The University of the State of New York

The State Education Department
State Review Officer
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No. 24-526

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 New York City Department of Education

Appearances:
Brain Injury Rights Group, Ltd., attorneys for petitioners, by Richa Raghute, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Thomas W. MacLeod, Esq.

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioners (the parents) appeal from a decision of an impartial hearing officer (IHO) which denied their request that respondent (the district) fund the costs of their daughter's tuition at the International Academy for the Brain (iBrain) for the 2024-25 school year. The appeal must be dismissed.

II. Overview—Administrative Procedures

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

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

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

III. Facts and Procedural History

The student was previously the subject of several State-level administrative proceedings (see Application of a Student with a Disability, Appeal No. 23-272; Application of a Student with a Disability, Appeal No. 20-063; Application of the Dep't of Educ., Appeal No. 19-107; Application of a Student with a Disability, Appeal No. 18-027). The parties' familiarity with this matter is presumed and, therefore, the facts and procedural history of the case and the IHO's decision will not be recited in detail here. Briefly, descriptions of the student include that she communicates by using facial expressions, gestures, and an augmentative and alternative communication (AAC) device, she uses a wheelchair to navigate her environment, and she requires 1:1 assistance to support her medical, physical, cognitive, and sensory needs (Dist. Ex. 1 at pp. 2,

14). The student attended iBrain during the 2023-24 school year in an 8:1+1 setting with 1:1 paraprofessional support and numerous related services (id. at pp. 1, 2, 4, 16-18).

A CSE convened on March 27, 2024, and found the student eligible for special education services as a student with a traumatic brain injury (TBI) (see generally Dist. Ex. 1).[1] The March 2024 CSE recommended a 12-month program in a district specialized school consisting of three periods per week of adapted physical education and an 8:1+1 special class placement together with related services of four 60-minute sessions per week of individual occupational therapy (OT), five 60-minute sessions per week of individual physical therapy (PT), four 60-minute sessions per week of individual speech-language therapy, one 60-minute session per week of group speech-language therapy, two 60-minute sessions per week of individual vision education services, and one monthly 60-minute session of parent counseling and training (Dist. Ex. 1 at pp. 50-52, 57). Additionally, the March 2024 CSE recommended individual paraprofessional services for the student's health, ambulation, safety, and feeding as well as assistive technology consisting of a dynamic display speech generating device and a once weekly 60-minute session of individual assistive technology services (id. at p. 51). In a prior written notice dated June 14, 2024, the district notified the parents of the March 2024 CSE recommendations and notified them of the public school site the district assigned the student to attend to implement her IEP (see Dist. Ex. 4).

The parents disagreed with the recommendations contained in the March 2024 IEP and notified the district of their intent to unilaterally place the student at iBrain for the 2024-25 extended school year (see Parent Ex. B).[2]

On June 24, 2024, the parents electronically signed an annual enrollment contract with iBrain for the student's attendance beginning on July 2, 2024 and continuing through to June 27, 2025 (see Parent Ex. C). The parents also entered into a school transportation annual service agreement with Sisters Travel and Transportation Services, LLC (Sisters Travel) for the transportation of the student to and from iBrain for the period of July 2, 2024 through June 27, 2025 (see Parent Ex. D). The student attended iBrain for the 2024-25 school year (see Parent Ex. C).

A. Due Process Complaint Notice

In a due process complaint notice dated July 2, 2024, the parents alleged that the district denied the student a free appropriate public education (FAPE) for the 2024-25 extended school year (see generally Parent Ex. A). As pendency, the parents requested funding from the district for the student's attendance at iBrain and for transportation services (Parent Ex. A at p. 2).[3]

[1] The student's eligibility for special education as a student with a traumatic brain injury is not in dispute (see 34 CFR 300.8[c][12]; 8 NYCRR 200.1[zz][12]).

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

[3] An interim decision was issued by the IHO on July 22, 2024 ordering that pendency to be provided in accordance with a February 21, 2024 unappealed IHO decision (see Application of a Student with a Disability, Appeal No. 23-272; see also Interim IHO Decision).

The parents alleged that the CSE failed to evaluate the student in all areas of suspected disability and predetermined the outcome of the IEP, the IEP lacked music therapy, recommend transportation services that included an air-conditioned bus and limited time travel, and they asserted that that the assigned public school site at district specialized school was only "partially accessible" and its web site did not mention serving children with a traumatic brain injury (Parent Ex. A at pp. 6-8). The parents further claimed that iBrain was an appropriate unilateral placement and that equitable considerations weighed in their favor (id. at p. 8). As relief, the parents requested funding of the iBrain tuition and transportation services by Sisters Travel for the extended 2024-25 school year (id. at p. 9).

In a due process response, the district generally denied the allegations contained in the due process complaint notice and stated that the March 2024 IEP recommendations were "reasonably calculated to enable the student to obtain meaningful educational benefits" (see Dist. Response Due Process Compl.).

B. Impartial Hearing Officer Decision

After a prehearing conference on August 2, 2024, an impartial hearing convened before the Office of Administrative Trials and Hearings (OATH) on August 27, 2024 (Tr. pp. 1-60).[4] In a decision dated October 8, 2024, the IHO found that the district met its burden that it offered the student a FAPE for the 2024-25 school year (IHO Decision at pp. 21, 24-25).

The IHO found that the district's IEP was based on consideration of the iBrain's February 9, 2024 education plan and January 5, 2024 quarterly progress report, as well as the input of the parent, parent's attorney, and the iBrain personnel at the meeting (IHO Decision at p. 8). The IHO found that the education plan from iBrain that was considered by the CSE included results of current assessments done by the iBrain as well as present levels of performance in each area of performance (id.). The IHO found that the parents' allegations regarding the inappropriateness of the recommended program was not supported by the hearing record (id. at p. 22). In particular, the IHO found that the March 2024 IEP was not predetermined and "music therapy, hearing education services, an extended school day, or additional transportation accommodations" were not necessary for a FAPE (id.). The IHO elaborated and stated that the parents and iBrain were active participants in the CSE and although not all of the recommendations of iBrain and the parents were placed on the IEP, the March 2024 IEP was "based in large part" from their (iBrain and parents) information (id.). The IHO found that while the student derived benefits from music therapy, the IEP had recommended related services and annual goals specifically in the areas of speech-language therapy, OT, and PT to address the student's music therapy goals of independence with the student's extremities, emotional regulation, and articulation and a specific recommendation for music therapy was not required for a FAPE (id. at pp. 22-23). The IHO found that the student did not have a hearing impairment and the IEP's recommendations of related services, management needs, annual goals, and assistive technology addressed the student's need for a "multimodel learning style" (id. at p. 23). Further, the IHO found that the parents' allegations regarding the proposed placement and peer grouping were speculative (id. at pp. 22-24).

[4] In an email dated July 5, 2024, the IHO sent the parties her "practice orders" (see IHO Ex. II).

Although the IHO found that the district offered the student a FAPE, the IHO made additional findings with respect to the appropriateness of iBrain and equitable considerations (IHO Decision at pp. 25-26). In connection with iBrain, the IHO found that the parents failed to meet their burden that the unilateral placement and transportation services were appropriate for the student (id. at p. 25). Next, the IHO found that the equitable considerations "overwhelmingly favor[ed] the district" (id.). Ultimately, the IHO dismissed the parents' claims with prejudice (id. at p. 26).

IV. Appeal for State-Level Review

The parents appeal, alleging that the IHO erred in finding that the district offered the student a FAPE for the 2024-25 school, that iBrain was not an appropriate unilateral placement, and that equitable considerations favored the district. At the outset, the parents assert that the IHO erred in disallowing the parents from present witness testimony, and if the IHO decision is not reversed, the matter should be remanded to allow testimony of the parents' witnesses. Next, the parents asserted that the IHO erred in finding that the district offered the student FAPE. In particular, the parents claim that the district relied solely on documentary evidence and failed to offer witness testimony on whether the district could implement the IEP at the assigned school. The parents also asserted that IEP fails to reference any evaluations conducted by the district and the March 2024 IEP present levels of performance, management needs, and annual goals were "identical" to the information in the iBrain education plan which plan was developed "with the understanding that the program would be implemented with an extended school day." Furthermore, the parents assert that the district failed to "demonstrate how its recommended 16 hours of related services per week, in addition to 35 academic periods, and [three] periods of adapted physical education, could have been implemented in one week" without an extended school day.

Next, the parents argue that iBrain was an appropriate unilateral placement and that equitable considerations favored the parents. As relief, the parents request a reversal of the IHO's decision and that the district be ordered to directly fund the iBrain tuition and transportation services from Sisters Travel for the 2024-25 school year.

In an answer, the district generally denies the material allegations contained in the request for review. The district argues that the IHO "reasonably declined" to consider the parents' testimonial evidence as they failed to disclose affidavit testimony in accordance with the IHO's hearing rules. Next, the district asserts that the IHO correctly found that the district offered the student a FAPE and the parents' allegations with respect to implementation and assigned school were speculative. Lastly, the district argued that iBrain was not an appropriate unilateral placement for the student and equitable considerations did not favor an award for the parents' requested relief.

In reply to the district's answer, the parents assert that the IHO's failure to permit the parents' testimony and "pressuring" the parents to request an extension of the compliance date prejudiced the parents' right to present their case and "frustrated" their right to receive a timely disposition of the matter. In addition, the parents argue that the IHO erroneously shifted the burden to the parents to demonstrate how the district failed to offer the student a FAPE. The parents argue that they were not obligated to demonstrate that iBrain "was faithfully implementing" its education

plan in order to establish the appropriateness of iBrain. Finally, the parents claim that the IHO erred in considering irrelevant factors when evaluating equitable considerations.

V. Applicable Standards

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

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; T.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 151, 160 [2d Cir. 2014]; R.E. v. New York City Dep't of Educ., 694 F.3d 167, 189-90 [2d Cir. 2012]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 [2d Cir. 2012]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). "'[A]dequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP'" (Walczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998], quoting Rowley, 458 U.S. at 206; see T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 253 [2d Cir. 2009]). 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]).[5]

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

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

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

VI. Discussion

A. Preliminary Matters

1. Scope of Review

Before addressing the merits, a determination must be made regarding which claims are properly before me on appeal.

Here, the parent has not appealed from the IHO's adverse findings that the IEP was not predetermined; that needs of the student were addressed in the related services and annual goals such that the provision of music therapy was not required for a FAPE; that hearing education services were not necessary for a FAPE; that additional transportation accommodations of air-conditioning, limited time travel, or porter services were not necessary for a FAPE; that the parents allegations pertaining to the peer grouping at the district's specialized school were speculative; and that the assigned public school was accessible. Accordingly, the IHO's findings on these issues have become final and binding on the parties and will not be reviewed on appeal (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; see M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6-*7, *10 [S.D.N.Y. Mar. 21, 2013]).

2. Conduct of the Impartial Hearing

The parents argue that the IHO erred in not allowing the parents' witnesses to testify. They assert that the IHO incorrectly precluded witness testimony because the parents failed to provide affidavit testimony or disclose such testimony prior to the initial hearing date. Further, the parents acknowledge the broad discretion of the IHO, but that parties must nevertheless be permitted to present testimony and allow for the opportunity to confront and cross-examine witnesses.

Initially, regarding the parents' claims about the conduct of the impartial hearing, it is well settled that an IHO must be fair and impartial and must avoid even the appearance of impropriety or prejudice (see, e.g., Application of a Student with a Disability, Appeal No. 12-066). Moreover, an IHO, like a judge, must be patient, dignified, and courteous in dealings with litigants and others with whom the IHO interacts in an official capacity and must perform all duties without bias or prejudice against or in favor of any person, according each party the right to be heard, and shall not, by words or conduct, manifest bias or prejudice (e.g., Application of a Student with a Disability, Appeal No. 12-064). An IHO may not be an employee of the district that is involved in the education or care of the child, may not have any personal or professional interest that conflicts with the IHO's objectivity, must be knowledgeable of the provisions of the IDEA and State and federal regulations and the legal interpretations of the IDEA and its implementing regulations, and must possess the knowledge and ability to conduct hearings and render and write decisions in accordance with appropriate, standard legal practice (20 U.S.C. § 1415[f][3][A]; 34 CFR 300.511[c][1]; 8 NYCRR 200.1[x]).

Generally, unless specifically prohibited by regulation, IHOs are provided with broad discretion, subject to administrative and judicial review procedures, in how they conduct an impartial hearing, so long as they "accord each party a meaningful opportunity" to exercise their rights during the impartial hearing (Letter to Anonymous, 23 IDELR 1073 [OSEP 1995]; see Impartial Due Process Hearing, 71 Fed. Reg. 46,704 [Aug. 14, 2006] [indicating that IHOs should be granted discretion to conduct hearings in accordance with standard legal practice, so long as they do not interfere with a party's right to a timely due process hearing]).

An IHO must provide all parties with an opportunity to present evidence and testimony, including the opportunity to confront and cross-examine witnesses (34 CFR 300.512[a][2]; 8 NYCRR 200.5[j][3][xii]). While an IHO is required to exclude evidence and may limit the testimony of witnesses that he or she "determines to be irrelevant, immaterial, unreliable or unduly repetitious" (8 NYCRR 200.5[j][3][xii][c]-[e]), it is also an IHO's responsibility to ensure that there is an adequate and complete hearing record (see 8 NYCRR 200.5[j][3][vii]).[6] Further, State regulation provides that nothing shall impair or limit the IHO in his or her ability to ask questions of counsel or witnesses for the purpose of clarifying or completing the hearing record (8 NYCRR 200.5[j][3][vii]). Moreover, it was well within the IHO's discretion to attempt to control the hearing by excluding evidence or testimony that the IHO finds to be irrelevant, immaterial, or unduly repetitious and by limiting the witnesses who testify to avoid unduly repetitious testimony (see 8 NYCRR 200.5[j][3][xii][c]-[e]).

Here, during the prehearing conference the parents identified two witnesses for their case (Tr. p. 4). In response, the IHO stated that she required all "direct testimony" to be provided through affidavit (id.). There was no objection by either party (see Tr. pp. 1-24). Then, the parties scheduled the hearing on the merits for August 27, 2024 and the IHO reminded the parties about the disclosure being due "the first five business days before the first day of hearing" (Tr. pp. 9, 21-22). Included with this directive, the IHO stated that such affidavits were also to be disclosed five business days before the hearing (Tr. p. 22). In an email dated August 2, 2024, the IHO sent an email confirming the hearing date and once again reminding the parties that they were directed to disclose evidence, including "testimony affidavits," five business days before the hearing (IHO Exs. III-IV).

Upon receiving the parties' disclosures, on August 21, 2024, the IHO sent an email to the parties stating that she informed the parties at the prehearing conference that affidavit testimony was required and that any affidavits were required to be disclosed no later than August 20, 2024 (IHO Ex. V at p. 1). The IHO stated that since neither party submitted affidavits, "that would mean that neither party is presenting witness testimony" (id.). Neither party responded to the IHO's email (see IHO Exs. I-V).

At the hearing on August 27, 2024, the IHO stated that the "parties [would] be proceeding on documentary evidence alone" because neither party complied with the requirement of direct affidavit testimony so there would be no "testimony admitted by either party" (Tr. pp. 28-29).

[6] In the event that an IHO does not accord one or both of the parties' due process during the impartial hearing, remand may be an appropriate remedy (8 NYCRR 279.10[c] [providing that a State Review Officer is authorized to remand matters back to an IHO to take additional evidence or make additional findings]; see Application of a Student with a Disability, Appeal No. 22-054).

Counsel for the parents stated that she preferred to have live witnesses but that it was up to the IHO (Tr. p. 29). In response, the IHO stated that neither party complied with her requirement of disclosure of affidavit testimony which was stated at the prehearing conference and included in the "hearing invitations" (id.). The IHO asked parents' counsel if she wanted to move forward on documents alone and in response, parents' counsel stated that if it was her "only option, yes" but she wanted to have witnesses testify (id.). The IHO stated that it was the "option" of the attorney unless she wanted to withdraw her case and refile (id.). Parents' counsel then took a few minutes to reach out to another colleague in her office on how to proceed because the IHO stated that the hearing was going to be held that day (Tr. p. 30). After the parents' counsel consulted with someone in her office, she came back on the record and stated that the parents' case would proceed on the documents (id.).

After entering exhibits into the hearing record, the district rested and upon questioning whether the parents rested their case, parents' counsel stated, "I guess we have to" (Tr. p. 35). The district responded that parents' counsel's response was as if she was being compelled to rest on the documents which previously she elected to move forward on the documents alone (Tr. p. 36). Parents' counsel responded stating that she would like to put in witnesses, but she was not allowed to present witnesses and her agreement to move forward with the hearing was "under protest" (id.). In response, the IHO then recounted the history of the case regarding disclosures and her requirement of direct affidavit testimony (Tr. pp. 36-37). Also, the IHO stated that the parents did not disclose a witness list as required by State regulations (Tr. pp. 37-38).[7] Further, the IHO stated that "[a]t no time did either party reach out and request a time extension or request an adjournment based upon the inability to obtain witness affidavits" (Tr. p. 37). The IHO reminded parents' counsel that upon receipt of the parties' disclosures she advised the parties that since there were no affidavits that testimony would not be allowed, and she received no response to her email from either party (Tr. pp. 37-38). The IHO reminded parents' counsel that she offered the opportunity to withdraw her case and refile, but the decision was made to proceed with the hearing (Tr. pp. 38-39). Ultimately the IHO stated that it was the parents' counsel's choice to proceed with the hearing on documents alone (Tr. p. 39). The parties placed their closing statements on the record and the hearing concluded (Tr. pp. 42-55).[8]

On appeal, the parents' arguments fall short. First, absent from the parents' request for review is any proffer of evidence that describes the specifics of the anticipated testimony of the witnesses and the parents do not demonstrate that the individuals would have offered testimonial evidence that was stronger or more convincing than the substantial documentary evidence already provided. Moreover, the parents failed to describe or explain how the anticipated testimony would have possibly changed the result in this matter, it does not appear that there is a sufficient basis for remanding this matter and adding further delay to a resolution of the appeal. Accordingly, there

[7] The United States Department of Education has opined "that names of witnesses to be called and the general thrust of their testimony should be disclosed" (Letter to Bell, 211 IDELR 166 [OSEP 1979]). State regulations also expressly contemplate the "exchange of witness lists" (8 NYCRR 200.5[j][3][xvii]).

[8] Due to an error in recording and transcribing the closing statements, the IHO directed the parties to submit written closing statements (Tr. pp. 57-58; see IHO Ex. I).

is insufficient basis in the hearing record to remand the matter to an IHO to receive additional evidence.

As previously stated, the IHO retains broad discretion in the efficient conduct of the hearing and to set reasonable directives for the conduct of the impartial hearing.[9] Overall, the IHO's consistent reminders to adhere to her directives pertaining to affidavit testimony, and the provision of an option to withdraw and refile if the parents were unprepared to follow the hearing rules was not an irrational, arbitrary or capricious exercise of her discretion to preclude the parents' witnesses from testifying during the hearing. In light of the above, I decline to find that the IHO exhibited any bias or lack of impartiality in the conduct of the impartial hearing.

B. March 27, 2024 IEP

On appeal the parents assert that the IHO erred in finding that the district offered a FAPE for two principle but related reasons. First, the parents' main assertion on appeal is that the assigned school could not implement the March 2024 IEP because the school did not have an extended school day. Second, the parent's criticized the IHO's reasoning, arguing that the district did not present witness testimony and as a result the IHO should have concluded that the district failed to meet its burden of proof.

Turning to the parents' allegations regarding the burden of proof, under the IDEA, the burden of persuasion in an administrative hearing challenging an IEP is on the party seeking relief (see Schaffer v. Weast, 546 U.S. 49, 59-62 [2005] [finding it improper under the IDEA to assume that every IEP is invalid until the school district demonstrates that it is not]). However, under State law, the burden of proof has been placed 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 Hardison v. Bd. of Educ. of the Oneonta City Sch. Dist., 773 F.3d 372, 386 [2d Cir. 2014]; C.F. v. New York City Dep't of Educ., 746 F.3d 68, 76 [2d Cir. 2014]; R.E., 694 F.3d at 184-85). Ordinarily, however, which party bore the burden of persuasion in the impartial hearing becomes relevant only if the case is one of those "very few" in which the evidence is equipoise (Schaffer, 546 U.S. at 58; Reyes v. New York City Dep't of Educ., 760 F.3d 211, 219 [2d Cir. 2014]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 225 n.3 [2d Cir. 2012]; T.B. v. Haverstraw-Stony Point Cent. Sch. Dist., 933 F. Supp. 2d 554, 565 n.6 [S.D.N.Y. 2013]; A.D. v. New York City Dep't of Educ., 2013 WL 1155570, at *5 [S.D.N.Y. Mar. 19, 2013]; see F.L. v. New York City Dep't of Educ., 553 Fed. App'x 2, 4 [2d Cir. Jan. 8, 2014]). [23-204]

In Endrew F., the Supreme Court held that the "reviewing court may fairly expect [school] authorities . . . to offer a cogent and responsive explanation for their decisions that shows the IEP

[9] That said, blanket, inflexible rules on the conduct of an impartial hearing, adhered to without the use of appropriate discretion, can in some circumstances create unjust results for the parties access to the due process afforded by the impartial hearing process (see, e.g., Application of a Student with a Disability, Appeal No. 20-009 [finding that an IHO failed to provide both parties with a sufficient opportunity to present evidence in accordance with their right to due process, and erred in dismissing a parent's due process complaint notice]). But the IHO in this case provided ample notice of her reasonable expectations and provided the parents with another path to present the case in the manner they chose through withdrawal and refiling of the case, even if that was not an ideal option in the parents' view.

is reasonably calculated to enable the child to make progress appropriate in light of his circumstances"(580 U.S. at 404). While the district's burden does not require that the district call witnesses, it does require the district to defend its recommendations and provide evidence that explains such recommendations. If the district intends to rest its case on documentary evidence alone, the district should offer into evidence all documentation pertaining to the evaluation of the student and the CSE's recommendations, including prior written notices (34 CFR 300.503[a]; 8 NYCRR 200.5[a]; see also L.O. v. New York City Dep't of Educ., 822 F.3d 95, 110-11 [2d Cir. 2016] [discussing the consequences of a CSE's failure to adequately document evaluative data, including that reviewing authorities might be left to speculate as to how the CSE formulated the student's IEP]).

In this case, the IHO addressed the lack of district witnesses and stated that, "[a]lthough it would be better if the district offered witnesses to meet its burden, parties' burdens at the impartial hearing can be met with documentary evidence alone" (IHO Decision at pp. 21-22). The IHO also stated that the "burden of persuasion" is relevant if the case is one of the "very few" in which the evidence is "equipoise" (id. at p. 22). The IHO concluded that there was sufficient evidence in the hearing record to find that the IEP "was reasonably calculated to enable her to make appropriate progress" (IHO Decision at p. 24). The IHO stated that the IEP was the "most comprehensive IEP" she had ever seen (id.). Furthermore, she found that the IEP "took into account all the feedback from [the] [p]arents and [iBrain] and recommended a program with the exact classroom ratio the student had been successful in, with a very similar range of robust supports and intensive related service mandates" (id.).

Upon careful review, of the evidence in the hearing record, I agree with the result reached by the IHO. The IHO, in a well-reasoned and well-supported decision, correctly reached the conclusion that the district offered the student a FAPE for the 2024-25 school year (IHO Decision at pp. 22-25). The IHO accurately recounted the facts of the case (id. at pp. 8-14), identified the issues to be resolved (id. at pp. 6-7), set forth the proper legal standard to determine whether the district offered the student a FAPE for the 2024-25 school year (id. at pp. 14-21) and applied that standard to the facts at hand (id. at pp. 21-25). The decision shows that the IHO carefully considered the documentary evidence presented by both parties and, further, that she weighed the evidence and properly supported her conclusions. 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 not a sufficient basis presented on appeal to modify the determinations of the IHO (see 20 U.S.C. § 1415[g][2]; 34 CFR 300.514[b][2]). Thus, as further explained below, the conclusions of the IHO described above are hereby adopted with additional discussion of the parents' allegations on appeal as noted below.

On appeal, the parents argue that the district's IEP is "entirely based" upon the iBrain education plan and that the iBrain education plan was centered upon an extended school day and the district failed to explain how the recommended program and related services would be implemented at the district's public school. The parents argue that the district did not present any evidence to demonstrate how the recommended 17 hours of related services per week, in addition to 35 academic periods, and 3 periods of adapted physical education, could have been implemented in one week. Further, the parents assert that the district did not present evidence that the student's recommended related services could be "provided mostly on a push-in basis." In its answer, the district on the other hand argues that the March 2024 IEP allowed for provider's discretion in the

delivery of the related services to be in the classroom, which was identical to push-in and therefore, the parents' arguments to the contrary were "impermissibly speculative," a point on which the district is correct.

The IHO found that all of the parents' allegations regarding the proposed placement with respect to extended school day were speculative and did not need to be "disproved" by the district (IHO Decision at pp. 22, 24). The IHO found that the student's IEP "allowed the possibility of either push-in or pull-out related service sessions," and therefore, it was "mathematically possible" for the IEP to be "implemented without the need for an extended school day" (id. at p. 24).

The Supreme Court and the Second Circuit have continually reminded litigants that "[t]he IEP is 'the centerpiece of the [IDEA's] education delivery system for disabled children (Endrew F., 137 S. Ct. 988, 994 [2017]; see D.S. v. Trumbull Bd. of Educ., 975 F.3d 152, 157 [2d Cir. 2020]). 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" (id. 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., 589 Fed. App'x at 576).[10] 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, 5-6 [2d Cir. Aug. 24, 2016]; J.C. v. New York City Dep't of Educ., 643 Fed. App'x 31, 33 [2d Cir. Mar. 16, 2016]; B.P. v. New York City Dep't of Educ., 634 Fed. App'x 845, 847-49 [2d Cir. Dec. 30, 2015]). Such challenges must be "tethered" to actual mandates in the student's IEP (see Y.F. 659 Fed. App'x at 5). Additionally, the Second Circuit indicated that such challenges are only appropriate, if they are evaluated prospectively (as of the time the parent made the placement decision) and if they were based on more than "mere speculation" that the school would not adequately adhere to the IEP despite its ability to do so (M.O., 793 F.3d at 244). In order for such challenges to be based on more than speculation, a parent must allege that the school is "factually incapable" of implementing the IEP (see M.E. v. New York City Dep't of Educ., 2018 WL 582601, at *12 [S.D.N.Y. Jan. 26, 2018]; Z.C. v. New York City Dep't of Educ., 2016 WL 7410783, at *9 [S.D.N.Y. Nov. 28, 2016]; L.B. v. New York City Dept. of Educ., 2016 WL 5404654, at *25

[10] The district is required to implement the IEP and parents are well within their rights to compel a non-compliant district to adhere to the terms of the written plan (20 U.S.C. §§ 1401[9][D]; 1414[d][2]; 34 CFR 300.17[d]; 300.323; 8 NYCRR 200.4[e]).

[S.D.N.Y. Sept. 27, 2016]; G.S. v. New York City Dep't of Educ., 2016 WL 5107039, at *15 [S.D.N.Y. Sept. 19, 2016]; M.T. v. New York City Dep't of Educ., 2016 WL 1267794, at *14 [S.D.N.Y. Mar. 29, 2016]). Such challenges must be based on something more than the parent's speculative "personal belief" that the assigned public school site was not appropriate (K.F. v. New York City Dep't of Educ., 2016 WL 3981370, at *13 [S.D.N.Y. Mar. 31, 2016]; Q.W.H. v. New York City Dep't of Educ., 2016 WL 916422, at *9 [S.D.N.Y. Mar. 7, 2016]; N.K. v. New York City Dep't of Educ., 2016 WL 590234, at *7 [S.D.N.Y. Feb. 11, 2016]).

Recently, a district court reviewing a similar challenge characterized it as "precisely the kind of speculative challenge that is prohibited" (Thomason v. Porter, 2023 WL 1966207, at *17 [S.D.N.Y. Feb. 13, 2023]).[11] The court described that, "[s]tripped of its non-speculative rhetoric, the [p]arents' argument boil[ed] down to a purely speculative one: the school would not implement the IEP's recommendation of [60]-minute speech therapy sessions, even though it had the ability to accommodate the sessions" (Thomason, 2023 WL 1966207, at *17). Although the district in Thomason had offered some testimony that it was capable of implementing the 60-minute related services sessions—which the district in the present appeal also provided—the court reached its conclusion even assuming that the testimony presented demonstrated the school's hesitancy about implementing the sessions (id.). The court distinguished a school's capacity to implement services from the school's willingness to do so (id., citing N.M. v. New York City Dep't of Educ., 2016 WL 796857, at *8 [S.D.N.Y. Feb. 24, 2016] [finding that, "[b]y its terms, however, a claim based on what a school 'would not have' done—as opposed to a claim based on what the school could not do—is speculative and barred under R.E. and M.O."] [emphasis in original]).

This is not a case in which it was unclear that the provider would have the discretion to push into the classroom or work separately with the student and, even if it was not that clear, it would not rise to the level of a denial of a FAPE (T.C. v. William Floyd Union Free Sch. Dist., 2025 WL 949038, at *21 [E.D.N.Y. Mar. 28, 2025]).

While the parents assert their argument as a failure to implement an extended school day, the March 2024 IEP did not recommend an extended school day for the student (see generally Dist. Ex. 1). Accordingly, the parents' assertion is really a "substantive attack[] on [the] IEP . . . couched as [a] challenge[] to the adequacy" of the assigned public school site's capacity to implement the IEP (M.O. v. New York City Dep't of Educ., 793 F.3d 236, 245 [2d Cir 2015]). Any conclusion that the district would not have implemented the student's IEP or that the assigned public school site could not meet the student's needs would necessarily be based on impermissible speculation, and the district was not obligated to present retrospective evidence at the impartial hearing regarding the execution of the student's programming under the IEP or to refute the parents' claims (R.B. v. New York City Dep't of Educ., 589 Fed. App'x 572, 576 [2d Cir. Oct. 29, 2014]; F.L. v. New York City Dep't of Educ., 553 Fed. App'x 2, 9 [2d Cir. Jan. 8, 2014]; K.L. v. New York City Dep't of Educ., 530 Fed. App'x 81, 87 [2d Cir. July 24, 2013]; R.E., 694 F.3d at 187 & n.3]).

Even if alleged as such, the parent's allegations would fair no better as a substantive attack on the March 2024 IEP itself. The March 2024 CSE recommended that the student receive four

[11] Even though the parties in this case may be similar to those in Thomason, 2023 WL 1966207, the two cases are unrelated and involve different students.

60-minute sessions per week of individual OT, five 60-minute sessions per week of individual PT, four 60-minute sessions per week of individual speech-language therapy, one 60-minute session per week of group speech-language therapy, and two 60-minute sessions per week of individual vision education services, along with one 60-minute session per week of individual assistive technology services (Dist. Ex. 1 at pp. 50-51). With respect to the student's related services, the IEP noted that they could be provided in a separate location, or at the provider's discretion in either the student's special education classroom, or the therapy area (id.). In addition, the March 2024 IEP recommended three periods per week of adapted physical education to be provided in the gym, classroom, or other facility (id. at p. 50). The March 2024 CSE also recommended that the student attend an 8:1+1 special class for 35 periods per week (id.).[12] The IEP further noted that the student required both push-in and pull-out sessions for OT "to allow for the opportunity to work on skill progression in controlled environments, as well as generalization in the academic environment"; both push-in and pull-out sessions for PT; and speech-language therapy to be assessed informally and formally in a push-in environment (id. at pp. 17, 24, 36-38).

In the instant matter, the March 2024 IEP recommended related services at the provider's discretion to be provided either in a separate location or in the student's classroom (Dist. Ex. 1 at pp. 50-51). The delineation in the March 2024 IEP for provider's discretion of either push-in or pull-out services gave the providers flexibility in where to provide the student's related services, i.e. special education classroom or therapy area. There was nothing inherently wrong with the district's approach and the fact that the parents and/or private school personnel may have preferred a longer school day for the student did not render the district's programming inappropriate. Accordingly, there is no basis for departing from the IHO's determination that the assigned school did not need to have an extended school day in order to implement the student's IEP, as services could have been provided during the course of the school day.[13] Claims regarding an assigned school's ability to implement an IEP must be "tethered" to actual mandates in the student's IEP (see Y.F., 659 Fed. App'x at 5).

Although I can sympathize with the parents' desire that a longer school day might yield even greater educational achievements for the student, that does not mean that the slightly more modest approach used by was deficient. Instead, I agree with the IHO that the student was likely to make progress under the IEP as proposed by the district, which offered a substantial array of services that were aligned with the student's needs and the district was not required to maximize the student's potential. 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, it must be determined whether or not the district established that it complied with the procedural

[12] 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]).

[13] State regulations provide for 12-month or extended school year services for students with disabilities in some circumstances (see 8 NYCRR 200.6[k]), but do not explicitly provide for extended school day services. With respect to a school day, State regulation specifies that for state aid purposes, a school day shall be five hours for students in kindergarten through grade 6 and 5.5 hours for students in grades 7 through 12 (see 8 NYCRR 175.5[j]).

requirements set forth in the IDEA and State regulations with regard to the specific issues raised in the due process complaint notice, 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]). Accordingly, I find that the CSE was not required to duplicate the extended school day provided to the student at iBrain.

VII. Conclusion

Based on the foregoing, I find that the evidence supports the IHO's finding that the March 2024 IEP was reasonably calculated to enable the student to receive educational benefits in light of her circumstances and that the parents' allegations regarding the assigned school's capacity to implement the March 2024 IEP were impermissibly speculative (Endrew F., 137 S. Ct. at 1001; Gagliardo, 489 F.3d at 112; Frank G. v. Board of Educ., 459 F.3d 356, 364-65 [2d Cir. 2006]). Having found that the district offered the student a FAPE, I need not reach the issues of whether iBrain was appropriate for the student or whether equitable considerations supported the parents request for relief and the necessary inquiry is at an end (Mrs. C. v. Voluntown, 226 F.3d 60, 66 [2d Cir. 2000]; Walczak, 142 F.3d at 134).

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

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
April 4, 2025

JUSTYN P. BATES
STATE REVIEW OFFICER