The University of the State of New York

The State Education Department
State Review Officer
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No. 24-428

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:
Brain Injury Rights Group, Ltd., attorneys for petitioner, by Peter G. Albert, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Abigail Hoglund-Shen, 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) fully fund the costs of her son's transportation to and from the International Academy for the Brain (iBrain) for the 2022-23 school year. The district cross-appeals from that portion of the IHO's decision which determined that the district failed to offer appropriate educational programming to the student for the 2022-23 school year. The appeal must be dismissed. The cross-appeal must be sustained in part.

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 student has received diagnoses of cerebral palsy, chronic lung disease, and hypertonia (Dist. Ex. 7 at p. 1). He requires maximum assistance for mobility and activities of daily living (ADLs), and communicates via gestures, facial expressions, and vocalizations (Parent Ex. B at pp. 3, 4). The student received home instruction from November 2021 until May 2022, at which time he began attending a district specialized school (Parent Exs. B at p. 1; I at p. 4). A CSE convened on May 9, 2022, determined the student was eligible for special education as a student with multiple disabilities, and developed an IEP for the 2022-23 school year (second grade) (see Parent Ex. B).[1] The May 2022 CSE recommended 12-month programming consisting of a 12:1+(3:1)

[1] The student's eligibility for special education as a student with multiple disabilities is not in dispute on appeal

special class placement in a specialized school for English language arts (ELA) (10 periods per week), math (10 periods per week), social studies (three periods per week), and sciences (three periods per week); three 30-minute sessions per week of individual occupational therapy (OT); two 30-minute sessions per week of individual physical therapy (PT); and three 30-minute sessions per week of individual speech-language therapy (id. at pp. 18-20). The May 2022 CSE also recommended two sessions per year of parent counseling and training and special transportation services (id. at pp. 19, 24-25).[2] The district provided the parent with a prior written notice and school location letter, both dated May 10, 2022, notifying the parent of the May 2022 CSE's recommendations and identifying the assigned public school to implement the student's May 2022 IEP (Dist. Exs. 2, 3). The student attended the district's assigned specialized school at the beginning of the 2022-23 school year (Parent Ex. I at p. 4; see Parent Ex. Q ¶ 11).

Via a prior written notice dated November 7, 2022, the district informed the parent that the district had a duty to reevaluate the student every three years and that the student was soon due for a psychological update (Dist. Ex. 6 at pp. 1-2). On November 18, 2022, the student's district speech-language therapist and his classroom teacher filled out an assistive technology consideration checklist for communication reflecting that the student was using a school-owned single-message voice output device (Dist. Ex. 8 at pp. 1-2).

On November 21, 2022, the parent provided the district with a 10-day notice of her rejection of the district's recommended program and placement for the 2022-23 extended school year (Parent Ex. C at p. 1). The parent noted that she was dissatisfied with the special transportation provided by the district and informed the district that she intended to enroll the student at iBrain (id. at p. 2). On November 22, 2022, the district conducted a psychological evaluation of the student (Dist. Ex. 7).

On November 26, 2022, the parent signed a contract with iBrain for the student's attendance for a portion of the 2022-23 school year, specifically, December 5, 2022 through June 23, 2023 (Parent Ex. D at pp. 1, 6).[3] Although undated, the parent signed a contract with Sisters Travel and Transportation Services, LLC (Sisters Travel) for special transportation services to and from iBrain from December 5, 2022 through June 30, 2023 (Parent Ex. G at pp. 1, 5).

The CSE reconvened on November 29, 2022, and in addition to the May 2022 recommendations, for the remainder of the 2022-23 school year and summer 2023, recommended that the student receive five periods per week of adapted physical education (compare Dist. Ex. 12 at pp. 16-21, with Parent Ex. B at pp. 18-25).[4] The November 2022 CSE also recommended that

(see 34 CFR 300.8[c][7]; 8 NYCRR 200.1[zz][8]).

[2] The recommended special transportation services included the following: transportation to and from the closest safe curb location to school, a lift bus, air conditioning, a regular sized wheelchair, and limited travel time (Parent Ex. B at p. 25).

[3] iBrain 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).

[4] The November 2022 IEP notes that a different frequency of the 12:1+(3:1) class was recommended for social studies and sciences starting September 1, 2023 (Dist. Ex. 12 at p. 17).

the student have daily access to an individual static display speech generating device (SGD), and modified the student's speech-language therapy recommendations to include two 30-minute individual and one 30-minute group sessions per week (compare Dist. Ex. 12 at p. 17, with Parent Ex. B at p. 19). On December 12, 2022, the district confirmed that the CSE recommended that the student receive an individual static display SGD to be used at school and home (Dist. Ex. 14 at pp. 1-2).

The student began attending iBrain on December 5, 2022 and his attendance there continued for the remainder of the 2022-23 school year and the 2023-24 school year (Parent Exs. I at p. 5; Q ¶ 11).

A CSE convened on November 14, 2023, determined the student was eligible for special education as a student with a traumatic brain injury, and recommended that he receive 12-month programming consisting of three periods per week of adapted physical education; 35 periods per week of 12:1+(3:1) special class instruction for all subjects in a district specialized school; four 60-minute sessions per week of individual OT; one 60-minute session per week of group OT; five 60-minute sessions per week of individual PT; five 60-minute sessions per week of individual speech-language therapy; daily, full-time, individual paraprofessional services for health, ambulation, safety, and feeding; daily use of an individual SGD; and one 60-minute session per week of individual assistive technology service (Dist. Ex. 16 at pp. 24-25). The November 2023 CSE further recommended one 60-minute session per month of group parent counseling and training and special transportation (id. at pp. 25, 29).

A. Due Process Complaint Notice

In a due process complaint notice dated February 23, 2023, the parent alleged that the district denied the student a free appropriate public education (FAPE) for the 2022-23 school year (see Parent Ex. A). The parent requested a pendency hearing (id. at p. 2). As relief, the parent requested a determination that iBrain was an appropriate unilateral placement for the student, an order directing the district to directly pay iBrain for the cost of full tuition for the 2022-23 school year; direct payment of Sisters Travel costs; and an order directing the district to fund an independent neuropsychological evaluation and an independent vision evaluation (id. at p. 8).

On April 10, 2024, the parent filed an amended due process complaint alleging that the district denied the student a FAPE for the 2023-24 school year in addition to the 2022-23 school year (see Parent Ex. I). The amended due process complaint requested as relief an order directing the district to pay for the student's tuition at iBrain for the 2022-23 and 2023-24 school years; an order directing the district to directly pay Sisters Travel; an order directing the district to reevaluate the student and to provide assistive technology services, devices and AAC; an order for the district to fund an independent educational and transition evaluation; an order directing the district to fund independent psychological, neuropsychological, and educational needs assessments; and an order directing the district to fund one year of compensatory education and transportation to iBrain (id. at p. 10).

B. Impartial Hearing Officer Decision

A pendency hearing convened before the Office of Administrative Trials and Hearings (OATH) on May 15, 2024 (Tr. pp. 1-24).[5] In his May 21, 2024 order on pendency, the IHO noted that "[a]s all subsequent IEPs are in dispute; and [the p]arent's unilateral placement of [the s]tudent at [iBrain], on its face, is not an agreed upon placement, the program recommended in [the s]tudent's 05/13/2021 IEP is the applicable pendent placement for [the s]tudent" (May 21, 2024 Interim Decision at p. 3).[6] An impartial hearing commenced on June 20, 2024 and concluded on July 1, 2024 after two days of proceedings (Tr. pp. 47-190). In a decision dated August 26, 2024, the IHO found that the district failed to meet its burden to show that it offered the student a FAPE for the 2022-23 and 2023-24 school years, that the parent met her burden of proving that iBrain was an appropriate unilateral placement for the student, and that equitable considerations supported the parent's requested relief for tuition and transportation funding (IHO Decision at p. 4).[7] The IHO determined that the parent was not entitled to any further independent evaluations or assessments, that the parent was not entitled to compensatory services, and that the parent was entitled to $405 for the Sisters Travel transportation costs for the portion of the 2022-23 school year that the student attended iBrain (id. at pp. 15-17). The IHO held that the parent was entitled to full funding of the Sisters Travel costs for the 2023-24 school year (Tr. pp. 16-17).

IV. Appeal for State-Level Review

The parent appeals, alleging that the IHO erred in reducing the award for transportation costs from the full amount requested for the partial 2022-23 school year to $405 (Req. for Rev. ¶¶ 12-29). The parent argues that the IHO should have awarded the parent Sisters Travel costs pursuant to the terms of the school transportation agreement which stated that the parent would pay a flat rate of $405 for "each AM TRIP and PM TRIP" for "approximately 125 days" (Req. for Rev. ¶ 13; Parent Ex. G at pp. 1, 2).

The district notes as a preliminary matter that the IHO's statement in the decision that he awarded the student pendency at iBrain in his May 21, 2024 interim decision was in error and should be reversed to properly reflect the language of the May 21, 2024 order on pendency (Answer & Cr.-Appeal ¶ 7; compare IHO Decision at p. 4, with May 21, 2024 Interim Decision at p. 3). The district appeals the IHO's determination that the district failed to provide the student

[5] Immediately following the May 15, 2024 pendency hearing, the parties reconvened for a pre-hearing conference (Tr. pp. 1-46).

[6] Although the 2021-22 school year is not at issue, it is relevant to note that on May 13, 2021 the CSE convened and recommended that the student receive five periods per week of adaptive physical education; a 12:1+(3:1) special education class 10 periods per week for English language arts (ELA); a 12:1+(3:1) special education class 10 periods per week for math; a 12:1+(3:1) special education class three periods per week for social studies; a 12:1+(3:1) special education class three periods per week for sciences; three 30-minute sessions per week of individual OT; two 30-minute sessions per week of individual PT; and three 30-minute sessions per week of individual speech-language therapy (Pendency Dist. Ex. 1 at p. 16).

[7] The IHO's Decision contains an error; namely the IHO stated that "[o]n 05/21/24, I issued a pendency order in this case, finding [iBrain] to be the appropriate pendent placement for Student, as this was Student's last agreed upon IEP" (IHO Decision at p. 4). The May 21, 2024 interim order specifically states that iBrain was not the last agreed upon placement (May 21, 2024 Interim Decision at p. 3).

with a FAPE for the 2022-23 school year, arguing that the reasons set forth in the IHO's decision in reaching his determination that the district denied the student a FAPE were "belied" by the recommendations contained in the May 9, 2022 IEP (Answer & Cr.-Appeal ¶¶ 9-18).[8] The district asserts that the parent failed to meet her burden to demonstrate that iBrain was an appropriate unilateral placement for the student (id. ¶¶ 19-21). The district alleges that the parent failed to establish that Sisters Travel provided the student with a 1:1 paraprofessional, limited travel time or a lift bus and that because Sisters Travel failed to respond to the district's subpoena, the district was unable to obtain the necessary documentation to establish that the required services were provided (id. ¶ 22). The district argues that the equities do not favor the parents (id. ¶¶ 24-26).[9]

In a reply and answer to cross-appeal, the parent argues that the IHO's FAPE determinations for the 2022-23 and 2023-24 school years should be upheld because the district did not produce any witnesses and asserts that the district cannot meet its burden of proof on documentary evidence alone (Answer to Cr.-Appeal ¶¶ 4-6).[10] The parent argues that because the IHO failed to explain why he reduced the award of transportation costs for the 2022-23 school year, and because the district failed to provide any evidence that the transportation costs for the 2022-23 school year were unreasonable, the IHO's reduction of the transportation award for the 2022-23 school year should be reversed (id. ¶¶ 24-29).

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

[8] Notably, the district does not appeal the IHO's finding regarding the provision of a FAPE for the 2023-24 school year (see Answer & Cr.-Appeal).

[9] In the district's answer with cross-appeal, the fourth issue that the district sets forth to be addressed references paragraphs 10 through 12; however, the answer with cross-appeal already contains paragraphs 10 through 12 earlier in the pleading; for the purposes of this decision, the district's arguments in the cross-appeal regarding the equities will be referred to as paragraphs 24 through 26 (see Answer & Cr.-Appeal).

[10] In the parent's reply and answer to the cross-appeal, similar to the district, the paragraphs are misnumbered and paragraphs five and six are mistakenly repeated as paragraphs five and six again instead of as paragraphs seven and eight; nevertheless, the parent set forth her argument regarding the allegation that the district did not meet its burden of proof since it offered no witness testimony in support of its position and that the evidence shows the district failed to call any witnesses to testify regarding the appropriateness of the student's program, namely, placement in a 12:1+(3:1) special class for the 2022-23 school year (see Answer to Cr.-Appeal).

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]).[11]

A board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents, if the services offered by the board of education were inadequate or inappropriate, the services selected by the parents were appropriate, and equitable considerations support the parents' claim (Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 [1993]; Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369-70 [1985]; 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

At the outset, the parties have not appealed from the IHO's findings that the district denied the student a FAPE for the 2023-24 school year, that the student was not entitled to an award of compensatory education, and that the student was not entitled to IEEs, or from the IHO's May 21, 2024 order on pendency which held that the program, recommendations, accommodations and services contained in the student's May 13, 2021 IEP constituted the student's pendency placement.[12] As a result, these determinations have become final and binding on the parties and will not be reviewed on appeal (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; see M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6-*7, *10 [S.D.N.Y. Mar. 21, 2013]).

[11] 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).

[12] In the August 26, 2024 decision and order, the IHO referenced his May 21, 2024 pendency order (IHO Decision at p. 4). Although the IHO stated in his decision and order that he had found iBrain to be the student's last agreed upon placement, because the IHO also referenced his May 21, 2024 pendency order, I find that the discrepancy contained in the IHO's decision and order was an error and that the May 21, 2024 pendency order is controlling in that the student's pendency was pursuant to the CSE's recommendations made in the May 13, 2021 IEP (compare IHO Decision at p. 4 with, May 21, 2024 Interim Order at p. 4).

A. 2022-23 School Year

The operative IEP in place at the start of the 2022-23 school year was the student's May 2022 IEP (see Parent Ex. B).[13] The parent notified the district on November 21, 2022 that she was dissatisfied with the recommendations contained in the May 2022 IEP and was rejecting it (Parent Ex. C at p. 1). Specifically, the parent was concerned with the student's special transportation services, that the recommendations could not be implemented during the regular school day, the "class size ratio, class functional and academic grouping, staffing, accessibility, availability of adequate resources, and lack of individualized attention and support as the recommended placement [wa]s not the least restrictive setting" (id. at p. 2). In response to the parent's November 21, 2022 10-day notice and stated concerns, the CSE reconvened on November 29, 2022 to create a new IEP for the student (see Dist. Ex. 12). While the CSE reconvened within the requisite time period after the 10-day notice in an attempt to remedy the parent's concerns,[14] the parent remained dissatisfied with the district's recommended program (see generally Parent Ex. A); accordingly, an analysis of whether the district offered the student a FAPE for the remainder of the 2022-23 school year centers around the resultant November 2022 IEP.

According to the prior written notice, the November 2022 CSE "reviewed and discussed" the November 22, 2022 psychological update report and a November 23, 2022 OT progress report (Parent Ex. E at p. 2). Additionally, review of the November 2022 IEP shows that the CSE had information from teacher observations, a November 2022 speech-language assessment, a November 2022 PT assessment, and the parent (Dist. Ex. 12 at pp. 1-7). Present at the November 29, 2022 CSE meeting were the student's then-current special education teacher, the parent, the school psychologist who conducted the student's psychological evaluation and who also served as a district representative, and the student's then-current occupational, physical, and speech-language therapists (see Dist. Exs. 7; 8; 10; 11; 12 at p. 2). The November 2022 IEP reflects that it was created with input from the student's providers who had been observing and working with the student in person since September 2022 (see Dist. Ex. 12 at pp. 1-7).

Turning to a review of the student's needs in order to analyze the appropriateness of the November 2022 CSE's recommendations, the November 2022 IEP reflects that the student has received diagnoses of cerebral palsy, chronic lung disease, hypertonia, asthma, and seasonal allergies (Tr. p. 166; Dist. Exs. 7 at p. 1; 12 at p. 6). The student has a history of aspiration pneumonia and croup which has resulted in multiple hospitalizations (Dist. Exs. 7 at p. 1; 12 at p.

[13] The hearing record included two versions of the student's May 2022 IEP (see Parent Ex. B; Dist. Ex. 1). District exhibit 1 included updated information regarding the student's progress towards her annual goals; however, it is unclear whether the parent received an IEP that included the progress information. Therefore, for the purposes of this decision, Parent exhibit B will be used to cite to the student's May 9, 2022 IEP (compare Dist. Ex. 1 at pp. 9-13, with Parent Ex. B at pp. 14-18).

[14] Parents are required to provide notice of the unilateral placement either at the most recent CSE meeting prior to their removal of the student from public school, or by written notice ten business days before such removal, "that they were rejecting the placement proposed by the public agency to provide a [FAPE] to their child, including stating their concerns and their intent to enroll their child in a private school at public expense" (20 U.S.C. § 1412[a][10][C][iii][I]; see 34 CFR 300.148[d][1]). This statutory provision "serves the important purpose of giving the school system an opportunity, before the child is removed, to assemble a team, evaluate the child, devise an appropriate plan, and determine whether a [FAPE] can be provided in the public schools" (Greenland Sch. Dist. v. Amy N., 358 F.3d 150, 160 [1st Cir. 2004]).

7).[15] The student is nonverbal, non-ambulatory, requires adult assistance with all ADLs, and is dependent on others during transitions (Parent Ex. R ¶ 3; Dist. Exs. 1 at p. 5; 12 at p. 7; 16 at p. 29).[16]

Briefly, regarding cognitive development, the November 2022 IEP reflected that, based on teacher observation, the student required supervision to complete most simple-routine tasks, and needed constant repetition to demonstrate acquired skills (Dist. Ex. 12 at pp. 3, 4). According to the IEP, the student's teacher noted that he was a kinesthetic and visual learner who learned best when active and engaged in hands-on activities (id. at p. 4). In terms of academic skills, the November 2022 IEP indicated that the student was assessed using the Student Annual Needs Determination Inventory (SANDI), and the student's performance reflected the following scores: in reading, 43 out of 436; in writing, 23 out of 276; in math, 18 out of 396; and in science 12 out of 316 (id. at p. 1). The IEP noted that the student's instructional/functional levels in reading and math were at a prekindergarten level (id. at p. 22). With respect to communication skills, the November 2022 IEP reflected that the student communicated using facial expressions, vocalizations, gestures, a programmatic communication device, whining, and crying/screaming (id. at pp. 1, 3). The IEP indicated that based on the administration of the SANDI to the student, he demonstrated his greatest strengths in looking at or turning toward a familiar person, expressing five different emotions in various ways, responding to five sensory activities by showing excitement, visually following a familiar person for five seconds, and showing interest in an object or person for one minute (id. at p. 4). In terms of physical development, the IEP noted that administration of the School Function Assessment (SFA) to the student indicated "extremely limited" participation on all sections, e.g., classroom, toileting, mealtime, transitions, and transportation, which reflected that the student was dependent with all transfers, mobility, and ADLs (id. at p. 2).

Based on the updated information available, the November 2022 CSE recommended a 12:1+(3:1) special class placement in a specialized school for the remainder of the 2022-23 school year and added five periods per week of adapted physical education and assistive technology devices and/or services including a SGD (compare Parent Ex. B at pp. 18-19, 25, with Dist. Ex. 12 at pp. 16-17, 21). The CSE continued to recommend related services for the student including OT, PT, speech-language therapy, as well as parent counseling and training, changing the recommendation for speech-language therapy from three individual 30-minute sessions per week to two individual sessions and one group session per week (compare Parent Ex. B at p. 19, with Dist. Ex. 12 at p. 17).

To address the student's significant management needs, the November 2022 CSE recommended the following accommodations: an individualized visual schedule; modeling redirection, access to reinforcers, picture schedule, highly structured small group instruction, visual cues, concrete learning activities, verbal praise; simplified tasks, prompting and minimal choices to choose from; a highly structured instructional environment with established routines,

[15] The parent testified that with respect to aspiration, sometimes when eating, food came back up, and sometimes the student had a problem with spitting up (Tr. p. 166). The parent further testified that the student had a hemorrhage as a brain bleed, "a grade one hemorrhage" (Tr. pp. 165-166).

[16] The parent reported that the student was on medication for muscle relaxation and asthma (Dist. Exs. 1 at p. 6; 12 at p. 6).

clear physical boundaries, a visual behavior board, preferred positive reinforcers throughout the school day, and communication system; and support from classroom paraprofessionals and related service providers (Dist. Ex. 12 at p. 8). Regarding special transportation, the CSE recommended accommodations and services including closest safe curb location to school, a lift bus, air conditioning, a regular size wheelchair, and limited travel time (id. at pp. 8, 21).

The CSE developed approximately nine annual goals to improve the student's ability to show enjoyment while being read to, hold a writing implement, demonstrate understanding of "more," express interest/preference for specific items/activities, develop mature grasping patterns, use a preferred alternative augmentative communication method to make choices and requests, improve trunk control, and reach for items to grasp (see Dist. Ex. 12 at pp. 9-16). Consistent with the student's eligibility for the alternate assessment, the annual goals included corresponding short-term objectives, as well as criteria to determine if the goals had been achieved (e.g., 80 percent accuracy over three consecutive sessions, 80 percent accuracy in four out of five consecutive trials), the method of how progress for the goals would be measured (e.g., teacher observation, data collection sheets), and a schedule for when progress for the goals would be measured (e.g., two times per month, one time per quarter) (id. at pp. 9-16, 19).

Turning to the issues on appeal regarding the student's special class placement, the IHO incorrectly held that the May 2022 and November 2022 CSEs "recommended that [the s]tudent be provided with a 12:1 special class for ELA, math, social studies and science" and that the student "would have therefore been in a general education classroom for all other subjects" (IHO Decision at p. 11). However, the May 2022 IEP clearly stated that the student's "disability preclude[d] participation in a general education environment," further noting that the student had a "severe cognitive/social emotional disability" and recommended not a 12:1, but a 12:1+(3:1) special class in a specialized school (Parent Ex. B at pp. 12, 18-19). Contrary to the IHO's finding that the student would be in the general education environment outside of the periods of special class instruction, the May 2022 IEP also indicated that the student could "participate with general education students on a case-by-case basis as approved by the IEP Team," and that he would not participate in a regular physical education program but rather in an adapted physical education program (id. at p. 24). In addition to the recommendations from the May 2022 IEP, the November 2022 IEP also stated that the student's "educational program [wa]s being individualized due to his needs . . . which affect[ed] his ability to process and retain information comparable to that of his general education peers," and that the student's "specialized management needs [we]re best met through a small, specialized school that combine[d] academics with functional living skills and provide[d] 12-month services" (Dist. Ex. 12 at pp. 8, 16-17, 20-21). Therefore, the IHO's finding that the district recommended a 12:1 special class was in error; it is clear from the documentation presented by the district that the May 2022 and November 2022 CSEs recommended a 12:1+(3:1) special class placement in a district specialized school, and that the student would not be placed in any general education classrooms throughout the school day (see Parent Ex. B at pp. 12, 18-19, 24; Dist. Exs. 2 at p. 1; 3; 12 at pp. 8, 16-17, 21; 13 at p. 2).

In the due process complaint notice and amended due process complaint notice, the parent argued that the student required a 6:1+1 special class placement because he had "highly intensive management needs" (Parent Exs. A at pp. 4-5; I at pp. 5-6). Initially, it is worth noting that State regulation indicates that the maximum class size for special classes containing students whose management needs are determined to be highly intensive, and requiring a high degree of individualized attention and intervention, shall not exceed six students, with one or more

supplementary school personnel assigned to each class during periods of instruction (8 NYCRR 200.6[h][4][ii][a]).[17] In contrast, according to State regulation, "[t]he maximum class size for those students with severe multiple disabilities, whose programs consist primarily of habilitation and treatment, shall not exceed 12 students. In addition to the teacher, the staff/student ratio shall be one staff person to three students. The additional staff may be teachers, supplementary school personnel and/or related service providers." (8 NYCRR 200.6 [h][4][iii]). A review of the student's needs reflects that in totality, the program and services recommended by the May 2022 and the November 2022 CSEs, including the recommendation for a 12:1+(3:1) special class, were likely to result in educational benefit for the student, particularly given his multiple disabilities.

The November 2022 CSE reported that the student's transition from home to school "seem[ed] difficult for [the student] for a few weeks, until he became adjusted to his classmates, peers, and teachers alike" (Dist. Ex. 12 at p. 3). The student's special education teacher reported that the student was "still adjusting" to the classroom rules and that the student "is not able to clean himself, make friends, get dressed, brush teeth, interact[] with others in a meaningful way, avoid danger, or take personal responsibility" (id.). The November 2022 IEP reflected that the student "require[d] supervision to complete most simple-routine tasks," and that he was "dependent on adults to complete school-related ADL tasks" including transfers and mobility (id. at pp. 1, 2). Additionally, the student's teachers and related service providers clearly communicated to the November 2022 CSE that the student was "completely dependent on caregivers for most self-help skills" (id. at p. 7). The CSE recommended a 12:1+(3:1) special class setting with appropriate management needs and "[s]upport from classroom paraprofessionals and related service providers" (id. at p. 8).

The November 2022 IEP reflects that the reasons the CSE rejected other special class ratios included that a 12:1+1 special class in a specialized school would not provide the structured environment and small group size that the student needed to address his behavioral and communication needs, and that a 6:1+1 special class in a specialized school would not address his academic and social needs; therefore, the CSE determined that those options did not provide the support the student needed to progress socially and academically (Dist. Ex. 12 at p. 24).

Turning to the assertion that because the student had highly intensive management needs, the CSE was required to recommend placement in a 6:1+1 special class, as stated above, State regulation does provide that "[t]he maximum class size for special classes containing students whose management needs are determined to be highly intensive, and requiring a high degree of individualized attention and intervention, shall not exceed six students, with one or more supplementary school personnel assigned to each class during periods of instruction" (8 NYCRR 200.6[h][4][ii][a]). However, the adult-to-student ratio required in a 6:1+1 special class and a 12:1+(3:1) special class is similar; with the 12:1+(3:1) special class ratio providing slightly more adults in the classroom per student and, additionally, providing for more variety in the type of school personnel working with the student. Accordingly, generally, while the student may exhibit highly intensive management needs and require a high or significant degree of individualized attention and intervention (see 8 NYCRR 200.6[h][4][ii][a]-[b]), the parent's strict adherence to the language in State regulation guiding 6:1+1 special class placements to the exclusion of other appropriate placement options is reductive and overlooks the evidence in the hearing record showing that the student's highly intensive needs required consistent adult support for him to function in school (see Dist. Ex. 12 at pp. 1-3, 5-8). A review of the student's needs shows that

although a 6:1+1 special class placement may also have been an appropriate placement for the student, and he was recommended for that classroom ratio in the April 28, 2023 iBrain report and educational plan, a 12:1+(3:1) placement consisting of habilitation and treatment was also an appropriate recommendation given his multiple disabilities and need for a high level of adult support in the classroom (see 8 NYCRR 200.6[h][4][iii]; Parent Ex. H). Accordingly, the May 2022 and November 2022 CSEs' determination to place the student in a 12:1+(3:1) special class, along with the other recommended management needs and supports, as well as related services, was reasonably calculated to afford the student an educational benefit.

Accordingly, contrary to the IHO's finding, the November 2022 CSE considered the information from the student's teacher and related service providers as well as the parent to formulate an appropriate program, namely, a 12:1+(3:1) special class placement along with supportive management needs, related services including OT, PT, and speech-language therapy, assistive technology devices and services, parent counseling and training, special transportation services, and testing accommodations for the student. As a result, the IHO's finding that the district did not offer the student a FAPE for the 2022-23 school year must be reversed.

B. Unilateral Placement

Given that the IHO erred by finding that the district failed to provide the student a FAPE for the 2022-23 school year, and the district has not cross-appealed the IHO's finding that it did not offer the student a FAPE for the 2023-24 school year, I now turn to the district's cross-appeal of the IHO's finding that the parent demonstrated that iBrain was appropriate for the student during the 2023-24 school year, because the parent "did not include testimony from any providers who worked directly with [the student]," and the hearing record lacked evidence, such as a schedule or attendance records, showing how the student's programing at iBrain was implemented.

A unilateral placement must be "proper under the Act" (Carter, 510 U.S. at 12, 15; Burlington, 471 U.S. at 370), i.e., the private school offered an educational program which met the student's special education needs (see Gagliardo, 489 F.3d at 112, 115; Walczak, 142 F.3d at 129). Citing the Rowley standard, the Supreme Court has explained that "when a public school system has defaulted on its obligations under the Act, a private school placement is 'proper under the Act' if the education provided by the private school is 'reasonably calculated to enable the child to receive educational benefits'" (Carter, 510 U.S. at 11; see Rowley, 458 U.S. at 203-04; Frank G. v. Bd. of Educ. of Hyde Park, 459 F.3d 356, 364 [2d Cir. 2006]; see also Gagliardo, 489 F.3d at 115; Berger v. Medina City Sch. Dist., 348 F.3d 513, 522 [6th Cir. 2003] ["evidence of academic progress at a private school does not itself establish that the private placement offers adequate and appropriate education under the IDEA"]). A parent's failure to select a program approved by the State in favor of an unapproved option is not itself a bar to reimbursement (Carter, 510 U.S. at 14). The private school need not employ certified special education teachers or have its own IEP for the student (id. at 13-14). Parents seeking reimbursement "bear the burden of demonstrating that their private placement was appropriate, even if the IEP was inappropriate" (Gagliardo, 489 F.3d at 112; see M.S. v. Bd. of Educ. of the City Sch. Dist. of Yonkers, 231 F.3d 96, 104 [2d Cir. 2000]). "Subject to certain limited exceptions, 'the same considerations and criteria that apply in determining whether the [s]chool [d]istrict's placement is appropriate should be considered in determining the appropriateness of the parents' placement'" (Gagliardo, 489 F.3d at 112, quoting Frank G., 459 F.3d 356, 364 [2d Cir. 2006]; see Rowley, 458 U.S. at 207). Parents need not show that the placement provides every special service necessary to maximize the student's potential

(Frank G., 459 F.3d at 364-65). A private placement is appropriate if it provides instruction specially designed to meet the unique needs of a student (20 U.S.C. § 1401[29]; Educ. Law § 4401[1]; 34 CFR 300.39[a][1]; 8 NYCRR 200.1[ww]; Hardison v. Bd. of Educ. of the Oneonta City Sch. Dist., 773 F.3d 372, 386 [2d Cir. 2014]; C.L. v. Scarsdale Union Free Sch. Dist., 744 F.3d 826, 836 [2d Cir. 2014]; Gagliardo, 489 F.3d at 114-15; Frank G., 459 F.3d at 365).

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

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

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

Information in the hearing record regarding the student's 2023-24 iBrain program includes two 50+ page iBrain report and education plans, which describe in detail the student's then-current levels of performance, needs, and recommended services; quarterly progress reports; and affidavit testimony from the deputy director of special education at iBrain, which indicated that the programming outlined in the iBrain "IEP" was implemented (see Tr. pp. 111-13; Parent Exs. H; L M; N; O; Q). My independent review of the hearing record supports a finding that the IHO relied on the proper legal standards to support his conclusion that iBrain was an appropriate unilateral placement for the 2023-24 school year and, further, that the decision also demonstrates that the IHO considered the testimonial and documentary evidence presented by the parent, and weighed the evidence in support of his conclusions (IHO Decision at pp. 12-13; see Tr. pp. 111-13; Parent Exs. H; L; M; N; O; Q). Therefore, the evidence in the hearing record supports the IHO's determination that the parent established that iBrain provided the student with specially designed instruction to address his unique needs.

C. Equitable Considerations

In addressing the equities, the IHO held that "the tuition for [iBrain] is reasonable in light of the small class sizes and focused supports [iBrain] provides [s]tudent to address his unique needs" (IHO Decision at p. 14). The district argues that the equities do not favor the parent, arguing that the parent's award should be reduced based on Sister's Travel failure to respond to the district's subpoena and because "the record is clear that [s]tudent does not need vision education services" (Answer & Cr.-Appeal ¶¶ 11, 12).

The final criterion for a reimbursement award is that the parents' claim must be supported by equitable considerations. Equitable considerations are relevant to fashioning relief under the IDEA (Burlington, 471 U.S. at 374; R.E., 694 F.3d at 185, 194; M.C. v. Voluntown Bd. of Educ., 226 F.3d 60, 68 [2d Cir. 2000]; see Carter, 510 U.S. at 16 ["Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable"]; L.K. v. New York City Dep't of Educ., 674 Fed. App'x 100, 101 [2d Cir. Jan. 19, 2017]). With respect to equitable considerations, the IDEA also provides that reimbursement may be reduced or denied when parents fail to raise the appropriateness of an IEP in a timely manner, fail to make their child available for evaluation by the district, or upon a finding of unreasonableness with respect to the actions taken by the parents (20 U.S.C. § 1412[a][10][C][iii]; 34 CFR 300.148[d]; E.M. v. New York City Dep't of Educ., 758 F.3d 442, 461 [2d Cir. 2014] [identifying factors relevant to equitable considerations, including whether the withdrawal of the student from public school was justified, whether the parent provided adequate notice, whether the amount of the private school tuition was reasonable, possible scholarships or other financial aid from the private school, and any fraud or collusion on the part of the parent or private school]; C.L., 744 F.3d at 840 [noting that "[i]mportant to the equitable consideration is whether the parents obstructed or were uncooperative in the school district's efforts to meet its obligations under the IDEA"]).

Addressing the issue of the subpoena served on Sister's Travel first, I decline to weigh the refusal of a separate entity, not controlled by the parent, to weigh against full funding of the parent's requested relief, as part of an equitable considerations analysis, under the facts and circumstances present here. If the district had subpoenaed the parent for the invoices she should have received from Sister's Travel and she had refused to produce them, that would have reflected on the parent's conduct during the impartial hearing, which may be considered for equitable purposes (see Application of a Student with a Disability, Appeal No.12-076 [declining to overturn an IHO's reduction of relief based in part of his credibility findings during the impartial hearing and noting that "I find no authority that precludes an IHO from considering the parties' conduct during the impartial hearing process while exercising his or her broad equitable power to fashion relief," citing Application of a Student with a Disability, Appeal No. 09-073; Application of a Student with a Disability, Appeal No. 09-007; Application of a Child with a Disability, Appeal No. 04-103; Application of a Child with a Disability, Appeal No. 04-061).. That is not the case here, however, and, as a result, I do not find that the failure of Sisters Travel to answer a subpoena issued in this matter weighs against the parent.

Regarding the district's assertion that iBrain is providing the student with unnecessary vision education services, I do not find that the hearing record supports that assertion. The May 2022 IEP notes that "[a]ccording to previous IEP, Vision Services were added to [the student's] previous IEP without consultation from Educational Vision Services" and that "[i]n sessions, [the student] does not present with visual issues that are preventing him from accessing any online platforms or materials presented to him (Dist. Ex. 1 at p. 7). The April 28, 2023 iBrain report and education plan lists individual vision education services as a 60-minute push in/pull out recommended program and the iBrain annual enrollment contract lists vision education services under iBrain's supplemental tuition fees (Parent Exs. H at pp. 1, 50; K at pp. 1-2). However, none of the iBrain quarterly progress reports reflect that the student is receiving vision education services at iBrain (see Parent Exs. M, N, O). Furthermore, whether the student was receiving

vision education services was not addressed during the impartial hearing. I therefore find that there is insufficient evidence in the hearing record to establish that the student is actually receiving vision education services from iBrain and, accordingly, I also decline to reduce the parent's award on this basis.

VII. Conclusion

The hearing record reflects that the district offered the student a FAPE for the 2022-23 school year and therefore the IHO's determination regarding the 2022-23 school year must be reversed. The evidence supports the IHO's finding that iBrain was an appropriate unilateral placement for the student and that equitable considerations favor the parent's request for district funding of the costs of the student's attendance at iBrain for the 2023-24 school year.

I have considered the parties' remaining contentions and find them unnecessary to address given my determinations.

THE APPEAL IS DISMISSED.

THE CROSS-APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

IT IS ORDERED that the IHO's decision, dated August 26, 2024, is modified by reversing that portion which found that the district failed to offer the student a FAPE for the 2022-23 school year; and

IT IS FURTHER ORDERED that the IHO's decision, dated August 26, 2024, is modified by reversing those portions which directed the district to directly fund all iBrain tuition costs for the 2022-23 school year and the transportation costs related to the 2022-23 school year.

Dated: **Albany, New York**
December 27, 2024

CAROL H. HAUGE
STATE REVIEW OFFICER