



The University of the State of New York

The State Education Department

State Review Officer

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No. 24-488

Application of a STUDENT WITH A DISABILITY, by her parents, for review of a determination of a hearing officer relating to the provision of educational services by the Board of Education of the Hewlett-Woodmere Union Free School District

Appearances:

Law Offices of Susan J. Deedy & Associates, attorneys for petitioners, by Susan J. Deedy, Esq.

Volz & Vigliotta, PLLC, attorneys for respondent, by Michael G. Vigliotta, Esq. and Michaela M. Weidtman, 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. Petitioners (the parents) appeal from the decision of an impartial hearing officer (IHO) which denied their request to be reimbursed for the costs of their daughter's tuition at Kulanu Academy (Kulanu) for the 2022-23 and 2023-24 school years. 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

According to the evidence in the hearing record, the student in this case attended district public schools for second through fifth grade, and for sixth grade (2021-22 school year), the parents unilaterally placed her at Kulanu (see Parent Ex. A at p. 2; see generally Dist. Ex. 3).¹ On May 27, 2022, the parents executed an "Enrollment Contract" with Kulanu for the student's

¹ Kulanu 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).

attendance during the 2022-23 school year (12-month program) beginning on July 7, 2022 and concluding on June 23, 2023 (see Dist. Ex. 19 at pp. 1, 7).

On June 17, 2022, a CSE conducted the student's annual review and developed an IEP for the 2022-23 school year (seventh grade) (see Dist. Ex. 2 at p. 1).^{2, 3} Finding that the student remained eligible for special education as a student with autism, the June 2022 CSE recommended a 12-month program, which, for July and August 2022, consisted of an 8:1+1 special class placement (three hours per day, five days per week), two 30-minute sessions per week of individual occupational therapy (OT), two 30-minute sessions per week of individual physical therapy (PT), one 30-minute session per week of individual counseling, two 30-minute sessions per week of speech-language therapy in a small group, and one 60-minute session per month of parent counseling and training services (see id. at pp. 1, 12-13).⁴ For the 10-month portion of the school year from September 2022 through June 2023, the June 2022 CSE recommended that the student attend an 8:1+2 special class placement for instruction in communication skills, community awareness, English language arts (ELA), functional mathematics, topics of science and health, and adapted physical education and receive related services consisting of two 30-minute sessions per week of individual OT, two 30-minute sessions per week of individual PT, one 30-minute session per week of individual counseling, one 30-minute session per week of counseling in a small group, one 40-minute session per week of individual speech-language therapy, one 40-minute session per week of speech-language therapy in a small group, and one 60-minute session per month of parent counseling and training services (id. at pp. 10-11). The June 2022 CSE also recommended the services of a full-time, individual paraprofessional for the student to "ensure safety and support academics throughout the school day" (id. at p. 11). Additionally, the June 2022 CSE developed annual goals to address the student's needs in the areas of reading, writing, mathematics, speech-language, social/emotional and behavioral, and motor skills and recommended that the student receive special transportation services (adult supervision and curb-to-curb service); assistive technology; supports for management needs; supplementary aids and services, program modifications, and accommodations; supports for school personnel on behalf of the student; and

² The June 2022 CSE consisted of the following members: a district CSE chairperson, a district school psychologist, a district regular education teacher, two district special education teachers, the attorney for the district, the parent, the parents' attorney, a Kulanu administrator, and a Kulanu teacher (see Dist. Ex. 2 at p. 2). For clarity, use of the term "parent" in this decision refers solely to the student's mother (id.). According to a "Stipulation of Settlement and Release" (settlement agreement) pertaining to the parents' claims for the 2021-22 school year, the parties agreed, in part, that the district would conduct the student's annual review "on or before June 30, 2022" (Dist. Ex. 29 ¶ 2). The parties also agreed for the district to pay the costs of the student's tuition at Kulanu for the 2021-22 school year and that Kulanu would not constitute the student's placement for the purposes of pendency (id. ¶¶ 2-3, 7). Pursuant to the settlement agreement, the parties further agreed that the student would be observed at Kulanu once during the 2021-22 school year, "prior to the CSE meeting to determine placement" for the 2022-23 school year, and "sign any necessary consents to obtain or permit the [d]istrict to obtain all of the [s]tudent's records, reports, evaluations and testing, from Kulanu for the 2021-2022 school year" (id. ¶ 5).

³ Evidence in the hearing record demonstrates that the parents canceled two prior dates scheduled for the student's annual review for the 2022-23 school year (i.e., June 13, 2022, and June 16, 2022) before the annual review was conducted on June 17, 2022 (see Dist. Ex. 33).

⁴ The student's eligibility for special education as a student with autism is not in dispute (see 34 CFR 300.8[c][1]; 8 NYCRR 200.1[zz][1]).

testing accommodations (id. at pp. 7-14).⁵ In the June 2022 IEP, the CSE noted that the student required "strategies, including positive behavioral interventions, supports and other strategies to address behaviors that impede[d] the student's learning or that of others"; however, the CSE further indicated that the student did not require a behavioral intervention plan (BIP) (Dist. Ex. 2 at p. 7).

In a letter dated June 17, 2022, the parents notified the district that the June 2022 CSE's "recommended program [wa]s not sufficient to address [her] significant deficits," and rejected the June 2022 IEP developed for the 2022-23 school year (Dist. Ex. 17 at p. 2). The parents also noted that the "recommendation to place [the student] in the public school setting [wa]s inappropriate," as the student required a "specialized school with a small, structured classroom that address[ed] her mixed learning disabilities as well as her social-emotional functioning" (id.). Accordingly, the parents notified the district of their intentions to unilaterally place the student at Kulanu for the 2022-23 school year and to seek public funding for the costs of her tuition (12-month program) and round-trip transportation (id.).

Evidence in the hearing record reflects that the student attended Kulanu for the 2022-23 school year from July 7, 2022 through June 23, 2023 (see Parent Ex. B at p. 1; see generally Parent Ex. N). While at Kulanu, the student received related services consisting of OT (12-month service), PT (10-month service), speech-language therapy (12-month service), and counseling services (12-month service), as well as the services of a full-time, individual paraprofessional (12-month service) (see Parent Ex. B at pp. 1-2).

On April 25, 2023, the parents executed an "Enrollment Contract" with Kulanu for the student's attendance during the 2023-24 school year (12-month program) beginning on July 6, 2023 and concluding on June 20, 2024 (see Dist. Ex. 24 at pp. 1, 7).

On May 31, 2023, the parents privately obtained a neuropsychological evaluation of the student (see Dist. Ex. 16 at p. 1).

On June 16, 2023, a CSE conducted the student's annual review and developed an IEP for the 2023-24 school year (eighth grade) (see Dist. Ex. 5 at p. 2).⁶ Finding that the student remained eligible for special education as a student with autism, the June 2023 CSE recommended a 12-month program, consisting largely of the same special education and related services; management needs; supplementary aids and services, program modifications, and accommodations; assistive technology devices and services; support for school personnel on behalf of the student; testing accommodations; adapted physical education; and special transportation services as the June 2022 CSE had recommended for the previous school year (compare Dist. Ex. 5 at pp. 1-2, 8, 12-16, with Dist. Ex. 2 at pp. 1, 10-14). It was noted in the June 2023 IEP that the parents disagreed with the

⁵ As noted in the June 2022 IEP, the parent "agree[d] with [the] reported [academic skill] levels from Kulanu staff" and that the student "continue[d] to use her fingers for simple math calculations" (Dist. Ex. 2 at p. 6). The parent also reported that a "public school setting [wa]s too large for [the student] and that district programs and services would not be appropriate to address her needs" (id.).

⁶ The June 2023 CSE consisted of the following members: a district CSE chairperson (same individual who acted as chairperson at the June 2022 CSE meeting), a district school psychologist, a district regular education teacher, a district special education teacher, attorney for the district, the parent, and the parents' attorney (see Dist. Ex. 5 at p. 2).

recommended 8:1+2 special class and the recommended placement at the district middle school (see Dist. Ex. 5 at pp. 7-8). Similar to the June 2022 IEP, the June 2023 IEP included annual goals targeting the student's needs in the areas of reading; writing; mathematics; speech-language skills; social/emotional and behavioral skills; and motor skills (compare Dist. Ex. 5 at pp. 9-12, with Dist. Ex. 2 at pp. 8-10). The June 2023 IEP also noted that the student "strategies, including positive behavioral interventions, supports and other strategies to address behaviors that impede[d] the student's learning or that of others"; however, the CSE further denoted that the student did not require a BIP (compare Dist. Ex. 5 at p. 8, with Dist. Ex. 2 at p. 7).

In a letter dated June 19, 2023, the parents notified the district that the June 2023 CSE's "recommended program [wa]s not sufficient to address [her] significant deficits," and rejected the June 2023 IEP developed for the 2023-24 school year (Dist. Ex. 18 at p. 2). The parents also noted that the "recommendation to place [the student] in the public school setting [wa]s inappropriate," as the student required a "specialized school with a small, structured classroom that address[ed] her mixed learning disabilities as well as her social-emotional functioning" (*id.*). Accordingly, the parents notified the district of their intentions to unilaterally place the student at Kulanu for the 2023-24 school year and to seek public funding for the costs of her tuition (12-month program) and round-trip transportation (*id.*).

Shortly thereafter, the district sent the parents a prior written notice dated June 22, 2023, seeking consent to conduct the student's mandated three-year reevaluation (see Dist. Ex. 9 at p. 1). The district proposed conducting the following as part of the student's triennial reevaluation: a psychological evaluation, an educational evaluation, a social history update, an OT evaluation, a speech-language evaluation, and a PT evaluation (*id.*). The district received the parents' consent to reevaluate the student on July 17, 2023 (see Dist. Ex. 10). The district completed the student's triennial reevaluation process during July and August 2023 (see generally Dist. Exs. 11-15).

Evidence in the hearing record reflects that the student attended Kulanu for the 2023-24 school year from July 6, 2023 through June 20, 2024 (see Parent Ex. C at p. 1). While at Kulanu, the student received related services consisting of OT (12-month service), PT (12-month service), speech-language therapy (12-month service), and counseling services (12-month service), as well as the services of a full-time, individual paraprofessional (12-month service) (*id.* at pp. 1-2).

On September 6, 2023, the district received a copy of the student's neuropsychological evaluation (September 2023 neuropsychological evaluation), which had been completed in May 2023 (see Dist. Ex. 16 at p. 1).

On September 12, 2023, a CSE conducted a "[r]evaluation [r]eview" (Dist. Ex. 8 at p. 2). At that time, the September 2023 CSE reviewed the results of the student's triennial reevaluations, which included a July 2023 psychological evaluation, a July 2023 social history update, an August 2023 educational evaluation, an August 2023 OT evaluation, and an August 2023 speech-language evaluation (*id.* at pp. 3-4; see generally Dist. Exs. 11-15).⁷ In addition, the September 2023 CSE

⁷ The September 2023 CSE consisted of the following members: a district CSE chairperson (same individual who acted as chairperson at the June 2022 and June 2023 CSE meetings), a district school psychologist, two Kulanu staff, the attorney for the district, a district regular education teacher, a district special education teacher, the parent, two individual identified as an "Aunt" and an "Uncle," and the parents' attorney (see Dist. Ex. 8 at p. 2).

reviewed the September 2023 neuropsychological evaluation of the student privately obtained by her parents (see Dist. Ex. 8 at pp. 3, 5-7; see generally Dist. Ex. 16). Finding that the student remained eligible for special education as a student with autism, the September 2023 CSE recommended a 12-month program, consisting of the same special education and related services; management needs; supplementary aids and services, program modifications, and accommodations; assistive technology devices and services; support for school personnel on behalf of the student; testing accommodations; adapted physical education; and special transportation services as had been recommended by the June 2023 CSE for the 2023-24 school year (compare Dist. Ex. 8 at pp. 1-2, 9, 13-17, with Dist. Ex. 5 at pp. 1-2, 8, 12-16). The September 2023 CSE continued to note in the IEP that the parents disagreed with the recommended 8:1+2 special class and the recommended placement at the district middle school (see Dist. Ex. 8 at pp. 7-9). Similar to the June 2023 IEP, the September 2023 IEP included annual goals targeting the student's needs in the areas of reading; writing; mathematics; speech-language skills; social/emotional and behavioral skills; and motor skills (compare Dist. Ex. 8 at pp. 8-11, with Dist. Ex. 5 at pp. 9-12). The September 2023 IEP also noted that the student "strategies, including positive behavioral interventions, supports and other strategies to address behaviors that impede[d] the student's learning or that of others"; however, the CSE further denoted that the student did not require a BIP (compare Dist. Ex. 8 at p. 9, with Dist. Ex. 5 at p. 8).

A. Due Process Complaint Notice

By due process complaint notice dated October 4, 2023, the parents alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2022-23 and 2023-24 school years based on numerous procedural and substantive violations (see Parent Ex. A at pp. 1, 4-8). As relief, the parents requested an order directing the district to reimburse the parents or directly pay Kulanu for the costs of the student's tuition at Kulanu for the 2022-23 and 2023-24 school years (id. at pp. 8-9).

B. Impartial Hearing Officer Decision

On January 29, 2024, the parties proceeded to an impartial hearing, which concluded on May 8, 2024, after seven total days of proceedings (see Tr. pp. 1-1129). In a decision dated September 20, 2024, the IHO found that the district offered the student a FAPE for the 2022-23 and 2023-24 school years (see IHO Decision at pp. 8-26).

In finding that the district offered the student a FAPE for the 2022-23 school year, the IHO initially examined the parents' procedural challenges to the development of the student's IEP, which included the sufficiency of the evaluative information available to the June 2022 CSE, parent participation and predetermination, the failure to discuss the annual goals, the timing of the June 2022 CSE meeting, and whether the district had agreed to place the student in an out-of-district placement (see IHO Decision at pp. 8-13). With regard to the parents' evaluative information claim, the IHO found that the June 2022 CSE had a fall 2021 Kulanu progress report available, as well as the participation of Kulanu staff and the parents at the meeting to develop the student's IEP (id. at p. 10). The IHO noted that the parents failed to point to "any on-point case law in support of the argument that [the] most recent documents must be in the possession of the CSE during the IEP meeting" (id.). Additionally, the IHO indicated that, even if the district's

actions were considered to be a procedural violation, the parents did not "point to any substantive impact with respect to this claim" (*id.*).

Next, the IHO addressed the parent participation claim (*see* IHO Decision at pp. 10-11). Here, the IHO noted the parents' concerns, including that they only had a "very brief opportunity at the end of the meeting, after the school district made its recommendations, to voice [their] concerns"; that the CSE chairperson "cut" the parents off and "did not credit" their concerns; and that no other CSE member had the opportunity to speak, other than the Kulanu staff and the CSE chairperson (*id.* at p. 10).⁸ The IHO found that the parents' claims turned on whether the district "had an open mind at the meeting," and the hearing record lacked evidence that that the district "refused to . . . consider the parent's request for another school program" (*id.* at pp. 10-11). The IHO further found that the evidence reflected that the district "made efforts to place the [s]tudent at another school," the parents were represented at the CSE meeting by an attorney, and the parents presented their position with respect to an appropriate placement for the student (*id.* at p. 11). The IHO also indicated that the parents' due process complaint notice did not include an allegation that the parents were deprived of the opportunity to participate at the June 2022 CSE meeting, but instead, "mention[ed] objections to the meeting because all the CSE members did not speak or contribute [to] the development of the IEP," which, according to the IHO, was "not ordinarily a basis for a finding of FAPE denial" (*id.*).

Next, the IHO addressed the parents' assertion that the June 2022 CSE failed to discuss the annual goals in the student's IEP at the meeting (*see* IHO Decision at p. 11). Initially, the IHO noted that this was the parents' "most compelling procedural argument" (*id.*). According to the IHO, at the impartial hearing the CSE chairperson had very little, if any, specific recollection of a discussion about the annual goals at the June 2022 CSE meeting; however, the CSE chairperson testified that the CSE discussed the student's special education needs (*id.*). Nevertheless, the IHO concluded that "courts tend[ed] to find that parents [we]re not denied the right to participate in the meeting if goals [we]re only discussed generally" (*id.*, citing *W.R. v. Katonah-Lewisboro Union Free Sch. Dist.*, 2022 WL 17539699, at *13 [S.D.N.Y. Dec. 7, 2022]). Similar to the facts in *W.R.*, the IHO found that, in this instance, the June 2022 CSE included the attendance and participation of both parents, the parents' attorney, and a "teacher from the student's school" (IHO Decision at pp. 11-12). The IHO further noted that, "while a more specific discussion of goals at the CSE meeting may have been desirable," the IEP meeting passed muster under the IDEA" (*id.* at p. 12).

With regard to the timing of the June 2022 CSE meeting, the IHO rejected the parents' assertion that the date of the CSE meeting prevented them from having the "opportunity to fully consider the program recommendation" made (IHO Decision at p. 12). More specifically, the IHO noted that the parents and their attorney were present at the June 2022 CSE meeting and the hearing record did not contain evidence that "suggest[ed] that there was any confusion about the nature of the placement" (*id.*). The IHO similarly rejected the parents' contention that the date of the June 2022 CSE meeting prevented them from having the "opportunity to visit the classroom to see whether it was an appropriate placement" (*id.*). The IHO found that, while this was a "valid point," the parents had no "general entitlement" under the IDEA or its implementing regulations to "observe their children in any current classroom or proposed educational placement" (*id.*, citing

⁸ The CSE chairperson was employed by the district as the assistant director of special education (*see* Tr. p. 38).

Letter to Mamas, 42 IDELR 10 [OSEP 2004] and M.E. v. New York City Dep't of Educ., 2024 WL 1514299, at *6 [S.D.N.Y. Apr. 8, 2024]).

The IHO then turned to the parents' argument concerning the district's previous agreement to place the student in an out-of-district placement (see IHO Decision at p. 12). Here, the IHO reasoned that, although the parents cited no authority for their argument, to the extent that the parents relied on the doctrine of equitable estoppel applied to the district, the hearing record was devoid of evidence that the parents relied on the district's "representation about finding a private school for the [s]tudent," and that, therefore, the equitable estoppel doctrine did not apply (id. at pp. 12-13).

Next, the IHO examined the parents' arguments concerning the appropriateness of the June 2022 CSE's recommendation of an 8:1+2 special class placement for the student for the 2022-23 school year (see IHO Decision at p. 13). Initially, the IHO reviewed the parents' concerns about the recommended placement, which included what the parents' characterized as a focus on "functional academics" within the classroom (id.). The IHO found that the parents' primary concern, however, was the student's ability to make progress in reading (id.). Specifically, the parents thought that the "class was too busy and chaotic" for the student to make progress in reading, especially with "student going in and out of the classroom, students working in multiple group, [and] students . . . stopping for jumping breaks and the like" (id.). The IHO indicated that, according to the parents, the student required a "classroom like Kulanu, with more teacher support, especially in group and 1:1 reading" (id. at pp. 13-14).

However, the IHO found that the evidence in the hearing record did not "clearly demonstrate" that the student was "making especially impressive progress at Kulanu, even though the school provided group and individual instruction in reading daily" (IHO Decision at p. 14). Similarly, the IHO found that in mathematics, while the "student reportedly made progress from having difficulty with simple addition and subtraction one to three," the hearing record did not include "clear and specific evidence what this progress consisted of," other than noting that the student was "being given second and third grade level work" (id.). Instead, the evidence in the hearing record indicated that the student's "main area of progress" was in the "mastery of time identification," which the IHO characterized as a "life skill exercise" (id.).

With regard to ELA at Kulanu, the IHO noted that the student was working on "expanding [her] vocabulary, spelling, and reading comprehension," as well as analyzing what was "happening or w[ould] happen in a story" (IHO Decision at p. 14). The IHO further noted, however, that the hearing record did not include clear specifics on the student's progress (id.). Based on testimonial evidence, the IHO noted that, at the start of the 2022-23 school year, the student primarily read words in isolation, but had improved and could "'read' though there [we]re some points in the story that she [wa]s hesitant" (id.). According to the IHO, the same witness testified that the student was "being given third to fourth grade work"; however, the IHO noted that the hearing record lacked evidence or "data . . . to suggest that the [s]tudent [wa]s even near the fourth-grade level in reading" (id.). The IHO also noted that, based on witness testimony, the student was "being taught at a lower level in regard to inferential questions"; however, the IHO noted that a "reading teacher was not called as a witness to explain anything more" (id.).

Turning to the parents' contention that the "proposed class" did not offer any "real academics," the IHO found that testimony established that the "program provide[d] classes in ELA, functional math, community awareness, and topics of science and health" (IHO Decision at p. 14). Additionally, the evidence demonstrated that in ELA, "students read and wr[o]te to complete tasks," such as writing "digital communication, read[ing] recipes, and [noting] that functional skills [we]re embedded in every single moment of the day" (id. at pp. 14-15). The IHO noted that a witness described "reading the book 'Matilda' to the children, wherein the focus was to gain day-to-day life skills" (id. at p. 15). The IHO further noted, however, that the program was "sufficiently flexible to address each student's individual, unique needs," and if a student was "capable of learning additional academic subjects, the program c[ould] be individualized to ensure they have exposure and lesson on a grade level curriculum" (id.).

The IHO indicated that, at Kulanu, students received a "fair amount of instruction that c[ould] fairly be considered life skills instruction" (IHO Decision at p. 15). For example, the IHO found that, based on witness testimony, Kulanu provided "non-academic classes on social skills, community studies, travel training, prevocational classes, culinary classes, and a health and hygiene class" (id.). In addition, Kulanu offered "'instructional breakfast,'" where students worked on "social and life skills" (id.).

Turning to the parents' concerns about the "proposed placement," the IHO rejected the parents' assertion that it included "too many misbehaving students" (IHO Decision at p. 15). Here, the IHO pointed to witness testimony explaining that students at Kulanu were "'social student' who c[ould] inappropriately call out as opposed to raising their hands" (id.). The same witness testified that "these students need[ed] token boards in classroom management 'just for being able to complete their work' because of noncompliance" (id.).

With respect to the parents' assertion that the district middle school was too large and crowded in the hallways for the student—who could "lose control of her body and [wa]s prone to falling"—the IHO found that the hearing record lacked evidence that the student had "such problems while in a public elementary school" (IHO Decision at p. 15). Moreover, the IHO found that the hearing record was not "clear on the difference in size and environment between the elementary school and the middle school" and the student had been recommended to receive the services of a "1:1 to ensure safety and academics throughout the school day" (id.).

Next, the IHO addressed the parents' contention that the district failed to establish that the 8:1+2 special class placement for the 2022-23 school year had a "seat available" for the student (IHO Decision at p. 16). Based on the evidence in the hearing record, the special class placement had eight students in the classroom at the start of the school year, and the parents asserted that the district did not communicate that information to them or communicate that the district would need to obtain a variance for the student to attend that classroom (id.). In rejecting this argument, the IHO pointed to witness testimony, which indicated that the district would need a variance for the student to attend that specific classroom; however, the witness also testified that if the variance was not granted, then the district would "split the class" to accommodate the student's attendance (id.). In respect to the parents' contention that this testimony was speculative, the IHO found that the witness did not "hedge when she made this statement," and noted that the hearing record lacked "clear proof" that the district was incapable of implementing the student's IEP if the student had attended the 8:1+2 special class placement (id.).

The IHO then turned his attention to the parents' concerns regarding the annual goals and present levels of performance and whether the student required a specialized reading program (see IHO Decision at pp. 16-19). With respect to the annual goals, the parents asserted that the annual goal targeting the student's ability to decode 10 sight words was inappropriate, the annual goals were not sufficiently "ambitious or broad enough," and the annual goals were not "specific" (*id.* at p. 17). The IHO noted that these concerns "did not appear to have [been] mentioned" at the CSE meeting (*id.*). However, the IHO found that the CSE chairperson testified that she was "involved in the development of the writing, math, speech language, social, emotional, and motor skill goals, which were based on the need identified in the recent Kulanu progress report" (*id.*). As a result, the IHO found that the June 2022 IEP included "reasonably comprehensive" annual goals (*id.*). In addition, the IHO briefly concluded that the hearing record did not include evidence that the "lack of sufficient detail in the 'present levels' sections of the IEP had any impact on the [s]tudent's education" (*id.*).

Finally, the IHO addressed the parents' contention that the district failed to provide any specialized reading program for the student and the June 2022 CE failed to discuss a program to address the student's reading deficiencies (see IHO Decision at pp. 17-18). In support of their assertions, the parents pointed to testimony that the student was "capable of learning if the right program [wa]s provided to her" (*id.* at p. 18). Initially, the IHO noted that issues pertaining to "methodology in IEPs [we]re ordinarily at the discretion of the school district" (*id.*). While noting that IHOs had latitude to "require a methodology in an IEP," the IHO further noted that there must be some showing that the "CSE should have known that a preferred methodology would result in significant benefit to a student" (*id.*). According to the IHO, the parents pointed to the student's success at Kulanu—"which provided the [s]tudent with 1:1 reading instruction"—as a basis for recommending "1:1 reading instruction" in the student's IEP (*id.* at pp. 18-19). The IHO found, however, that at the time of the June 2022 CSE meeting, "evidence of the [s]tudent's success at Kulanu was more anecdotal than anything," especially since Kulanu staff reported at the CSE meeting that the student's "reading comprehension was 'still emerging' at the second-grade level" (*id.* at p. 19). Additionally, the IHO noted that the student had previously received "1:1 reading instruction through the Wilson program" at the district, but the parents blamed the "incompetence of the teacher" instructing the student as the reason for the student not responding to the instruction (*id.*). Overall, having found little case law to support a district's liability for failing to provide 1:1 reading instruction in an IEP, the IHO concluded that the parents' claim was without merit (*id.*).

Having found that the district offered the student a FAPE for the 2022-23 school year, the IHO then turned his attention to the parents' claims related to the 2023-24 school year (see IHO Decision at pp. 19-26). Initially, the IHO summarized the procedural violations alleged by the parents, including that the June 2023 CSE did not include a Kulanu representative; the district failed to conduct the student's triennial reevaluations prior to the June 2023 CSE meeting; the district failed to have all progress reports, evaluations or current information about the student prior to the CSE meeting; the district failed to "take necessary steps for the [s]tudent" before the CSE meeting; the district scheduled the CSE meeting at the "'last minute'"; and the CSE meeting did not include a discussion of the annual goals (*id.* at pp. 19-20). Similarly, the IHO summarized the substantive violations alleged by the parents: the 8:1+2 special class placement was not appropriate "for the same reasons as in" the 2022-23 school year, the district middle school was not appropriate due to its size, the annual goals were not appropriate, the evaluations relied upon by the CSE were not appropriate because the district should have completed an assistive

technology evaluation, the present levels of performance were not appropriate, and the June 2023 IEP did not include a recommendation for a reading program (id. at p. 20).

With respect to the alleged procedural violations, the IHO found that, although the student was last evaluated in May 2020, the parents' privately obtained neuropsychological evaluation took place on May 31, 2023, and the district's reevaluations took place thereafter (see IHO Decision at p. 20). The IHO noted that a CSE considered the evaluations at a September 2023 meeting and the parents had not explained "how the failure to conduct a triennial evaluation by May, 2023 had any impact" on the student (id.). With regard to the allegation concerning the composition of the June 2023 CSE, the IHO found that, consistent with the parents' assertion, the hearing record lacked evidence to establish that a regular education teacher or a special education teacher "of the [s]tudent]" attended the meeting (id.). However, when a CSE met in September 2023, the IHO noted that two Kulanu staff attended, and the hearing record lacked evidence that the "addition of another teacher would have changed anything at the meeting" (id. at pp. 20-21). As for the assertions that the June 2023 CSE failed to discuss the Kulanu progress report and failed to invite Kulanu staff, the IHO noted that, based on the evidence, although the CSE attempted to call Kulanu during the meeting, the parents "asked [the CSE] not to call Kulanu" and the parents did not deny this assertion during testimony (id. at p. 21). Additionally, the IHO noted that the parents' allegations did not "consider" that a CSE convened in September 2023 to review evaluations and the September 2023 CSE included two Kulanu staff members (id.). Finally, with regard to the annual goals contention, the IHO found that, similar to the June 2022 CSE meeting, the student's needs were discussed and those needs "drove the goals" (id.). The IHO further indicated that the hearing record was devoid of evidence suggesting that "there was any request to go through the IEP goals one at a time" (id.).

Next, the IHO addressed the parents' concerns about the 8:1+2 special class placement recommended for the 2023-24 school year (see IHO Decision at pp. 21-22). Generally, the IHO found that "[m]uch of the analysis of the appropriateness of the [s]tudent's program for the 2022-2023 school year [wa]s applicable to the analysis of the appropriateness of the [s]tudent's program for the 2023-2024 school year" (id.). Thus, the IHO rejected the parents' contention that the proposed class did not provide "real academics" in light of testimony reflecting that students received instruction in ELA, functional math, community awareness, and topics of science and health (id. at p. 22). The IHO also rejected the contention that the proposed placement included "too many misbehaving students," based on testimony reflecting that "Kulanu also appear[ed] to house students with management needs" (id.).

While acknowledging that the student "made gains and mastered goals" based on a Kulanu progress report for the 2022-23 school year, the IHO was not persuaded by the parents' argument suggesting that "report indicated that the [s]tudent should have been placed at Kulanu" (IHO Decision at p. 22). Instead, the IHO found that the progress report did not include "specifics," such as "grade levels," and according to the report, the student did not master any of her reading goals during the 2022-23 school year "despite the 1:1 reading instruction that was provided" to her (id.). Additionally, the IHO noted that the evaluator who completed the student's September 2023 neuropsychological evaluation found the student's reading skills fell within the "extremely low range," and "did not specifically comment on the efficacy of the approach taken by Kulanu" (id.). As a result, the IHO found that the June 2023 and September 2023 CSEs had "sufficient evidence" to "reasonably recommend" the 8:1+2 special class placement for the student (id.).

With regard to the present levels of performance and annual goals, the IHO noted that a speech-language pathologist developed the annual goals related to the student's language skills in the September 2023 IEP (IHO Decision at p. 22). The IHO rejected the parents' contention that the speech-language pathologist developed the annual goals prior to the CSE meeting and then "entered them into 'IEP Direct,'" noting that the parents had not presented any "authority to suggest that this [wa]s an impermissible practice" (id. at pp. 22-23). Similarly, the IHO rejected the parents' argument that the speech-language pathologist's development of the annual goals without having "any other discussions" with the CSE chairperson or "anyone else at the CSE meeting regarding her evaluation [of the student] or the goals she was proposing" was an "impermissible practice" (id. at p. 23). The IHO further rejected the parents' assertion that the speech-language pathologist failed to "provide a reasonable explanation for why she included only one goal to address [the student's] pragmatic language skills," especially when the student's pragmatic language was her "main deficit area" (id.). The IHO noted that the IDEA did not require a specific number of annual goals in an IEP, and the parents had not presented "authority to suggest that more than one goal [wa]s needed for an area of need" (id.).

Turning to the present levels of performance, the IHO briefly found that the hearing record lacked evidence to support the parents' assertion that this section of the IEP was "not comprehensive enough" or that the "lack of sufficient detail in the 'present levels' sections of the IEP had any impact of the [s]tudent's education" (IHO Decision at p. 23).

Next, the IHO addressed the appropriateness of the student's triennial reevaluations (see IHO Decision at pp. 23-25). With regard to the speech-language evaluation, the educational evaluation, and OT evaluation, the IHO rejected the parents' assertions and found that the parents failed to present any witnesses of their own to explain why these evaluations were not appropriate (id. at pp. 24-25). In addition, the IHO pointed out that the hearing record lacked evidence that different evaluations in these areas "would have had any material impact" on the student's needs (id.).

With respect to the parents' argument that the "CSE again failed to recommend any specialized reading services" for the student, the IHO found that the evidence in the hearing record reflected that the student had not made "dramatic progress at Kulanu" during the 2022-23 school year (IHO Decision at pp. 25-26). Contrary to the parents' contention that the student's progress in reading at Kulanu during the 2022-23 school year should have informed the CSE of the student's ability to learn, the IHO noted that that "progress" had not been "captured by any persuasive data" (id. at p. 26). The IHO indicated that the district's educational evaluation revealed that the student had been "reading at the second percentile after two years at Kulanu," and the neuropsychological evaluation revealed "similar" results (id.).

In light of the foregoing determinations, the IHO concluded that the district offered the student a FAPE for the 2023-24 school years and dismissed the matter with prejudice (see IHO Decision at p. 26).

IV. Appeal for State-Level Review

The parents appeal, arguing that the IHO erred by finding that the district offered the student a FAPE for the 2022-23 and 2023-24 school years. With regard to the 2022-23 school

year, the parents generally contend that the IHO misrepresented or ignored their evidence in reaching his conclusions. The parents assert that the June 2022 CSE failed to have all current information about the student prior to conducting the CSE meeting, and the IHO erred by finding that the absence of additional Kulanu documents did not substantively impact the development of the IEP because Kulanu staff and the parents were present at the CSE meeting. Next, the parents contend that they—and other CSE members—were deprived of the opportunity to meaningfully participate at the June 2022 CSE meeting, and the IHO improperly analyzed this issue as predetermination of the student's program rather than as a participation claim. The parents assert that the IHO erred by finding that the district considered the parents' request for an out-of-district placement for the student and made attempts to place the student in another program. Additionally, the parents assert that, although the IHO recognized the June 2022 CSE's failure to discuss the student's annual goals at the meeting as a procedural violation, the IHO improperly found that the CSE's failure to discuss the annual goals impacted the validity of the IEP. Relatedly, the parents argue that the IHO erred by finding that the annual goals in the June 2022 IEP were appropriate. Next, the parents contend that the IHO erred by finding that the timing of the June 2022 CSE meeting did not affect the district's offer of a FAPE, noting that the "lateness" of the meeting resulted in them not being able to observe the class before the end of the school year. Relatedly, the parents argue that the timing of the June 2022 CSE meeting resulted in the district's inability to search for, and to send applications to out-of-district placements for the student. The parents further argue that the IHO erred by finding that the 8:1+2 special class placement for the student was appropriate because the IHO applied the wrong legal standard and improperly compared the recommended special class to services provided by Kulanu. In addition, the parents argue that the IHO erred in his analysis of the assigned public school site—i.e., the district middle school—by failing to assess whether the larger school building was appropriate in light of the student's social/emotional needs and improperly found that the district had a seat available for the student on the first day of school or could apply for a variance or split classrooms to accommodate the student's attendance. Finally, the parents assert that the IHO erred by finding that the district's failure to recommend an individual reading program for the student did not result in a failure to offer the student a FAPE for the 2022-23 school year. Moreover, the parents note that the IHO conflated the issue of recommending a methodology in an IEP with the student's need for an individual reading program, and they did not argue that the particular methodology was required, but rather, that the district should have recommended a "scientifically based 1:1 reading program to be provided with fidelity."

Turning to the 2023-24 school year, the parents argue that the IHO erred by finding that the district's failure to conduct the student's triennial evaluations prior to the CSE meeting for the 2023-24 school year did not affect the appropriateness of the CSE's recommendations. Had the triennial evaluations been conducted in a timely manner, the parents argue that the CSE could have fully considered their request for an out-of-district placement for the student. With respect to the June 2023 CSE composition, the parents argue that the IHO erred by finding that the district's failure to invite Kulanu staff did not result in the failure to offer the student a FAPE. The parents also argue that the IHO erred by finding that the district's failure to discuss the annual goals at the CSE meeting did not constitute a significant procedural violation, and relatedly, that the IHO erred by finding that it was not inappropriate to develop annual goals prior to the CSE meeting and that the pragmatic speech-language annual goals were appropriate. Next, the parents contend that the IHO erred by finding that the 8:1+2 special class placement recommendation was appropriate and incorrectly compared the Kulanu program with the June 2023 CSE's recommendations. The

parents further contend that the IHO erred by dismissing their claim concerning the behavioral issues of the students in the recommended class. Additionally, the parents argue that the IHO erred by finding that the student did not require vision therapy or an individual reading program. Finally, the parents assert that the IHO erred by finding that the educational and OT evaluations of the student were appropriate because the evaluations were completed during summer.

In addition to the foregoing, the parents argue that the IHO erred by failing to determine whether Kulanu was an appropriate unilateral placement for the 2022-23 and 2023-24 school years and whether equitable considerations weighed in favor of the parents' requested relief. On appeal, the parents seek to reverse the IHO's findings that the district offered the student a FAPE for the 2022-23 and 2023-24 school years.

In an answer, the district responds to the parents' 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 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]).⁹

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

⁹ 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).

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

Upon careful review, the hearing record reflects that the IHO correctly reached the conclusion that the district offered the student a FAPE for the 2022-23 and 2023-24 school years (see IHO Decision at pp. 6-26). The IHO accurately recounted the facts of the case, addressed the core issues that were identified in the parents' due process complaint notice, set forth the proper legal standard to determine whether the district offered the student a FAPE for the 2022-23 and 2023-24 school years, and applied that standard to the facts at hand (id.). The decision shows that the IHO considered the testimonial and documentary evidence presented by both parties, and further, that he weighed the evidence and supported his conclusions (id.). Furthermore, an independent review of the entire hearing record reveals that the impartial hearing was conducted in a manner consistent with the requirements of due process and that there is no reason appearing in the hearing record to modify the determinations of the IHO (20 U.S.C. § 1415[g][2]; 34 CFR 300.514[b][2]). Thus, while my reasoning may have differed from the IHO's in some respects, I concur with the IHO's ultimate determinations that, despite any procedural errors, the district offered the student a FAPE for the 2022-23 and 2023-24 school years and that the June 2022 and June 2023 IEPs were reasonably calculated to provide meaningful educational benefit to the student (Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]; see Rowley, 458 U.S. at 192).

A. June 2022 CSE Process and IEP

Initially, with respect to the timing of the June 2022 CSE, the IDEA's implementing regulations and State regulations require that 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, 2012], aff'd, 530 Fed. App'x 81 [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]). As a matter of State law, the school year runs from July 1 through June 30 (see Educ. Law § 2[15]). Here, the parent does not allege that the district failed to have an IEP in place as of the beginning of the school year or that CSE meeting was more than a year from the student's last CSE review. Accordingly, there is no legal basis for the parent's allegation that the CSE was held in an untimely manner.

Next, the parents argue that the June 2022 CSE did not ensure that it had all of the current information about the student prior to the meeting. However, a review of the hearing record indicates that the June 2022 CSE had sufficient information to develop the student's IEP for the 2022-23 school year. Specifically, the June 2022 CSE had before it and considered a fall 2021 progress report from Kulanu as well as input from the student's then-current teachers and the parents (Tr. pp. 1118-20; Dist. Exs. 1 at p. 1; 2 at pp. 5-7; 3). The fall 2021 progress report indicated that the student attended a self-contained classroom with the assistance of a 1:1 paraprofessional and noted that she participated in school-wide activities for social benefits (Dist. Ex. 3 at p. 1). The report further indicated that the student struggled in spelling, reading, and social appropriateness (id.).¹⁰ Additionally, the fall 2021 progress report described the progress the student had made on annual goals designed to improve the student skills in the areas of ELA, mathematics, social studies, science, life skills, social skills, fine and gross motor skills, and social/emotional skills (id. at pp. 2-9).

Furthermore, the June 2022 CSE memorialized information provided by Kulanu staff attending the meeting within the IEP, describing the student's present levels of performance in reading, writing, mathematics, social development, and physical development, thereby updating the information about the student provided in the fall 2021 progress report (Dist. Ex. 2 at pp. 5-7). At the impartial hearing, the CSE chairperson testified that representatives from Kulanu attended and participated in the June 2022 CSE meeting by telephone, shared information, and responded to questions (see Tr. pp. 46-47). She further testified that prior to the meeting she "embedded" information from the fall 2021 progress report into the June 2022 IEP, "and then after the meeting added additional information that may have come up at the meeting that wasn't included in the progress reports" (Tr. pp. 45-46, 52-54). Moreover, the parent testified that during the June 2022 CSE meeting, Kulanu staff read the fall 2021 progress report, and were asked questions to clarify and update the information they presented (Tr. pp. 1118-19). Finally, the parent testified that she also had an opportunity to provide input and her opinion at the end of the meeting as well as that she "jumped in once or twice saying no, [the student] needs this, she needs that" (Tr. pp. 1119-20).¹¹ The CSE documented in the IEP that the parent had agreed with the "reported levels from Kulanu staff" (Dist. Ex. 2 at p. 2).

Review of the June 2022 IEP indicates that the CSE incorporated the information provided by the fall 2021 progress report along with the information provided by the parent and Kulanu staff during the meeting into the present levels of performance (Tr. pp. 45-47, 1118-20; compare Dist. Ex. 2 at pp. 2-7, with Dist. Ex. 3). Further review shows that the CSE then developed approximately 24 annual goals designed to improve the student's skills in reading, writing, mathematics, speech and language, social/emotional and behavioral, and motor skills (Dist. Ex. 2 at pp. 8-10). The parents state that the decoding goal regarding high-frequency words was

¹⁰ The fall 2021 Kulanu progress report provided information regarding the student's present levels of performance at the end of the first semester of the 2021-22 school year (see generally Dist. Ex. 3). The configuration of the Kulanu progress report included a description of the "Task Objective"—that is, a goal—for each subject area, as well as the student's "Level of Performance" toward achieving the stated task or goal (id.).

¹¹ The parent's testimony at the impartial hearing belies the allegation in the request for review that the district predetermined the student's program recommendations or deprived the parent of the opportunity to meaningfully participate in the June 2022 CSE meeting (compare Tr. pp. 1119-20, with Req. for Rev. ¶ 9).

insufficiently ambitious as it only provided for the student to learn 10 high-frequency words for the whole school year. However, contrary to the parents' description, the annual goal provided that, when presented with a list, the student would read 10 high-frequency words "taken from reading narratives and/or specific informational words," which could mean 10 words at a time, not 10 words for the whole school year (Dist. Ex. 2 at p. 8). In addition, while the parents argue that they were deprived of a meaningful opportunity to participate in the development of the IEP because the goals were not discussed at the meeting, the weight of the evidence in the hearing record indicates that, because the parent attended the June 2023 CSE meeting and participated in the meeting and the annual goals were appropriate to meet the student's needs, any failure to discuss the particular annual goals included in the IEP at the CSE meeting did not significantly impede the parents' opportunity to participate in the development of the student's IEP (see E.A.M. v. New York City Dep't of Educ., 2012 WL 4571794, at * 8 [S.D.N.Y. Sept. 29, 2012] [recognizing that the IDEA does not require that annual goals be drafted at the CSE meeting]).

To further the student's identified needs, the June 2022 CSE recommended an 8:1+2 special class placement with related services consisting of OT, PT, counseling, and speech-language therapy, as well as parent counseling and training (Dist. Ex. 2 at pp. 10-11). While the IHO did, as the parents argue, tend to compare the June 2022 IEP to the student's programming at Kulanu, where, as in this case, the student is attending a unilateral private placement, some reference to a student's performance at a nonpublic school may be necessary if preparing a new or revised IEP while the student is attending the nonpublic school.¹² Moreover, any error by the IHO in this regard is harmless as the evidence in the hearing record supports the conclusion that the recommended programming was designed to enable the student to make progress.

State regulations provide that a special class placement with a maximum class size not to exceed eight students, staffed with one or more supplementary school personnel, is designed for "students whose management needs are determined to be intensive, and requiring a significant degree of individualized attention and intervention" (8 NYCRR 200.6[h][4][ii][b]). The June 2022

¹² Generally, comparisons of a unilateral placement to the public placement are not a relevant inquiry when determining whether the district offered the student a FAPE; rather, an IHO must determine whether or not the district established that it complied with the procedural requirements set forth in the IDEA and State regulations with regard to the specific issues raised in the due process complaint, and whether the IEP developed by its CSE through the IDEA's procedures was substantively appropriate because it was reasonably calculated to enable the student to receive educational benefits—irrespective of whether the parent's preferred program was also appropriate (Rowley, 458 U.S. at 189, 206-07; R.E., 694 F.3d at 189-90; M.H., 685 F.3d at 245; Cerra, 427 F.3d at 192; Walczak, 142 F.3d at 132; see R.B. v. New York City Dep't. of Educ., 2013 WL 5438605 at *15 [S.D.N.Y. Sept. 27, 2013] [explaining that the appropriateness of a district's program is determined by its compliance with the IDEA's requirements, not by its similarity (or lack thereof) to the unilateral placement], aff'd, 589 Fed. App'x 572 [2d Cir. Oct. 29, 2014]; M.H. v. New York City Dep't. of Educ., 2011 WL 609880, at *11 [S.D.N.Y. Feb. 16, 2011] [finding that "the appropriateness of a public school placement shall not be determined by comparison with a private school placement preferred by the parent"], quoting M.B. v. Arlington Cent. Sch. Dist., 2002 WL 389151, at *9 [S.D.N.Y. Mar. 12, 2002]; see also Angevine v. Smith, 959 F.2d 292, 296 [D.C. Cir. 1992] [noting the irrelevancy comparisons that were made of a public school and unilateral placement]; B.M. v. Encinitas Union Sch. Dist., 2013 WL 593417, at *8 [S.D. Cal. Feb. 14, 2013] [noting that "[e]ven if the services requested by parents would better serve the student's needs than the services offered in an IEP, this does not mean that the services offered are inappropriate, as long as the IEP is reasonably calculated to provide the student with educational benefits"], quoting D.H. v. Poway Unified Sch. Dist., 2011 WL 883003, at *5 [S.D. Cal. Mar. 14, 2011]).

CSE recommended the following services, supports, and strategies to address the student's management needs: specially designed instruction in a small, structured setting; 1:1 supervision to ensure safe navigation of her school environment especially outside of the classroom, upon arrival to school, dismissal, transitions to other parts of the building, lunch, recess, and specials; aide support during academic instruction, related services, or 1:1 work with providers; information and tasks to be broken down and accompanied by visual aids; clear expectations and check-ins to monitor comprehension; support to maintain engagement in lessons and to organize herself throughout instruction; assistive technology to access academic material and to produce work; and ongoing instruction and continuous practice in order to prevent substantial regression in acquired skills (see Dist. Ex. 2 at p. 7). Additionally, the June 2022 CSE recommended the following supplementary aids and services, program modifications, and accommodations to further support the student: refocusing and redirection; check for understanding; breakdown information into smaller components; support for organizational skills; 1:1 aide daily; access to calculator; motor breaks; and special seating arrangements (id. at pp. 11-12). The June 2022 CSE recommended the student receive assistive technology devices and services including a laptop; headset with microphone; speech-to-text and text-to-speech, word prediction and study tools software; audio books; electronic copy of notes and worksheets; and 10 hours yearly of assistive technology services (id. at p. 12). Further, the June 2022 CSE recommended the following supports for school personnel on behalf of the student: training of staff on the student's disability for two yearly 45-minute sessions, and 40 minutes daily of behavioral intervention consultation (id.). Finally, the June 2022 CSE recommended the student receive a variety of testing accommodations including: a location with minimal distractions; answers recorded in test booklet; directions read for each page of questions; extended time (1.5); on task focusing prompt; test passages, questions, items and multiple-choice responses read the student; and use of break period (id. at p. 13).

According to a June 17, 2022 prior written notice, the June 2022 CSE made the recommendations because the student required "specially designed in (sic) instruction in a small, structured setting with the addition of specific, explicit instruction to address deficits in the areas of fine and gross motor development, expressive and receptive language and social/emotional development" (see Dist. Ex. 1 at p. 1). Within the June 2022 prior written notice, the district noted that the recommended special education program at the district middle school "mirror[ed] the program and services" the student received at Kulanu, but that the parents "disagreed with the recommendation of placement" at the district middle school and expressed concerns about the "size" of the district middle school (see id.). On appeal, the parents continue to express concerns about the size of the middle school. However, in response to these stated concerns, the June 2022 CSE—which did not view the building size as a concern that made the CSE's recommended program inappropriate—included a recommendation for "additional" PT to support the student's "transition" to the district middle school and "navigating the building safely" (id. at pp. 1-2). Moreover, the June 2022 CSE recommended that the student's related services take place in the "special class setting or another location in the school building to support less travel . . . around the school building" (id. at p. 2). According to the June 2022 prior written notice, pursuant to the parents' request, "an out of district placement w[ould] be explored to address [their] concerns that the [district] [m]iddle [s]chool setting [wa]s too large" (id.). However, it was also noted that the CSE had "determined that an in-district program was appropriate," and the parents had "expressed that [the student] progressed" during the 2021-22 school year (id.).

The parents argue that the district failed to follow through with its promise to search for another school promise. While the evidence does reflect that the district agreed to explore such an option, once the CSE found that the recommended program in a district public school was appropriate for the student, it was not required to consider a nonpublic school for the student (see E.P. v. New York City Dep't of Educ., 2015 WL 4882523, at *8 [E.D.N.Y. Aug. 14, 2015] [finding that once the CSE decided on an appropriate placement in the least restrictive environment in which the student could have been educated, it was not required to thereafter consider other more restrictive placements along the continuum]; see also B.K. v. New York City Dep't of Educ., 12 F. Supp. 3d 343, 359 [E.D.N.Y. 2014]; E.F. v. New York City Dep't of Educ., 2013 WL 4495676, at *15 [E.D.N.Y. 2014]; but see E.H. v. New York City Dep't of Educ., 164 F. Supp. 3d 539, 552 [S.D.N.Y. 2016] [finding a CSE was required to consider the parent's point of view that the student needed to be educated in the setting he was attending]).

The parents also contend that the IHO erred in finding that the June 2022 IEP sufficiently addressed the student's reading needs. State regulation defines "specially designed reading instruction" as "specially designed individualized or group instruction or special services or programs, as defined in subdivision 2 of section 4401 of the Education Law, in the area of reading . . . which is provided to a student with a disability who has significant reading difficulties that cannot be met through general reading programs" (8 NYCRR 200.6[b][6]). Education Law § 4401(2), in turn, sets for the definitions of "[s]pecial services or programs," which includes, among other things, special classes, resource rooms, consultant teacher services, and related services. Consistent with the reference to the various special services or programs included in the definition of special education under State Law, State guidance notes that specialized reading instruction could be recommended in the IEP of the student as a special class, direct consultant teacher service, related service, resource room program ("Questions and Answers on Individualized Education Program (IEP) Development, The State's Model IEP Form and Related Requirements," at p. 31, Office of Special Educ. Mem. [Updated Oct. 2023], available at https://www.nysed.gov/sites/default/files/programs/special-education/questions-answers-iep-development_0.pdf).

Evidence in the hearing record indicates that the June 2022 CSE addressed the student's reading needs with the recommendation of an 8:1+2 special class placement for instruction in ELA (daily) (see Dist. Ex. 2 at pp. 1, 11). For example, at the impartial hearing, the CSE chairperson testified that the June 2022 CSE did not recommend specialized reading services for the student because the "[s]pecial class was recommended to address the reading needs" (Tr. p. 138). She explained that the 8:1+2 special class placement for instruction in ELA was "specialized reading" and therefore, there was no reason to recommend "extra specialized reading services" for the student; the CSE chairperson also noted that the "special class ELA" was a "highly individualized program" (id.).

In addition to the 8:1+2 special class for instruction in ELA to address the student's reading needs, the June 2022 CSE developed approximately nine annual goals designed to improve the student's skills in decoding, sight word development, fluency, comprehension, encoding, and writing skills (see Dist. Ex. 2 at pp. 8-9). Additionally, the June 2022 CSE recommended a laptop for the student with software designed to provide text-to-speech and speech-to-text, as well as word prediction software and study tools, and the use of audio books (id. at p. 12). The 1:1 aide was also to support the student during academics (id. at pp. 7, 12).

With respect to enrollment of the proposed 8:1+2 special class in the public school, the parents argue that the testimony regarding the district's ability to seek a variance or split the 8:1+2 special class was speculative; however, it is the parents' allegation that the district would not have had the capacity to implement the IEP that was speculative. Generally, the sufficiency of the program offered by the district must be determined on the basis of the IEP itself (R.E., 694 F.3d at 186-88). 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. v. New York City Dep't of Educ., 584 F.3d 412, 419 [2d Cir. 2009]; 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. v. New York City Dep't of Educ., 793 F.3d 236, 244 [2d Cir. 2015]; R.E., 694 F.3d at 191-92; T.Y., 584 F.3d at 419-20; see C.F. v. New York City Dep't of Educ., 746 F.3d 68, 79 [2d Cir. 2014] [holding that while parents are entitled to participate in the decision-making process with regard to the type of educational placement their child will attend, the IDEA does not confer rights on parents with regard to the selection of a school site]). 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, 6 [2d Cir. Aug. 24, 2016]; J.C. v. New York City Dep't of Educ., 643 Fed. App'x 31, 33 [2d Cir. 2016]; B.P. v. New York City Dep't of Educ., 634 Fed. App'x 845, 847-49 [2d Cir. 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 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., 2016 WL 3981370, at *13; 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]).

As of the beginning of the school year, the parents had already unilaterally placed the student at Kulanu (Dist. Ex. 17 at p. 2). Evidence that the district would have accommodated the student in the recommended special class had the parents chosen to send the student to the public school was sufficient to demonstrate that the district had the capacity to implement the IEP.

Based on the above, the evidence in the hearing record supports the IHO's determination that the student's recommended special education placement and services described above, with the support of the 8:1+2 special class placement, related services, and the identified management needs, addressed the student's needs and offered the student a FAPE for the 2022-23 school year.

B. June 2023 CSE Process and IEP

The parents argue that the IHO erred in finding that the district's failure to conduct triennial evaluations prior to the June 2023 CSE meeting did not deny the student a FAPE. Regulations require that a district must conduct an evaluation of a student where the educational or related services needs of a student warrant a reevaluation or if the student's parent or teacher requests a reevaluation (34 CFR 300.303[a][2]; 8 NYCRR 200.4[b][4]); however, a district need not conduct a reevaluation more frequently than once per year unless the parent and the district otherwise agree and at least once every three years unless the district and the parent agree in writing that such a reevaluation is unnecessary (8 NYCRR 200.4[b][4]; see 34 CFR 300.303[b][1]-[2]). Here, the evidence indicated that the student was evaluated by the district in or around August 2020 (see Dist. Ex. 2 at pp. 3-4). Accordingly, the district's reevaluation of the student in July 2023 was not untimely (see generally Dist. Exs. 11-15). Further, review of the hearing record indicates that the June 2023 CSE reviewed and considered a spring 2023 progress report from Kulanu (see Tr. pp. 75-77, 1122; Dist. Exs. 4 at p. 1; 5 at pp. 5-8; 6).¹³ Comparison of the June 2023 IEP present levels of performance with the Kulanu spring 2023 progress report shows that the CSE incorporated information directly from Kulanu into the IEP (compare Dist. Ex. 5 at pp. 5-8, with Dist. Ex. 6). The CSE chairperson testified that the process during the annual review meeting was to "review present levels of performance, develop needs, goals, recommend programs and services" (Tr. p. 77). She further testified that "all of the information that was in these present levels of performance was taken specifically from the progress report" (Tr. p. 78). When asked if the goals were discussed at the CSE meeting, she explained that "all needs [we]re identified at the CSE meeting" and "[g]oals c[ame] from needs, "[s]o yes" (Tr. pp. 78-79). She further testified that the June 2023 CSE recommended the 8:1+2 special class placement based on the information provided in the Kulanu progress report and the student's continued need for specially designed instruction in a small, structured setting (Tr. p. 79). The CSE chairperson testified that the 8:1+2

¹³ To the extent that the parents contend that the June 2023 CSE was not properly composed because it did not include Kulanu staff as members, the IDEA requires a CSE to include the following members: the parents; one regular education teacher of the student (if the student was, or may be, participating in the regular education environment); one special education teacher of the student or, where appropriate, not less than one special education provider of the student; a district representative; an individual capable of interpreting instructional implications of evaluation results; at the discretion of the parent or district, other persons having knowledge or special expertise regarding the student, "including related services personnel as appropriate"; and if appropriate, the student (20 U.S.C. § 1414[d][1][B]; see 34 CFR 300.321[a]; 8 NYCRR 200.3[a][1]). While neither the IDEA nor State regulations require a CSE to include staff from a student's unilateral placement, a CSE is required to include at least one special education teacher of the student. However, even assuming that the June 2023 CSE did not include a special education teacher of the student, the June 2023 CSE had the Kulanu 2023 spring progress report available as well as input from the individual with the greatest familiarity with the student, namely, the parent, who participated in the CSE meeting. Accordingly, the procedural deficiency on its own did not rise to the level of a denial of a FAPE.

special class placement "was the most appropriate placement that would meet her needs" (Tr. p. 79).

The June 2023 CSE developed approximately 29 annual goals designed to improve the student's skills in areas of reading; writing; mathematics; speech and language; social, emotional and behavioral skills; and motor skills (Dist. Ex. 5 at pp. 9-12). To the extent that the parents again argue that the CSE did not discuss the annual goals at the meeting, even if the annual goals were finalized after the CSE meeting, this type of process has been found to be permissible so long as it does not seriously infringe on the parent's opportunity to participate in the meeting (S.B. v. New York City Dep't of Educ., 2015 WL 3919116, at *6-*7 [S.D.N.Y. June 25, 2015]; E.A.M. v. New York City Dep't of Educ., 2012 WL 4571794, at *8 [S.D.N.Y. Sept. 29, 2012]; S.F. v. New York City Dep't of Educ., 2011 WL 5419847, at *10-*11 [S.D.N.Y. Nov. 9, 2011]). Evidence reflects that the parent attended the June 2023 CSE meeting, along with her attorney, and a review of the June 2023 IEP demonstrates that the CSE included the parent's stated concerns within the IEP, such as her disagreement with the recommendation of an 8:1+2 special class placement at the district middle school (see Dist. Ex. 5 at pp. 7-8). Further review of the June 2023 IEP indicates that the information presented in the present levels of performance was directly related to the skills targeted by the annual goals (compare Dist. Ex. 5 at pp. 5-8, with pp. 9-12).

The June 2023 CSE recommended the student attend an 8:1+2 special class placement with the related services of OT, PT, counseling, speech-language therapy, and parent counseling and training along with the same supports for management needs and supplementary aids and services, program modifications, and accommodations summarized above with regard to the June 2022 IEP (Dist. Ex. 5 at pp. 8, 12). In a prior written notice dated June 16, 2023, the district informed the parents of the special education program recommended for the student for the 2023-24 school year (12-month program) (see Dist. Ex. 4 at p. 1). According to the prior written notice, the June 2023 CSE made the recommendations because the student continued to require "specialized instruction in a small, structured setting in addition to related therapies to continue to progress towards grade level standards" (id.). According to the June 2023 prior written notice, the CSE considered a Kulanu progress report in its decision-making process, and although the CSE "considered canvassing for an out of district placement," the CSE ultimately rejected this consideration because the student's "needs c[ould] be met in the district 8:1:2 special class" at the district middle school (id.). The June 2023 prior written notice further indicated that the parents had disagreed with the CSE's "recommendation of placement" at the district middle school (id.). In addition, the CSE agreed to reconvene a meeting if the student returned to the district to "review and amend the goals as needed" (id.).

As the IHO found, the IEP reflected that the 8:1+2 special class would address more than functional ELA and math, and the programming and annual goals included in the IEP support that finding (see Dist. Ex. 5). Similar to the June 2022 CSE's decision to recommend an 8:1+2 special class placement for instruction in ELA as a means to address the student's reading needs, the June 2023 CSE addressed the student's reading needs with a recommendation of an 8:1+2 special class placement for instruction in ELA (daily) (see Dist. Ex. 5 at pp. 1, 12). The June 2023 CSE developed approximately 11 annual goals designed to improve the student's skills in decoding, sight word development, fluency, vocabulary, comprehension, punctuation, grammar, encoding, and editing skills (id. at pp. 9-10). Additionally, the CSE recommended a laptop for the student with software designed to provide text-to-speech and speech-to-text, as well as word prediction

software and study tools, and the use of audio books (id. at pp. 13-14). Evidence demonstrates that the recommendation of a 1:1 aide was also to support the student during academics (id. at p. 13).

Based on the above, the evidence in the hearing record support the IHO's determination that the student's recommended special education placement and services described above, with the support of the 8:1+2 special class placement, related services, and the identified management needs, addressed the student's needs and offered the student a FAPE for the 2023-24 school year.¹⁴

VII. Conclusion

Having determined that the evidence in the hearing record establishes that the district offered the student a FAPE in the LRE for the 2022-23 and 2023-24 school years, the necessary inquiry is at an end and there is no need to reach the issue of whether Kulanu was an appropriate unilateral placement for the student or whether equitable considerations support an award of tuition funding (Burlington, 471 U.S. at 370; see M.C. v. Voluntown Bd. of Educ., 226 F.3d 60, 66 [2d Cir. 2000]).

I have considered the parties' remaining contentions and find them to be without merit.

THE APPEAL IS DISMISSED.

**Dated: Albany, New York
January 3, 2025**

**SARAH L. HARRINGTON
STATE REVIEW OFFICER**

¹⁴ As noted previously, a CSE reconvened in September 2023 to review and consider the results of the student's triennial reevaluations and the parents' privately-obtained May 2023 neuropsychological evaluation of the student (see Tr. pp. 83-85; see generally Dist. Exs. 11-14; 16). At the impartial hearing, the CSE chairperson testified that the purpose of the September 2023 CSE meeting was to review the reevaluation results and to determine if the student's June 2023 IEP needed to be modified based on the testing results (see Tr. p. 86). Evidence in the hearing record reflects that the September 2023 CSE updated the student's present levels of performance based on the information provided from the triennial reevaluations and the May 2023 neuropsychological evaluation (compare Dist. Ex. 8 at pp. 5-8, with Dist. Ex. 5 at pp. 5-8). Additionally, based on the results of the July 2023 speech-language reevaluation, the September 2023 CSE added approximately four annual goals designed to improve the student's speech and language skills (see Tr. pp. 87-88; compare Dist. Ex. 5 at p. 11, with Dist. Ex. 8 at p. 12). The CSE chairperson testified that once the CSE had reviewed all of the testing results, the CSE discussed the student's needs, management needs, and the appropriateness of the 8:1+2 special class placement (see Tr. p. 81).