at 419; R.B. v. New York City Dep't of Educ., 589 Fed. App'x 572, 576 [2d Cir. Oct. 29, 2014]). However, a district's assignment of a student to a particular public school site must be made in conformance with the CSE's educational placement recommendation, and the district is not permitted to deviate from the provisions set forth in the IEP (M.O., 793 F.3d at 244; R.E., 694 F.3d at 191-92; T.Y., 584 F.3d at 419-20; see C.F., 746 F.3d at 79). The Second Circuit has held that claims regarding an assigned school's ability to implement an IEP may not be speculative when they consist of "prospective challenges to [the assigned school's] capacity to provide the services mandated by the IEP" (M.O., 793 F.3d at 245; see Y.F. v. New York City Dep't of Educ., 659 Fed. App'x 3, 5-6 [2d Cir. Aug. 24, 2016]; J.C. v. New York City Dep't of Educ., 643 Fed. App'x 31, 33 [2d Cir. Mar. 16, 2016]; B.P. v. New York City Dep't of Educ., 634 Fed. App'x 845, 847-49 [2d Cir. Dec. 30, 2015]). Such challenges must be "tethered" to actual mandates in the student's IEP (see Y.F., 659 Fed. App'x at 5). Additionally, the Second Circuit indicated that such challenges are only appropriate if they are evaluated prospectively (as of the time the parent made the placement decision) and if they were based on more than "mere speculation" that the school would not adequately adhere to the IEP despite its ability to do so (M.O., 793 F.3d at 244). In order for such challenges to be based on more than speculation, a parent must allege that the school is "factually incapable" of implementing the IEP (see M.E. v. New York City Dep't of Educ., 2018 WL 582601, at *12 [S.D.N.Y. Jan. 26, 2018]; Z.C. v. New York City Dep't of Educ., 2016 WL 7410783, at *9 [S.D.N.Y. Nov. 28, 2016]; L.B. v. New York City Dept. of Educ., 2016 WL 5404654, at *25 [S.D.N.Y. Sept. 27, 2016]; G.S. v. New York City Dep't of Educ., 2016 WL 5107039, at *15 [S.D.N.Y. Sept. 19, 2016]; M.T. v. New York City Dep't of Educ., 2016 WL 1267794, at *14 [S.D.N.Y. Mar. 29, 2016]). Such challenges must be based on something more than the parent's speculative "personal belief" that the assigned public school site was not appropriate (K.F. v. New York City Dep't of Educ., 2016 WL 3981370, at *13 [S.D.N.Y. Mar. 31, 2016]; Q.W.H. v. New York City Dep't of Educ., 2016 WL 916422, at *9 [S.D.N.Y. Mar. 7, 2016]; N.K. v. New York City Dep't of Educ., 2016 WL 590234, at *7 [S.D.N.Y. Feb. 11, 2016]).

In a school location letter dated June 10, 2022, the district notified the parent of the assigned school site to implement the student's IEP during the 2022-23 school year (see Dist. Ex. 3). The assistant principal of the assigned public school testified that she had been the assistant principal of the school for five years and a district special education teacher for 20 years (see Dist. Ex. 14 ¶ 2). The assistant principal testified that she reviewed the school location letter and the student's IEP, that the assigned school had a seat for the student in a 12:1+1 special class during the 12-month 2022-23 school year, and the assigned public school site was capable of implementing the student's IEP (id. ¶¶ 1, 6-8, 11). She also testified that the 12:1+1 special class placement at her school was "tailored to students with intellectual disabilities," who "receive[d] targeted individualized intervention daily based on their needs in the classroom" (id. ¶ 9). Additionally, the assistant principal testified that the assigned school offered OT, PT, and speech-language therapy, and toileting was programmatic at the assigned school and could be adapted based on a student's needs (id. ¶¶ 8, 10).

Accordingly, as the April 2022 IEP was appropriate to meet the student's needs for the reasons set forth above, any conclusion regarding the district's ability to implement the IEP at the assigned public school site based on the assistant principal's lack of personal knowledge of the

student or details about how the student's IEP would have been implemented would necessarily be based on impermissible speculation, and the district was not obligated to present retrospective evidence at the impartial hearing regarding the implementation of the student's program at the assigned public school site or to refute the parent's claims related thereto (M.O., 2015 WL 4256024, at *7; R.B., 589 Fed. App'x at 576; F.L., 553 Fed. App'x at 9; K.L., 530 Fed. App'x at 87; R.E., 694 F.3d at 187 & n.3).

In light of the above, there is no basis to disturb the IHO's determination that the assigned public school site had the capacity to implement the student's IEP for the student's 2022-23 school year, and the parent's arguments must be dismissed.

VII. Conclusion

Having found that the evidence in the hearing record supports the IHO's finding that the district offered the student a FAPE for the 2022-23 school year, the necessary inquiry is at an end and there is no need to determine whether Hamaspik was an appropriate unilateral placement for the student during the 2022-23 school year or whether equitable considerations weighed in favor of the parent's requested relief.

I have considered the parties' remaining contentions and find that I need not address them in light of my findings above.

THE APPEAL IS DISMISSED.

**Dated: Albany, New York
December 5, 2024**

**JUSTYN P. BATES
STATE REVIEW OFFICER**