# CASE NUMBER: Enter # if known. - NYC: Enter #.

## FINDINGS OF FACT AND DECISION

Case Number: Re-enter NYC case #.

Student’s Name[[1]](#footnote-1): Enter name. (“Student”)

Date of Birth: Enter DOB.

School District: Enter name.

Hearing Requested by: Enter name. (“Parent(s)”)

Enter name or delete unused box.

Request Date/Date Complaint Filed: Enter date.

Date(s) of Hearing: Enter date.

Enter date or delete unused box.

Enter date or delete unused box.

Enter date or delete unused box.

Actual Record Closed Date: Enter date (must precede date of signature).

Date of Decision: Enter date (must be same as date of signature).

Date of Distribution (if Different than Decision Date): Enter date if applicable.

Time Sensitive Choose an item.

Hearing Officer: Enter your name.

### NAMES AND TITLES OF PERSONS WHO APPEARED ON Enter date.

For the Student:

Enter information. Press “enter” to add more as needed.

For the Department of Education:

Enter information. Press “enter” to add more as needed.

### NAMES AND TITLES OF PERSONS WHO APPEARED ON Enter date or delete this section.

For the Student:

Enter information. Press “enter” to add more as needed.

For the Department of Education:

Enter information. Press “enter” to add more as needed.

### NAMES AND TITLES OF PERSONS WHO APPEARED ON Enter date or delete this section.

For the Student:

Enter information. Press “enter” to add more as needed.

For the Department of Education:

Enter information. Press “enter” to add more as needed.

### NAMES AND TITLES OF PERSONS WHO APPEARED ON Enter date or delete this section.

For the Student:

Enter information. Press “enter” to add more as needed.

For the Department of Education:

Enter information. Press “enter” to add more as needed.

## INTRODUCTION

This is a decision in a hearing under the [New York Education Law]. The [Parent/District] filed this case on Enter date..

The Parent, through counsel, filed a Due Process Complaint(“DPC”) on or about [DATE].

Parent alleges that the Department of Education (“DOE”) failed to implement an individualized education service plan (“IESP”) for the [DATE] school year]. *Id.* The Parent seeks a compensatory education award consisting of [DESCRIBE].

In light of the foregoing and as more fully discussed below, I find that the DOE failed to implement the IESP, thereby denying the Student a free appropriate public education (“FAPE”) on an equitable basis for the [DATE] school year, and that the relief Parent seeks is appropriate compensatory relief.

## PROCEDURAL HISTORY

[Enter text of relevant information, dates, and references to exhibits as appropriate including, but not limited to, the following:

* Due Process Complaint allegations and DOE's Response;
* IHO appointment;
* Hearing date, parent representation, and DOE representation;
* Resolution meeting, pre-hearing conference, and summary of motions filed and significant agreements or rulings prior to the due process hearing and your decision;
* Extensions to the decision timeline; and
* Written closing arguments or briefs.]

I held a hearing on Enter date. It was a [closed/open] hearing. Parent [was/was not represented by [Enter name.]]. DOE was represented by Enter name. Parent entered into evidence exhibits Enter information . DOE entered into evidence exhibits Enter information[[2]](#footnote-2).

## FINDINGS OF FACT

[Enter text of relevant information, dates, and references to exhibits as appropriate including, but not limited to, the following:

* Student’s age, grade, and disability classification;
* Special education services and placement;
* Additional information relating to student’s disability and circumstances;
* Recommendations; and
* Allegations noted in the Due Process Complaint.]

## CONCLUSIONS OF LAW AND ANALYSIS

After a full review of the record generated at hearing, I make the following findings of fact and determinations.

It is uncontested that the Student and Parent reside in New York City and the Student attended the Private School during the [DATE] school year. (Ex. A-1, D-1) Furthermore, it is uncontested that the Private School is located within the geographic boundaries of the DOE. The Parent did not challenge the content of the IESP, merely the delivery of the recommended services. Ex. A; [DATE] Transcript.[[3]](#footnote-3)

*Burden*

Except for in circumstances not applicable here, the burden of proof is on the school district during an impartial hearing (Educ. Law § 4404(1)(c); see *R.E. v. New York City Dep't of Educ*., 694 F.3d 167, 184-85 (2d Cir. 2012); *C.F. v. New York City Dep’t of Educ.*, 746 F.3d 68, 76 (2d Cir. 2014))

*FAPE*

The IDEA provides that children with disabilities are entitled to a FAPE (20 U.S.C. § 1400 (d)(1)(A). A FAPE consists of specialized education and related services designed to meet a student’s unique needs, provided in conformity with a comprehensive written Individualized Education Program (“IEP”) (20 U.S.C. § 1401(9)). A school district has offered a student a FAPE when (a) the board of education complies with the procedural requirements set forth in the IDEA; and (b) the IEP is developed through the IDEA's procedures and is reasonably calculated to enable the student to receive educational benefits *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206-07 (1982). In order to meet its substantive FAPE obligations, a district must offer a student an IEP that is “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S.Ct. 988, 999 (2017).

Dual enrollment

A board of education must offer a FAPE to each student with a disability residing in the school district who requires special education services or programs (20 U.S.C. § 1412(a)(l)(A); Educ. Law§ 4402(2)(a), (b)(2)). The IDEA confers no individual entitlement to special education or related services upon students who are enrolled by their parents in nonpublic schools (see 34 CFR 300.137(a)). Under State law, however, parents who have privately enrolled their child in a nonpublic school may seek educational "services" for their child with a disability by filing a request in the district where the nonpublic school is located on or before the first day of June preceding the school year for which the request for services is made (Educ. Law § 3602-c(2)). Then, the district of location's CSE must review the request and "develop an [IESP] for the student based on the student's individual needs in the same manner and with the same contents as an [IEP]" (Educ. Law§ 3602-c(2)(b)(l)).

Here, there is no dispute that the Student is entitled to services pursuant to the IESP dated [DATE]. CITE RECORD. Parent alleges and [credibly testified] that the DOE failed to implement [SPECIFIC SERVICES] and the DOE, which bears the burden of proof, has failed to introduce any evidence to the contrary

The implementation of IESP services falls on the district of location insofar as "boards of education of all school districts of the state shall furnish services to students who are residents of this state and who attend nonpublic schools located in such school districts, upon the written request of the parent" (Educ. Law § 3602-c(2)(a)). The CSE must "assure that special education programs and services are made available to students with disabilities attending nonpublic schools located within the school district on an equitable basis, as compared to special education programs and services provided to other students with disabilities attending public or nonpublic schools located within the school district” (Educ. Law § 3602-c(2)(b)(1)). Additionally, section 3602-c provides that a parent may seek review of the recommendation of the CSE pursuant to the impartial hearing and State-level review procedures pursuant to Education Law § 4404.

A district cannot be absolved of its statutory obligation to implement services for the student simply by being inactive in implementing the mandated services. The DOE had the obligation to provide services to the Student in conformity with the IESP (Educ. Law§ 3602-c(2)(a), (b)(l);. In failing to do so, the DOE failed to provide the Student with services on an equitable basis as compared to other students with disabilities attending public or nonpublic schools located within the school district.

*Compensatory Relief*

The remedy for a school district’s failure to provide appropriate equitable services required under Education Law § 3602-c is similar to the remedy for a school district’s failure to provide appropriate services under the IDEA. *See Application of a Student with a Disability,* Appeal No. 20-023, citing *Doe v. E. Lyme Bd. of Educ.,* 262 F. Supp. 3d 11, 27 (D.Conn. 2017). Under the IDEA, courts can “grant such relief as the court determines is appropriate”, limited only by the restriction that “the relief is to be appropriate in light of the purpose of the Act” (*Doe v. East Lyme Bd. Of Educ.*, 790 F.3d 440, 454 (2d Cir. 2015)) (citation omitted). Equitable considerations are relevant in fashioning relief, and the court enjoys broad discretion in doing so. *Florence Cty. Sch. Dist. Four v. Carter,* 510 U.S. 7, 16 (1993). Although an award of damages is not available under the IDEA *(see Polera v. Bd. of Educ. of Newburgh Enlarged City Sch. Dist*., 288 F.3d 478, 486 (2d Cir. 2002)), “a court may award various forms of retroactive and prospective equitable relief, including reimbursement of tuition, compensatory education, and other declaratory and injunctive remedies” (*Doe v. East Lyme*, 790 F.3d at 454).

A hearing officer may award compensatory education relief in the form of supplemental special education or related services when there has been a denial of FAPE. See *P. v. Newington Bd. of Educ.*, 546 F.3d 111, 123 (2d Cir. 2008). An award of compensatory services may be appropriate if a student has been denied appropriate services for an extended period of time, and if such deprivation of instruction can be remedied through the provision of additional services before the student becomes ineligible for instruction by reason of age or graduation. An award of additional services should aim to place a student in the position he or she would have been in had the district complied with its obligations under the IDEA. *P. v. Newington*, 546 F.3d 111, 123 (2d Cir. 2008). Compensatory education can serve as a “replacement of educational services the child should have received in the first place", and any award "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA[.]" *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005); see also *Draper v. Atlanta Indep. Sch. Sys.*, 518 F.3d 1275, 1289 (11th Cir. 2008) (holding that "[c]ompensatory awards should place children in the position they would have been in but for the violation of the Act").

Compensatory education awards may include payment for out-of-pocket educational expenses incurred by a parent for services not delivered to a student, provided the school district’s failure to provide those services constitutes a denial of FAPE and the services are an appropriate remedy. *Foster v. Bd. of Educ. of the City of Chicago*, 611 Fed App’x 874, 878-79 (7th Cir. 2015) (citing cases). Furthermore, under the IDEA, compensatory education awards can provide for direct payment to private providers. *Indep. Sch. Dist. No. 283 v. E.M.D.H.*, 2022 WL 1607292, at \*3 (D. Minn. 2022), citing I*ndep. Sch. Dist. No. 283 v. E.M.D.H.*, 960 F.3d 1073, 1084-85 (8th Cir. 2019).

The DOE is required under the due process procedures set forth in New York State law to address its burdens by describing its views, based on a fact-specific inquiry set forth in an evidentiary record, regarding an appropriate compensatory education remedy that would most reasonably and efficiently place the student in the position that he would have been but for the denial of a FAPE. The DOE had an opportunity during the impartial hearing to set forth its position regarding the appropriate compensatory education remedy. The DOE [argued THINGS or did not introduce any evidence regarding appropriate relief.]

The Parent testified credibly that [although the DOE offered vouchers for the mandated IESP services, the Parent was not able to identify any providers willing to accept the DOE’s rate]. CITE. While it may very well be permissible for a district to include the parent in the identification of a particular provider, especially if the parent is willing and able to do so, it does not follow that the responsibility to redress a parents' inability to locate a provider is shifted to the parent. The DOE does not explain why it did not simply schedule the special education services as mandated by the IESP and, in essence, inform the Parent where and when the services would be available, and at which time the Parent would have the responsibility to produce the student in order to receive the services.

I have considered both parties’ positions and find that the Student should have received instruction under the IESP from [DATE] (the first school day following the date which the DOE was required to implement its recommendations) to [DATE], the last day of school for then [DATE] school year. Ex. IHO-I. Totaling [NUMBER] weeks when accounting for school vacations, the Student should have received [NUMBER] hours of [SETSS/OT/PT/Speech] and [NUMBER] hours of [SETSS/OT/PT]. See [EVIDENCE]. As there is no dispute as to the appropriateness of the IESP recommendation, this same number of sessions are appropriate to put the Student in the position they would have been in but for the DOE’s failure to implement the IESP.

There is no evidence or claim made by the DOE asserting or suggesting that the Parent failed to cooperate with the DOE or interfered in any manner with the DOE’s obligation to provide the Student with a FAPE on an equitable basis for the [DATE] school year.

## ORDER

NOW, THEREFORE, IN LIGHT OF THE ABOVE FINDINGS OF FACT, IT IS HEREBY **ORDERED THAT**:

(1) The DOE shall fund, as compensatory relief, the following services for the [DATE] school year:

1. [NUMBER] hours of [SERVICEs], by a provider of the Parent’s choosing at a rate of up to [NUMBER] dollars per hour.
2. [NUMBER] hours of [SERVICE], by a provider of the Parent’s choosing at a rate of up to [NUMBER] dollars per hour.
3. [NUMBER] hours of [SERVICE], by a provider of the Parent’s choosing at a rate of up to [NUMBER] dollars per hour.

(2) The DOE shall reimburse the Parent for the cost of the services described above within [##] days of submission of proof of payment. [; and,]

(3) The DOE shall pay to the Providers listed above upon receipt of invoices for services rendered.

(4) To the extent such services, as described in Paragraph (1) above, are not provided to the Student by [DATE], any remaining services shall expire.

(5) [The DOE shall convene a CSE within [NUMBER] days to develop an appropriate IEP or IESP in advance of the [NEXT] school year.]

**SO ORDERED.**

DATED: Enter date.

Impartial Hearing Officer

## NOTICE OF RIGHT TO APPEAL

Within 40 days of the date of this decision, the parent and/or the Public-School District has a right to appeal the decision to a State Review Officer (SRO) of the New York State Education Department under section 4404 of the Education Law and the Individuals with Disabilities Education Act.

If either party plans to appeal the decision, a notice of intention to seek review shall be personally served upon the opposing party no later than 25 days after the date of the decision sought to be reviewed.

An appealing party’s request for review shall be personally served upon the opposing party within 40 days from the date of the decision sought to be reviewed. An appealing party shall file the notice of intention to seek review, notice of request for review, request for review, and proof of service with the Office of State Review of the State Education Department within two days after service of the request for review is complete. The rules of procedure for appeals before an SRO are found in Part 279 of the Regulations of the Commissioner of Education. A copy of the rules in Part 279 and model forms are available at <http://www.sro.nysed.gov>.

## APPENDIX A – REDACTION IDENTIFICATION PAGE

| **Term Used In FOFD** | **Redacted Information** |
| --- | --- |
| Student |  |
| Parent/Guardian |  |
| Parent Attorney/Representative |  |
| District Attorney/Representative |  |
| School |  |
| District |  |
| [Fill in] |  |
| [Fill in] |  |
| [Fill in] |  |
| [Fill in] |  |

**Submit this page to the parent and doe only.**

**Do not submit this page to nysed.**

## APPENDIX B – DOCUMENTATION ENTERED INTO THE RECORD

### PARENT EXHIBITS

|  |  |  |  |
| --- | --- | --- | --- |
| **Exhibit** | **Document** | **Date** | **Pages** |
|  | Enter information. Press tab key. | Enter information. Press tab key. | Enter # of pages. Press tab key. |

### DOE EXHIBITS

|  |  |  |  |
| --- | --- | --- | --- |
| **Exhibit** | **Document** | **Date** | **Pages** |
|  | Enter information. Press tab key. | Enter information. Press tab key. | Enter # of pages. Press tab key. |

### IHO EXHIBITS

|  |  |  |  |
| --- | --- | --- | --- |
| **Exhibit** | **Document** | **Date** | **Pages** |
|  | Enter information. Press tab key. | Enter information. Press tab key. | Enter # of pages. Press tab key. |

1. Personally identifiable information is attached as Appendix A, “Redaction Identification Page,” to this decision and must be removed prior to public distribution. [↑](#footnote-ref-1)
2. A more detailed list of the admitted exhibits is attached as Appendix B, “Documentation Entered Into the Record,” to this decision. [↑](#footnote-ref-2)
3. In that the transcript from the hearing has not been finished, reference to the transcript as a whole is made herein. [↑](#footnote-ref-3)