



# The University of the State of New York

## The State Education Department

State Review Officer

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No. 13-113

**Application of a STUDENT WITH A DISABILITY, by  
parents, for review of a determination of a hearing officer  
relating to the provision of educational services by the**

### **Appearances:**

Law Offices of Regina Skyer & Associates, L.L.P., attorneys for petitioners, Jesse Cole Cutler, Esq., of counsel

Michael A. Cardozo, Corporation Counsel, and Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for respondent, Gail M. Eckstein, Esq., of counsel

## **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 their son's tuition costs at The Cooke Center Academy (Cooke) for the 2011-12 school year. The appeal must be dismissed.

### **II. Overview—Administrative Procedures**

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 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]).

### III. Facts and Procedural History

The parties' familiarity with the detailed facts and procedural history of the case and the IHO's decision is presumed and will not be recited here in detail.<sup>1</sup> According to the parent, the student has been receiving special education services since second grade, and has a history of hearing loss and language and cognitive delays (Tr. pp. 286-291; Dist. Exs. 1 at pp. 1-2; 3 at p. 13; 6 at p. 1). With respect to the student's educational history, he has attended Cooke since September 2005 (Tr. pp. 294, 296; Dist. Ex. 6 at p. 1; Parent. Ex. B at p. 1).<sup>2,3</sup>

As relevant to the instant dispute, the CSE convened on June 8, 2011, to formulate the student's IEP for the 2011-12 school year (see generally Dist. Ex. 3). Having determined that the student remained eligible for special education and related services as a student with a speech or language impairment, the June 2011 CSE recommended a 15:1 special class placement in a community high school with the following related services: two 45-minute sessions per week of speech-language therapy in a group of four, and one 45-minute counseling session per week in a group of five (Dist. Ex. 3 at pp. 1, 13, 15). The student's proposed IEP for 11th grade also contained testing accommodations and a transition plan (Dist. Ex. 3 at pp. 1, 15-17).

The parents rejected the June 2011 IEP, and further disagreed with the particular public school site to which the district assigned the student to attend for the 2011-12 school year (Dist. Ex. 9; Parent Ex. U at p. 1).<sup>4,5</sup> As a result, the parents notified the district of their intent to unilaterally place the student at Cooke by letter dated August 24, 2011 (Parent Ex. U). After the

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<sup>1</sup> Any additional facts necessary to the disposition of the parties' arguments will be set forth below as necessary for resolution of the issues presented in this appeal.

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

<sup>3</sup> According to the July 2010 psychoeducational evaluation report the student has been attending Cooke since 2004, but that appears to be an error (Tr. pp. 320-21; compare Dist. Ex. 6 at p. 1, with Parent Ex. B at p. 1).

<sup>4</sup> I note that both the parents and school district have entered the August 24, 2011 unilateral placement letter into evidence (Dist. Ex. 9 pp. at 1-2; Parent Ex. U at pp. 1-4). These exhibits are not exact duplicates, however, as the parents' exhibit also includes a signed confirmation by the district indicating receipt of the unilateral placement letter (Parent Ex. U at pp. 3-4). '

<sup>5</sup> There are other duplicative exhibits in the hearing record. The parties are encouraged to confer beforehand and submit joint exhibits to the extent practicable (8 NYCRR 200.5[j][3][xii][b]). I also remind the IHO of his obligation to exclude from the hearing record what he "determines to be irrelevant, immaterial, unreliable or unduly repetitious" (8 NYCRR 200.5[j][3][xii][c]). Unless otherwise specified, where exhibits are duplicative, I have cited to the parent's exhibit.

conclusion of the 2011-12 school year, the parents filed a due process complaint notice, dated August 31, 2012, alleging that the district failed to offer the student a free appropriate public education (FAPE) for the 2011-12 school year on procedural as well as substantive grounds (see Dist. Ex. 1). As relief, the parents sought the costs of the student's tuition at Cooke.

An impartial hearing convened on December 4, 2012, and concluded on April 2, 2013 after three days of proceedings (Tr. pp. 1-363). In a decision dated May 21, 2013, the IHO determined that the district offered the student a free appropriate public education (FAPE) for the 2011-12 school year (IHO Decision at p. 16).

#### **IV. Appeal for State-Level Review**

The following issues presented on appeal regarding whether the student was offered a FAPE will be addressed on appeal in order to render a decision in this case:

1. whether the IHO erred in determining that the June 2011 CSE was properly composed;
2. whether the IHO erred in determining that the present levels of performance in the June 2011 IEP were sufficient to develop an appropriate IEP;
3. whether the IHO erred in determining that the goals in the June 2011 IEP were adequate to address the student's needs;
4. whether the IHO erred in determining that the transition plan in the June 2011 IEP adequately provided for the student's needs;
5. whether the IHO erred in determining that the failure of the June 2011 CSE to invite the student to participate in the development of the transition plan was a procedural error that did not rise to the level of a denial of a FAPE;
6. whether the IHO erred in determining that the 15:1 special class placement in a community school with related services as recommended in the June 2011 IEP was appropriate to address the student's needs; and
7. whether the IHO erred in declining to review the parents' allegations regarding the appropriateness of the assigned school.

#### **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. 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; 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. Florida 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]). 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., 553 F.3d 165, 172 [2d Cir. 2009]; Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]; Perricelli v. Carmel Cent. Sch. Dist., 2007 WL 465211, at \*10 [S.D.N.Y. Feb. 9, 2007]). 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; A.H. v. Dep't of Educ., 394 Fed. App'x 718, 720, 2010 WL 3242234 [2d Cir. Aug. 16, 2010]; E.H. v. Bd. of Educ., 2008 WL 3930028, at \*7 [N.D.N.Y. Aug. 21, 2008], aff'd, 361 Fed. App'x 156, 2009 WL 3326627 [2d Cir. Oct. 16, 2009]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007], aff'd, 293 Fed. App'x 20, 2008 WL 3852180 [2d Cir. Aug. 19, 2008]).

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 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]; Perricelli, 2007 WL 465211, at \*15). 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 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; G.B. v. Tuxedo Union Free Sch. Dist., 751 F. Supp. 2d 552, 573-80 [S.D.N.Y. 2010], aff'd, 486 Fed. App'x 954, 2012 WL 4946429 [2d Cir. Oct. 18, 2012]; E.G. v. City Sch. Dist. of New Rochelle, 606 F. Supp. 2d 384, 388 [S.D.N.Y. 2009]; Patskin v. Bd. of Educ., 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]).

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]; Tarlowe v. New York City Bd. of Educ., 2008 WL 2736027, at \*6 [S.D.N.Y. July 3, 2008] [noting that a CSE must consider, among other things, the "results of the initial evaluation or most recent evaluation" of the student, as well as the "academic, developmental, and functional needs" of the student]), 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]; see also Application of the Dep't of Educ., Appeal No. 07-018; Application of a Child with a Disability, Appeal No. 06-059; Application of the Dep't of Educ., Appeal No. 06-029; Application of a Child with a Disability, Appeal No. 04-046; Application of a Child with a Disability, Appeal No. 02-014; Application of a Child with a Disability, Appeal No. 01-095; Application of a Child Suspected of Having a Disability, Appeal No. 93-9).

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 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; M.P.G. v. New York City Dep't of Educ., 2010 WL 3398256, at \*7 [S.D.N.Y. Aug. 27, 2010]).

## 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 2011-12 school year (see IHO Decision at p. 16). 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 2011-12 school year, and applied that standard to the facts at hand (id. at pp. 3-17). 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, with the exception of those issues indicated below (see 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 adopt the majority of the IHO's conclusions as my own and concur with the IHO's ultimate determination that despite any procedural errors, the district offered the student a FAPE, and that the June 2011 IEP was 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 2011 CSE Composition

Turning first to the parents' contention that a regular education teacher should have attended the June 2011 CSE, the IHO concluded that no general education teacher was required since the evidence in the hearing record indicated that the CSE was not considering a general education program because the student would not benefit from general education academic classes (IHO Decision at pp. 10-11; Tr. pp. 27-28, 69; see Dist. Exs. 3 at pp. 1-2, 14; 4 at p. 2). In this case, neither party seriously argues that the student should have been instructed in academic subjects in a general education setting; however, assuming without deciding that the IHO erred in holding that a regular education teacher was not required at the CSE meeting, I find that any deficiency in this regard would not have amounted to a substantive denial of a FAPE.

The IDEA requires that a CSE include not less than one regular education teacher of the student, if the student is or may be participating in the regular education environment (20 U.S.C. § 1414[d][1][B][ii]; see 34 C.F.R. § 300.321[a][2]; see also 8 NYCRR 200.3[a][1][ii]). As an initial matter, it is undisputed that a regular education teacher did not attend the June 2011 CSE meeting (Tr. pp. 27-28; Dist. Ex. 3 at p. 2). It is also undisputed that a general education program was not considered by the June 2011 CSE and that neither the parent nor Cooke representative suggested this option for the student (see Tr. pp. 27-28, 69, 104; Dist. Exs. 3 at pp. 1, 14; 4 at p. 2). The June 2011 IEP mandated that the student attend 25 periods per week of special education academic classes, and for the remaining periods recommended "full participation" in "lunch, assemblies, trips and/or other school activities" with non-disabled students which could be construed as a regular education environment (Dist. Ex. 3 at pp. 13, 15). In addition, the district special education teacher testified that the student might have participated in a general education setting for music or art, however there is no evidence that this was discussed during the June 2011 CSE meeting, or that the parent raised any concerns regarding the lack of a general education teacher or additional modifications that would be needed in any

mainstream settings (Tr. pp. 70-71, 104; see pp. 1-363; Dist. Ex. 4 at pp. 1-2). Further, the parent stated in her testimony that the student had been mainstreamed for lunch, gym and music at Cooke prior to high school (Tr. p. 297). Moreover the student was reported to be well-behaved, cooperative, responsible, easily redirected, and able to work well with peers (Dist. Exs. 6 at pp. 1-2; 7 at p. 1; Parent Ex. K at pp. 3, 5, 7-8, 10, 14-16, 18).

Therefore, while the June 2011 CSE lacked a regular education teacher who would have been responsible for providing modifications and supports in the general education setting—and assuming without deciding that this constituted a procedural violation—the hearing record lacks sufficient evidence to conclude that such procedural inadequacy impeded the student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or caused a deprivation of educational benefits in this instance (see J.F. v. New York City Dep't of Educ., 2012 WL 5984915, at \*7 [S.D.N.Y. Nov. 27, 2012] [concluding that even if a regular education teacher was a required CSE member, the lack of such a teacher did not render an IEP inappropriate when there was no evidence of any concerns during the CSE meeting that the regular education teacher was required to resolve and "no reason to believe" that such teacher was required to advise on lunch and recess modifications or support]; E.A.M. v. New York City Dep't of Educ., 2012 WL 4571794, at \*6-\*7 [S.D.N.Y. Sept. 29, 2012] [where the record supported a conclusion that a regular education teacher was required at the CSE meeting and it was possible that an appropriate regular education teacher under the IDEA was not present at the CSE meeting, the evidence did not show that the CSE composition rendered the IEP inadequate]; see also K.L.A. v. Windham Se. Supervisory Union, 371 F. App'x 151, 153-54 [2d Cir. 2010] [explaining that the regular education teacher was only required "to the extent appropriate"]). Also of relevance to mitigating any harm that might have flowed from the lack of a general education teacher at the June 2011 CSE, is the undisputed adequacy of the student's management needs in the June 2011 IEP, which would apply to instruction in any activity the student attended in the regular education environment (Dist. Ex. 3 at p. 4). These management needs, including redirection to task, visual and auditory cues, scaffolding, and extra time to process information and complete assignments, would have been sufficient to alert regular education staff to the student's unique special education needs and would have provided adequate guidance for individualized instruction in a general education setting (id.).

Further, the IHO correctly found that the parents' objections to the qualifications of the district assigned special education teacher who also served as the district representative were without merit (IHO Decision at p. 11). Consistent with the IDEA and federal and State regulations, the hearing record shows that the district representative was a licensed special education teacher who had worked with the district for 27 years in various teaching and administrative positions, and as such was qualified to provide or supervise special education instruction, and was knowledgeable about both the general education curriculum as well as the availability of resources of the district (Tr. pp. 15, 17-18, 57-60, 103; see Dist. Ex. 3 at p. 14; 20 U.S.C. § 1414[d][1][B][iv][I], [II], [III]; 34 C.F.R. 300.321[a][4][i], [ii], [iii]; 8 NYCRR 200.3[a][1][v]). While the parents argue that the district special education teacher never taught in a 15:1 special class in a community high school setting, there is no requirement in the IDEA or federal or State regulations that the district representative have specific experience through personal participation in each program on the continuum of alternative placements, but only that he or she is familiar with the program options (20 U.S.C. § 1414[d][1][B][iv]; 34 C.F.R.

300.321[a][4]; 8 NYCRR 200.3[a][1][v]). With regard to the district representative's qualifications to serve as the special education teacher on the June 2011 CSE, federal and State regulations provide that "not less than one special education teacher of the student, or, if appropriate, not less than one special education provider of the student" attend a student's CSE meeting (8 NYCRR 200.3[a][1][iii]; see 34 C.F.R. § 300.321[a][3]). Here, while the district assigned teacher did not meet the regulatory criteria of a "special education teacher of the student," it is undisputed that the student's mathematics and English Language Arts (ELA) teachers from Cooke did participate in the June 2011 CSE meeting by phone, and that at least one of them was a State-certified special education teacher (Tr. pp. 29-30, 158-59, 201; Dist. Exs. 3 at p. 2; 4 at p. 1; Parent Ex. K at p. 1). Thus, for the reasons set forth above, I conclude that none of the procedural errors noted here with regard to composition of the June 2011 CSE rose to the level of the denial of a FAPE to the student.

### **B. Evaluative Information/Present Levels of Performance**

As an initial matter, the IHO construed the parents' claim in the due process complaint notice as a challenge to the sufficiency of the evaluative information available to the June 2011 CSE, and presents a well-reasoned analysis of the relevant evidence with regard to this issue (IHO Decision at pp. 10, 12). Upon review, I find that the evidence in the hearing record supports the IHO's finding that the June 2011 CSE had sufficient evaluative information with which to develop the student's IEP for the 2011-12 school year (Tr. pp. 21-23, 27, 32-34; Dist. Exs. 4; 6; 7; Parent Ex. K).

On appeal, the parents further specify their contention that the district failed to identify in the June 2011 IEP the student's academic needs and abilities as reported in the July 2010 psychoeducational evaluation report. In particular, the parents argue that despite reviewing a July 2010 psychoeducational evaluation report, the June 2011 CSE did not include information from the report in the June 2011 IEP regarding the student's functional levels and delays in decoding, reading fluency, calculation, math fluency, spelling and passage comprehension (Pet. ¶ 25; compare Dist. Ex. 3 at p. 3, with Dist. Ex. 4 at pp. 3-4). In addition, the parents contend that the June 2011 IEP failed to identify the student's speech-language needs in the present levels of performance section (Pet. ¶ 38; Dist. Ex. 3 at pp. 3-6, see pp. 10-12).

Among the other elements of an IEP is a statement of a student's academic achievement and functional performance and how the student's disability affects his or her progress in relation to the general education curriculum (20 U.S.C. § 1414[d][1][A][i][I]; 34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]; see 8 NYCRR 200.1[ww][3][i]). In developing the recommendations for a student's IEP, the CSE must consider the results of the initial or most recent evaluation; the student's strengths; the concerns of the parents for enhancing the education of their child; the academic, developmental and functional needs of the student, including, as appropriate, the student's performance on any general State or district-wide assessments as well as any special factors as set forth in federal and State regulations (34 CFR 300.324[a]; 8 NYCRR 200.4[d][2]).

Here, the evidence in the hearing record indicates that although the CSE did not specify the comprehensive assessment data as laid out in the July 2010 psychoeducational evaluation report, the present levels section of the June 2011 IEP provided a description of the student's

unique profile of strengths and needs in the areas of academics, social/emotional functioning, and vocational skills that is aligned with the information in the July 2010 psychoeducational evaluation report (compare Dist. Ex. 3 at pp. 3-6, with Dist. Ex. 6 at pp. 1-7). Specifically, the June 2011 IEP describes the student's needs in the areas of reading comprehension, spelling, writing, mathematical problem solving, and peer interaction skills; identifies the student as well-behaved, eager to please, and responsible; acknowledges his vocational interest in art and illustration; and provides management needs such as "extra time" to address his processing speed delays; directions read, reread and rephrased to address his receptive language difficulties; use of a calculator to address his mathematical fluency deficits; and graphic organizers/charts/graphs/checklists to address his comprehension and abstract reasoning delays (id.). Moreover, the June 2011 IEP included the most recent assessment scores from Cooke in the areas of reading comprehension, applied problems and overall mathematical skills (Dist. Ex. 3 at p. 3). Further, there is nothing in the regulations cited above that indicates that evaluative assessment results must be included in the student's IEP, but only that recent evaluative information must be considered by the CSE in the development of a student's recommended program (34 CFR 300.324[a]; 8 NYCRR 200.4[d][2]).

To the extent the parents argue that the present levels of the June 2011 IEP are lacking information about the student's speech-language development, an independent review of that section of the June 2011 IEP supports their contention (Dist. Ex. 3 at pp. 3-6). However, to address the student's needs in this developmental area, the June 2011 IEP nevertheless included seven goals in the speech-language area which, according to evidence in the hearing record, were updated by the CSE utilizing the March 2011 progress report from Cooke as well as input from the Cooke representative who attended the June 2011 CSE meeting (Tr. pp. 46-49; Dist. Exs. 3 at pp. 2, 10-12; 4 at pp. 1-2; Parent Ex. K at pp. 17-18). In addition, the June 2011 CSE recommended related services of speech-language therapy, and the frequency and group size of those services were also determined with the help of the Cooke representative, based on consideration of the student's then-current needs (Tr. pp. 49-50; Dist. Exs. 3 at p. 15; 4 at p. 2). The deficiency in the IEP in these circumstances was more technical than substantive and did not result in a denial of a FAPE to the student.

### **C. Adequacy of Annual Goals**

Turning to the issue of whether the annual goals in the June 2011 IEP were sufficient, the IHO conducted a well-reasoned analysis of the relevant evidence. As noted by the IHO, a review of the hearing record demonstrates that the goals were, for the most part, prepared by the student's teachers from Cooke; that the goals were discussed by all of the members at the June 2011 CSE, including the parent; and that while every deficit area of the student's functioning may not have had a corresponding goal, the goals contained in the June 2011 IEP adequately addressed the student's main areas of need (IHO Decision at pp. 12-13; see Tr. pp. 30-33; compare Dist. Ex. 3 at pp. 3-5, with Dist. Ex. 3 at pp. 7-12; see 20 U.S.C. § 1414[d][1][A][i][II]; 34 CFR 300.320[a][2][i]; 8 NYCRR 200.4[d][2][iii]). I agree with the IHO's determination in this regard, and further note that the June 2011 IEP included 22 annual goals in the areas of reading fluency and comprehension, vocabulary development, writing, mathematical problem solving, self-awareness and self-advocacy, job-related skills, and receptive, expressive, and pragmatic language which were consistent with the student's identified needs in the June 2011

IEP with the exception of the speech and language goals as noted above (Dist. Ex. 3 at pp. 3-5, 7-12).<sup>6</sup> In addition, all of the goals met the requisite State and federal guidelines for including evaluative criteria (e.g. 80 percent), evaluation procedures (e.g. class activities and teacher/provider observations), and a schedule used to measure progress (e.g. three times during the year) (Dist. Ex. 3 at pp. 7-12; see 8 NYCRR 200.4[d][2][iii][b]; see 20 U.S.C. § 1414[d][1][A][i][III]; 34 CFR 300.320[a][3]).

Although not addressed by the IHO, the parents argue that the goals failed to include a grade level baseline and specific "targeted level of mastery." With regard to this claim, the IDEA and State regulations neither mandate nor preclude a CSE from developing IEP goals that are expressed in terms of a specific "grade level" or a "baseline" (see Lathrop R-II School Dist. v. Gray, 611 F.3d 419, 424-25 [8th Cir. 2010] [noting that a school district cannot be compelled to put more in an IEP than is required by law]; R.B. v New York City Dept. of Educ., 15 F.Supp.3d 421 [S.D.N.Y. 2014] [measurable goals do not require a baseline]; Hailey M. v. Matayoshi, 2011 WL 3957206, at \*23 [D. Haw. Sept. 7, 2011] [rejecting the claim that goals are inadequate because they lack baseline levels or grade levels and are appropriate if they are capable of measurement and directly relate to student's areas of weakness identified in the present levels of educational performance]; D.G. v. Cooperstown Cent. Sch. Dist., 746 F.Supp.2d 435, 446-47 [N.D.N.Y. 2010] [noting that the CSE took into account baseline information located in the student's evaluations when developing the student's IEP]).<sup>7</sup>

Based on the foregoing, the annual goals were measurable and aligned with the student's needs, and any alleged deficiency due to the lack of "baseline" data or grade levels, did not preclude the student from the opportunity to receive educational benefits. Moreover, despite the parents' contentions, the annual goals provided information sufficient to guide a teacher in instructing the student and measuring his progress (see D.A.B. v. New York City Dep't of Educ., 2013 WL 5178267, at \*11 [S.D.N.Y. Sept. 16, 2013]; E.F. v. New York City Dep't of Educ., 2013 WL 4495676, at \*18-\*19 [E.D.N.Y. Aug. 19, 2013]; D.B. v. New York City Dep't of Educ., 2013 WL 4437247, at \*13-\*14 [S.D.N.Y. Aug. 19, 2013]; S.H. v. Eastchester Union Free Sch. Dist., 2011 WL 6108523, at \*8 [S.D.N.Y. Dec. 8, 2011]; W.T. v. Bd. of Educ., 716 F. Supp. 2d 270, 288-89 [S.D.N.Y. 2010]; Tarlowe, 2008 WL 2736027, at \*9; M.C. v. Rye Neck Union Free Sch. Dist., 2008 WL 4449338, at \*11 [S.D.N.Y. Sept. 29, 2008]; W.S. v. Rye City Sch. Dist., 454 F. Supp. 2d 134, 146-47 [S.D.N.Y. 2006]; Application of the Dep't of Educ., Appeal No. 12-108 [finding annual goals appropriate where the goals addressed the student's areas of need reflected in the present levels of performance]).

#### **D. Transition Plan**

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<sup>6</sup> However, a review of the relevant evidence demonstrates that the student's speech-language goals are aligned with the information presented in the March 2011 progress report which was utilized by the June 2011 CSE, and were also developed with the input of the Cooke representative (Tr. pp. 33, 46-49; compare Dist. Ex. 3 at pp. 7-12, with Parent Ex. K at pp. 17-18).

<sup>7</sup> The parents also argue that some of the math goals on the June 2011 IEP were inappropriate because the student's math teacher at Cooke for the 2011-12 school year testified that they had been worked on the prior year (Tr. p. 237). However the math teacher also testified that the student was not fully proficient in these goal areas as the school year began, and was only able to demonstrate understanding with support after the concepts were revisited during the latter part of the 2011-12 school year (Tr. pp. 249, 251-55).

With regard to the adequacy of the transition plan recommended by the June 2011 CSE, the IHO conducted a well-reasoned analysis of the available evidence, finding that the transition plan was "more than sufficient" despite any procedural errors (IHO Decision at p. 14). Specifically, the IHO determined that the transition plan developed by the June 2011 CSE included long term goals related to community integration, postsecondary placement, independent living, and employment; provided appropriate transition services to help the student reach those goals; addressed the student's individualized interest and strength in art; and was developed "line by line" with input from the Cooke representative as well as the parent, without any objections being raised (IHO Decision at p. 13; see Tr. pp. 50-51; 108-09; Dist. Ex. 3 at pp. 16-17). Further, the IHO determined that although the parents were correct in asserting that the student should have been invited to participate in developing the transition plan, the failure to do so was a procedural error that did not rise to the level of a denial of a FAPE (IHO Decision at pp. 13-14). Federal regulation provides that a student must be invited to attend a CSE meeting if a purpose of the meeting is to consider postsecondary goals and transition services; and if the student does not attend, the public agency must take other steps to ensure that the child's preferences and interests are considered (see 34 CFR § 300.321[b][2]). In this case, the evidence in the hearing record indicates that the June 2011 CSE considered the student's individual preferences and interests as will be discussed below (see 34 CFR § 300.321[b]). After reviewing the evidence in the hearing record, I concur with the IHO's determination that the transition plan, despite any technical deficiencies, was adequate to meet the student's needs, and I will proceed to address the parents' remaining contentions not addressed in the IHO's decision.

Under the IDEA, to the extent appropriate for each individual student, an IEP must focus on providing instruction and experiences that enable the student to prepare for later post-school activities, including postsecondary education, employment, and independent living (20 U.S.C. § 1401[34]; see Educ. Law § 4401[9]; 34 CFR § 300.43; 8 NYCRR 200.1[fff]). Accordingly, pursuant to federal law and State regulations, an IEP for a student who is at least 16 years of age (15 under State regulations), or younger if determined appropriate by the CSE, must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills (20 U.S.C. § 1414[d][1][A][i][VIII]; 34 CFR 300.320[b]; 8 NYCRR 200.4[d][2][ix]).

An IEP must also include the transition services needed to assist the student in reaching those goals (20 U.S.C. § 1414[d][1][A][i][VIII]; 34 CFR 300.320[b]). In this regard, State regulations require that an IEP include a statement of a student's needs as they relate to transition from school to post-school activities (8 NYCRR 200.4[d][2][ix][a]), as well as the transition service needs of the student that focus on the student's course of study, such as participation in advanced placement courses or a vocational education program (8 NYCRR 200.4[d][2][ix][c]). The regulations also require that the student's IEP include needed activities to facilitate the student's movement from school to post-school activities, including instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, when appropriate, acquisition of daily living skills and a functional vocational evaluation (8 NYCRR 200.4[d][2][ix][d]), as well as a statement of responsibilities of the school district (or participating agencies) for the provision of services and activities that "promote movement" from school to post-school.

Turning to the parents' contention that the recommendations in the June 2011 IEP's transition plan were overly general, impossible to measure, and not aligned with the student's needs, strengths, preferences or interests, the evidence in the hearing record reveals that the June 2011 CSE developed the transition plan with information obtained from a formal vocational assessment, the March 2011 Cooke progress report, as well as from the parent and Cooke representative as mentioned above (Tr. pp. 50-51, 97, 99, 108-09; Dist. Exs. 4 at p. 2; 6 at p. 4; Parent Ex. K at pp. 12-16). Consistent with that information, the present levels of the June 2011 IEP indicated that the student had performed maintenance and beautification work in a park as a community service; was an artist and illustrator; was an independent traveler but needed to improve his problem solving abilities; and required modeling and practice of appropriate peer interactions as well as reminders to advocate for his needs and wants (compare Dist. Ex. 3 at p. 5, with Dist. Exs. 4 at p. 2; 6 at p. 4; Parent Ex. K at pp. 12-16). Reflecting the present levels, the June 2011 IEP recommended the student participate in community activities that would support his interest in art; research postsecondary programs and future career goals as per his stated interest; set realistic goals for himself; develop independent living skills such as budgeting, shopping and household management; increase his self-advocacy skills; and although he was an independent traveler, the student would work on problem solving (Dist. Ex. 3 at pp. 16-17). While I agree with the parents that the post-secondary goals in the June 2011 IEP did not include objective criteria for measurement, they were augmented by a measurable annual goal in the IEP that addressed the student's need to improve his work-related self-advocacy, interpersonal and communication skills (Tr. pp. 92-93; Dist. Ex. 3 at pp. 5, 12, 16-17; see Parent Ex. K at pp. 14-15).<sup>8</sup>

The parents also argue that the June 2011 IEP does not include "internship" or work placement recommendations and that this was required since, according to the testimony of the district special education teacher, the June 2011 CSE intended for the student to be provided with said service at the assigned school (Pet. ¶¶ 48-49; Tr. pp. 93-94; Dist. Ex. 3 pp. 16-17; see Letter to Spitzer-Resnick, 59 IDELR 230 [OSEP 2012]). However, the June 2011 IEP's transition plan indicated that the student would participate in "community activities that highlight and support areas of interest and strength" and I note that the student's 2010-11 internship had been in a community service placement (Dist. Exs. 3 at pp. 5, 16; 4 at p. 2; Parent Ex. K at p. 14). Further, the June 2011 CSE demonstrated its intent for the student to engage in a work placement by including an annual goal specifically designed to help the student develop on-the-job skills as discussed above (Tr. pp. 92-94; Dist. Ex. 3 at p. 12). Therefore, although the word "internship" does not appear in the transition plan, I find that the June 2011 CSE otherwise adequately indicated its intent to allow the student to have this type of experience in the June 2011 IEP.

With regard to the parents' argument that the June 2011 CSE was required to consider the student's need for transitional services that are aligned with the general education curriculum, I

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<sup>8</sup> While the parents contend that there is no basis for this annual goal in the present levels, I note that the June 2011 IEP indicates that the student needed reminders to advocate for his needs and wants, and was participating in community work projects (Dist. Ex. 3 at p. 5). In addition the March 2011 Cooke progress report indicated that the student required support to use formal, appropriate language with his supervisor and co-workers, and to accept constructive criticism at a job site (Parent Ex. K at p.14).

note that the parents contention mistakenly rely on the portion of an April 2010 VESID guidance document that outlines CSE considerations for a special education student pursuing a regular diploma; however, in this case, the June 2011 IEP clearly indicated that the student would be working towards an IEP diploma (Dist. Exs. 3 at p. 16; 4 at p. 2; see "Individualized Education Program (IEP) Diplomas," VESID Mem. [April 2010], available at <http://www.p12.nysed.gov/specialed/publications/IEPdiploma.pdf> at Attachment 1, Point 3; Attachment 2).<sup>9</sup> Thus there was no error in this regard on the part of the district.

Given the foregoing and by virtue of the evidence in the hearing record, I concur with the IHO that the transition plan adequately set forth the student's transition needs and goals consistent with federal and State regulations, and that any technical deficiencies did not rise to such a level that the student was denied a FAPE (see 20 U.S.C. § 1415[f][3][E][ii]; 34 CFR § 300.513[a][2]; 8 NYCRR 200.5[j][4]).

### **E. 15:1 Special Class Placement**

With regard to the issue of whether the CSE's recommendation for a 15:1 special class placement in a community school in the June 2011 IEP was appropriate to address the student's educational needs, the IHO conducted a well-reasoned analysis of the relevant evidence. The IHO found that neither the parents nor the district disputed the fact that the student had significant academic deficiencies and required a small class setting to achieve educational progress (IHO Decision at p. 14; Tr. pp. 69-70, 104). The IHO further noted that the June 2011 IEP indicated that the student required "small group instruction" because of significant academic and language delays, and that the district special education teacher testified that the student would not benefit from a general education classroom placement (Tr. p. 28; Dist. Ex. 3 at pp. 4, 13).

State regulations provide that a special class placement with a maximum class size not to exceed 15 students is designed for students whose "special education needs consist primarily of the need for specialized instruction which can best be accomplished in a self-contained setting" (8 NYCRR 200.6[h][4]). While the parents argue that the student needed a smaller, more supportive program in order to benefit educationally, I concur with the IHO that the evidence in the hearing record demonstrates that the student's special education needs consisted primarily of a need for specialized instruction and that a 15:1 special class placement would have offered meaningful educational benefit (IHO Decision at p. 15).

The June 2011 IEP noted that the student was performing at a fourth grade level in reading comprehension and math, and in the classroom was being instructed on a seventh grade level in reading and on a fifth grade level in math (Tr. pp. 37, 178; Dist. Exs. 3 at p. 3; 4 at pp. 1-2). According to evidence in the hearing record, the student was making progress in all of his academic classes, worked at a slow and steady pace, was determined to get his work done, stayed focused, was able to organize his materials, had made great strides in classroom participation, and was generally well-behaved, eager to please and responsible (Dist. Exs. 3 at pp. 3, 5; 4 at pp.

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<sup>9</sup> The Office of Vocational and Educational Services for Individuals with Disabilities (VESID) is now known as Adult Career and Continuing Education Services-Vocational Rehabilitation (ACCES-VR).

1-2; Parent Ex. K at pp. 2-5, 7-8, 15-18). Regarding his social/emotional development, the student was reported to be kind to others, able to work collaboratively with peers, and exhibited behavior that other students could look up to (Dist. Ex. 4 at p. 2; Parent Ex. K at pp. 3, 5, 6, 8, 10, 15, 18). Further, the student had improved in his age-appropriate social interactions with peers, though he still required modeling and practice, as well as reminders to advocate for his needs and wants (Dist. Ex. 3 at p. 5; see Dist. Ex. 4 at p. 2; Parent Ex. K at pp. 15-18). According to the hearing record, the student also had fatigue issues at school and required prompts to pick his head up off the desk, although this was reported to be happening much less frequently (Dist. Exs. 3 at p. 5; 4 at p. 2; Parent Ex. K at p. 2). In addition, the March 2011 Cooke progress report stated that at times the student required prompts to initiate working but was easily redirected (Parent Ex. K at p. 16).<sup>10</sup>

Moreover, the November 2010 observation conducted in the student's mathematics classroom revealed that although the student had difficulty articulating his thoughts, he was often able to get the right answer to problems, and that the student was "for the most part task-focused and compliant" (Dist. Ex. 7 at p. 1). With respect to the student's internship, the March 2011 Cooke progress report indicated that the student followed directions, always stayed focused on the task at hand, and was able to work independently with little to no prompting (Parent Ex. K at p. 14).

Cognitive testing results included in the July 2010 psychoeducational evaluation report indicated that the student was functioning in the extremely low range with a full scale intelligence quotient (IQ) of 68 (Dist. Ex. 6 at p. 2). A relative area of strength was noted in the student's verbal comprehension with a composite score of 85 (low average range), and the student's weakest area of functioning was his processing speed with a composite score of 65 (extremely low range) (Dist. Ex. 6 at pp. 2-3).

To address the student's academic management needs, the June 2011 IEP indicated that the student required "small group instruction" and recommended a number of accommodations and supports, many of which could be prepared in advance of the class as a modification to lessons or utilized for the classroom as a whole, such as clear routines and structure, manipulatives, scaffolding, visual and auditory cues, and the use of graphic organizers/charts/graphs/checklists (Dist. Ex. 3 at p. 4).<sup>11</sup> While some of the student's management needs in the June 2011 IEP may have required direct assistance or implementation by the teacher, such as redirection to task, directions read, reread and rephrased as needed, extra time to process information and complete assignments, and use of a calculator, as discussed above the evidence in the hearing record shows that the student did not exhibit management

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<sup>10</sup> While I note that at the impartial hearing the student's math teacher and speech-language therapist testified that the student needed frequent prompting and redirection to task, upon careful review of the hearing record this information appears to be at odds with then-current information relied on by the June 2011 CSE, namely the November 2010 classroom observation, the March 2011 Cooke progress report as well as the verbal reports of the student's teachers and the Cooke representative, as memorialized in the June 2011 CSE meeting minutes (Tr. pp. 177-78, 215, 220; Dist. Exs. 4 at pp. 1-2; 7 at p. 1; Parent Ex. K at pp. 2, 14, 16).

<sup>11</sup> Often what is considered "small" in terms of class size is very much in the eye of the beholder who opts to use such imprecise terms. I note that while 15 can be considered a small group, a teacher in a 15:1 classroom might also divide the students up into even smaller groups for instructional purposes.

needs so intensive they would interfere with the instructional process of the class or require the presence of an additional adult to assist in his instruction (*id.*; see 8 NYCRR 200.6[h][4][i]). To further support the student, the June 2011 CSE recommended testing accommodations, related services of speech-language therapy and counseling, individualized annual goals, and a transition plan (Dist. Ex. 3 at pp. 7-13, 15-17).

In addition, the district special education teacher testified that in arriving at the decision to recommend a 15:1 special class placement, the June 2011 CSE considered but rejected a 12:1+1 special class placement at a specialized school because the student's academic performance, as well as his behavior and ability to interact with peers were at a higher level than that of the typical student in a 12:1+1 specialized school setting (Tr. p. 53). She further testified that the type of student who would be in a 15:1 program would be performing between a fourth and seventh or eighth grade level, and would have speech and language delays and learning disabilities (Tr. p. 60). In her testimony, the assistant principal of the assigned high school confirmed that based on the student's age, grade and functional levels, he would be considered an average high school special education student (Tr. pp. 118, 129, 148).

Based upon the foregoing, the evidence in the hearing record supports the IHO's decision that the 15:1 special class placement—together with the annual goals, recommended supports and related services—was reasonably calculated to enable the student to receive educational benefits, and thus offered the student a FAPE in the LRE for the 2011-12 school year.

Therefore, in reviewing and considering the evidence regarding the adequacy of the June 2011 IEP as a whole, in this instance I find that despite several errors and deficiencies, the June 2011 CSE adequately addressed the student's unique special education needs and developed an IEP that was likely to produce progress (see Dist. Ex. 3). The evidence in the hearing record reveals that the June 2011 CSE relied on sufficient, up-to-date evaluative information; that the present levels of the June 2011 IEP although lacking information about the student's language needs were sufficient; that the annual goals addressed the majority of the student's deficit areas and were measurable enough to guide instruction and monitoring of progress; that the transition plan was adequate and sufficiently individualized despite lacking measurable post-secondary goals; that the failure of the June 2011 CSE to invite the student to help develop the transition plan was a procedural error and that the student's preferences and interests were otherwise considered; that the 15:1 special class placement in a community school was calculated to confer educational benefit; and that assuming but not deciding that the lack of a regular education teacher at the June 2011 CSE was a procedural error, this inadequacy did not rise to the level of a denial of a FAPE (*Karl v. Bd. of Educ.*, 736 F.2d 873, 877 [2d Cir. 1984] [finding that although a single component of an IEP may be so deficient as to deny a FAPE, the educational benefits flowing from an IEP must be determined from the combination of offerings rather than the single components viewed apart from the whole]; see also *Bell v. Bd. of Educ.*, 2008 WL 5991062, at \*34 [D.N.M. Nov. 28, 2008] [explaining that an IEP must be analyzed as whole in determining whether it is substantively valid]; *Lessard v. Wilton-Lyndeborough Co-op. Sch. Dist.*, 2008 WL 3843913, at \*6-\*7 [D.N.H. Aug. 14, 2008] [noting that the adequacy of an IEP is evaluated as a whole while taking into account the child's needs]; see also *W.S. v. Rye City Sch. Dist.*, 454 F. Supp. 2d 134, 146-47 [S.D.N.Y. 2006] [upholding the adequacy of an IEP as a whole, notwithstanding its deficiencies]).

## **F. Challenges to the Assigned Public School Site**

Finally, with respect to the parents' claims relating to the assigned public school site, which the IHO declined to address and which the parties continue to argue on appeal, in this instance, similar to the reasons set forth in other decisions issued by the Office of State Review (e.g., Application of the Dep't of Educ., Appeal No. 14-025; Application of the Dep't of Educ., Appeal No. 12-090; Application of a Student with a Disability, Appeal No. 13-237), the parents' assertions are without merit. The parents' contentions regarding the size of the assigned public school site, as well as the number of students, the level of activity and noise, the functional grouping of the students in the proposed classroom, and the lack of a foreign language class in a 15:1 ratio (Pet. ¶ 57; Dist. Ex. 1 at p. 5) turn on how the March 2011 IEP would or would not have been implemented and, as it is undisputed that the student did not attend the district's assigned public school site (see Parent Exs. A; C; D; M; N; O; U; ), the parents cannot prevail on such speculative claims (R.E., 694 F.3d at 186-88; see F.L. v. New York City Dep't of Educ., 553 Fed. App'x 2, 9, 2014 WL 53264 [2d Cir. Jan. 8, 2014] [citing R.E. and explaining that "[s]peculation that [a] school district will not adequately adhere to [an] IEP is not an appropriate basis for unilateral placement" and that the "appropriate forum for such a claim is 'a later proceeding' to show that the child was denied a [FAPE] 'because necessary services included in the IEP were not provided in practice'"]; K.L., 530 Fed. App'x at 87, 2013 WL 3814669; P.K. v. New York City Dep't of Educ., 526 Fed. App'x 135, 141, 2013 WL 2158587 [2d Cir. May 21, 2013]; see also C.F. v. New York City Dep't of Educ., 746 F.3d 68, 79 [2d Cir. Mar. 4, 2014]; B.P. v. New York City Dept. of Educ., 2014 WL 6808130, at \*12 [S.D.N.Y. Dec. 3, 2014]; C.L.K. v. Arlington Sch. Dist., 2013 WL 6818376, at \*13 [S.D.N.Y. Dec. 23, 2013]; R.C. v. Byram Hills Sch. Dist., 906 F. Supp. 2d 256, 273 [S.D.N.Y. 2012]).

## **VII. Conclusion**

Having determined that the evidence in the hearing record supports the IHO's determinations that the district offered the student a FAPE for the 2011-12 school year, the necessary inquiry is at an end and there is no need to reach the issues of whether Cooke was an appropriate unilateral placement or whether equitable considerations weighed in favor of the parents' request for relief. I have considered the remaining contentions and find it is unnecessary to address them in light of my determinations above.

**THE APPEAL IS DISMISSED.**

**Dated: Albany, New York  
December 23, 2014**

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**JUSTYN P. BATES  
STATE REVIEW OFFICER**