



The University of the State of New York

The State Education Department

State Review Officer

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No. 13-122

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

Appearances:

Law Offices of Lauren A. Baum, PC, attorneys for petitioners, Lauren A. Baum, Esq., of counsel

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for respondent, Lisa R. Khandhar, 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 the costs of the student's tuition at the Communities Acting to Heighten Awareness and Learning School (CAHAL) for the 2011-12 school year. Respondent (the district) cross-appeals from that portion of the IHO's decision which found that the March 2011 CSE did not include a regular education teacher. The appeal must be dismissed. The cross-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. The CSE convened on March 8, 2011, to formulate the student's IEP for the 2011-12 school year (see generally Dist. Ex. 5). The parents disagreed with the recommendations in the March 2011 IEP, as well as with the particular public school site to which the district assigned the student to attend for the 2011-12 school year, and as a result, notified the district of their intent to unilaterally place the student at CAHAL (see Parent Exs. B-E). In a due process complaint notice, dated June 29, 2012, the parents alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2011-12 school year (see Parent Ex. A).

On September 10, 2012, the IHO conducted a prehearing conference, and on October 17, 2012, the parties proceeded to an impartial hearing, which concluded on April 9, 2013 after four days of proceedings (see Tr. pp. 1-477). In a decision dated May 30, 2013, the IHO determined that the district offered the student a FAPE for the 2011-12 school year (see IHO Decision at pp. 9-15).

IV. Appeal for State-Level Review

The parties' familiarity with the particular issues for review on appeal in the parents' petition for review, the district's answer and cross-appeal, and the parents' answer thereto is also presumed and will not be recited here. The crux of the parties' dispute on appeal is whether the March 2011 CSE was properly composed, whether the 12:1+1 special class placement at a community school was appropriate to meet the student's needs, and whether the assigned public school site was appropriate.¹

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

¹ The parents also assert that the district failed to properly serve the answer and cross-appeal because it was incorrectly addressed and resulted in the untimely receipt of the district's pleading by counsel for the parents. In addition, the parents assert that the district failed to number the allegations in its pleading in accordance with State regulations. As such, the parents request that the SRO reject the district's answer and cross-appeal. Initially and contrary to the parents' allegation, the district's cross-appeal includes numbered paragraphs. With regard to the incorrect mailing address, a determination of whether the district's pleading was timely served relates to when the district completed service and not when the pleading was received (see 8 NYCRR 279.5, 279.11; see also 8 NYCRR 275.8[a]-[b]).

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 evidence in the hearing record reflects that the IHO, in a well-reasoned and well-supported decision, correctly reached the conclusion that the district offered the student a FAPE for the 2011-12 school year (see IHO Decision at pp. 9-15). In particular, a review of the evidence in the hearing record supports that the IHO properly concluded the following: although the March 2011 CSE did not include a regular education teacher, such procedural inadequacy did not constitute a denial of FAPE; the 12:1+1 special class placement at a community school was consistent with the student's evaluative information and was appropriate to meet the student's needs; the March 2011 IEP—and in particular, the present levels of performance—accurately reflected the results of the evaluative information, identified the student's needs and strategies to address the student's academic and social/emotional management needs, and established annual goals and recommended special education services related to those needs; and the parents had the opportunity to participate at the March 2011 CSE meeting (*id.* at pp. 9-15). In addition, the IHO accurately recounted the facts of the case, addressed the majority of the specific issues 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. 2-15). The decision shows that the IHO carefully considered the testimonial and documentary evidence presented by both parties, and further, that he weighed the evidence and properly 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 (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—as explained more fully below—the conclusions of the IHO are hereby adopted.

A. March 2011 CSE Composition

The IHO concluded that the March 2011 CSE was properly composed because—at the time of the March 2011 CSE meeting—the student was not participating in a general education setting, nor was it "likely" that the student would be participating in a general education setting during the 2011-12 school year, and therefore, a regular education teacher was not a required member of the CSE.

The IDEA requires a CSE to include, among others, not less than one regular education teacher of the student if the student is or may be participating in a general education environment (20 U.S.C. § 1414[d][1][B][ii]; see 34 CFR 300.321[a][2]; 8 NYCRR 200.3[a][1][ii]). The regular education teacher "shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and supplementary aids and services, program modifications, and support for school personnel" (20 U.S.C. § 1414[d][3][C]; 34 CFR 300.324[a][3]; 8 NYCRR 200.3[d]). As noted above, however, 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]).

In this case, the evidence in the hearing record reveals that the following individuals attended the March 2011 CSE meeting: a district school psychologist, a district representative, the student's then-current special education teacher at CAHAL, the student's then-current speech-language therapy providers, the student's then-current occupational therapist, CAHAL's educational coordinator, an additional parent member, the student's mother, and the student's grandmother (see Tr. pp. 164, 172-73, 371-72; Dist. Exs. 5 at p. 2; 7 at p. 1; 9 at p. 1; 10). The evidence in the hearing record further reflects that although the CAHAL educational coordinator and the student's grandmother were both certified in general education, neither functioned as the regular education teacher at the March 2011 CSE meeting (see Tr. pp. 31, 235-36, 389, 391, 442; Dist. Ex. 5 at p. 2). Accordingly, the evidence in the hearing record reflects—consistent with the IHO's decision—that the March 2011 CSE did not include the attendance of a regular education teacher (see IHO Decision at pp. 9-13; Dist. Ex. 5 at p. 2).

However, contrary to the IHO's decision, the evidence in the hearing record does reflect that at the time of the March 2011 CSE meeting, the student was participating with her regular education peers at CAHAL during "specials"—such as art and computer—and furthermore, it was likely that the student would participate in a general education setting because the March 2011 CSE recommended that the student participate in "all school activities"—including "lunch, assemblies, trips and/or other school activities"—with her nondisabled peers (Tr. pp. 31, 174, 199, 232, 284-85, 288, 336; Dist. Ex. 5 at p. 17).² Regardless of this factual distinction, however, the evidence in the hearing record does not support a determination that the absence of a regular education teacher—as a procedural violation—impeded the student's right to a FAPE, significantly impeded the parents' 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]).

Furthermore, a review of the hearing record shows that the IHO correctly determined that the CSE's recommendation of a 12:1+1 special class in a community school was consistent with

² Compared to the information in the hearing record regarding the student's participation in a mainstream setting at CAHAL during the 2011-12 school year, the hearing record contains limited information regarding the student's participation in "specials" or the particular activities and classes that the student was mainstreamed for at the time of the March 2011 CSE meeting or during the 2010-11 school year (compare Tr. pp. 198-99, with Tr. pp. 299-300, 302-05, 312-13, 317-19, 324-30, 414).

the student's evaluative information and was appropriate to meet the student's needs (see IHO Decision at pp. 13-14). According to State regulation, a 12:1+1 special class placement is designed for those students whose "management needs interfere with the instructional process, to the extent that an additional adult is needed within the classroom to assist in the instruction of such students" (8 NYCRR 200.6[h][4][i]). In this case, the March 2011 CSE recommended a number of strategies to address the student's academic and social/emotional management needs, including frequent redirection to task, visual and verbal prompts, content clues, reteaching and repetition, graphic organizers, a multisensory approach, tasks broken down, praise and encouragement, as well as testing accommodations (extended time, separate location, and directions and questions read aloud) (see Dist. Exs. 5 at p. 4; 7; 9 at pp. 1, 3-5; 10; 14; 17 at p. 7). Contrary to the parents' contention, the March 2011 IEP provided for adequate strategies and supports to address the student's needs, and the information available to the CSE indicated that the student's needs could be met in a 12:1+1 special class placement (see Dist. Exs. 5 at pp. 3, 5; 9; 14). In addition, to address the student's needs related to fine motor, gross motor, and speech-language skills, the March 2011 CSE recommended related services including OT, PT, and speech-language therapy (Dist. Ex. 5 at p. 17; see Dist. Exs. 7; 10; 13).

With regard to the present levels of performance, the IHO correctly found that the March 2011 IEP accurately reflected the evaluative information considered and relied upon by the March 2011 CSE, and accurately identified the student's needs (see IHO Decision at p. 14). 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]). Consistent with the IHO's findings, the evidence in the hearing record reveals that the March 2011 CSE reviewed multiple sources of information to develop the March 2011 IEP, including a March 2011 classroom observation, a March 2011 speech-language progress report, a March 2011 teacher report, a March 2011 OT progress report, a March 2011 PT progress report, a February 2011 psychoeducational evaluation report, and a February 2011 Vineland-II parent/caregiver rating report (see Tr. pp. 171, 172; Dist. Exs. 7; 9-10; 13-14; 16-17). In addition, a review of the evidence in the hearing record reflects that the March 2011 CSE developed the present levels of performance with input from the parent, the grandparent, teacher, and therapists, as well as with information from the Vineland-II (see Tr. pp. 180, 190-91; Dist. Ex. 5 at pp. 3, 5, 6; see also Dist. Ex. 6 at pp. 2-4). The present levels of academic performance section also included the results of recent cognitive testing, the student's recent achievement testing, a description of the student's speech-language functioning (including deficits in expressive, receptive, and pragmatic language, as well as specific articulation concerns), a description of the student's social/emotional functioning (noting her "extreme shyness" and ability to interact with peers and adults), and a description of the student's health and physical development (noting delays in gross, visual-perceptual, oculomotor, and fine motor skills), (Dist. Ex. 5 at pp. 3, 5-7; see Dist. Ex. 16 at pp. 3, 4). The March 2011 IEP also reflected that

the student had a seizure disorder and took medication at home and that she wore glasses (see Dist. Ex. 5 at p. 6).

A review of the annual goals in the March 2011 IEP reveals that the IHO correctly found that the IEP appropriately included annual goals in the areas of the student's identified needs. An IEP must include a written statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and meet each of the student's other educational needs that result from the student's disability (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]). Each annual goal shall include the evaluative criteria, evaluation procedures and schedules to be used to measure progress toward meeting the annual goal during the period beginning with placement and ending with the next scheduled review by the committee (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]). The March 2011 IEP included two annual goals addressing reading skills (one related to decoding, word analysis, and fluency, and one related to reading comprehension skills); two annual goals addressing math computation skills, money concepts, and problem solving; one annual goal addressing written expression; six annual goals related to improving the student's receptive, expressive, pragmatic, articulation and oral motor skills; one annual goal that addressed the student's fine motor and handwriting skills; and two annual goals addressing the student's gross motor skills related to muscle strength, endurance, balance and coordination (see Dist. Ex. 5 at pp. 8-14). Contrary to the parents' contentions, each annual goal included the evaluative criteria (i.e., four out of five trials, 80 percent accuracy), evaluation procedures (i.e., teacher or provider observations, teacher made materials), and schedules to be used to measure progress (i.e., three reports per year) (see 8 NYCRR 200.4[d][2][iii][b], [c]; Dist. Ex. 5 at pp. 8-14). Furthermore, contrary to the parents' contention that the annual goals were generic, broad or vague, each annual goal was sufficiently specific to provide direction to the student's teachers and providers concerning the expectations of the student (see Dist. Ex. 5 at pp. 8-14). Moreover, while the parents maintained that there were no annual goals addressing the student's attentional needs (distractibility and impulsivity), tracking difficulty, insecurity, or self-advocacy, the student's needs related to attentional issues, insecurity, and self-advocacy were otherwise addressed in the March 2011 IEP through the strategies included in the academic and social/emotional management needs sections of the IEP, including, frequent redirection to task, visual and verbal prompts, reteaching and repetition, tasks broken down, and the provision of praise and encouragement (id. at pp. 4-5). Additionally, the evidence in the hearing record demonstrates that the March 2011 CSE discussed the annual goals at the meeting and that no one disagreed with the annual goals (see Tr. pp. 175, 177, 353, 372). While the March 2011 IEP did not include a specific annual goal to address the student's tracking deficit, this deficiency alone is not sufficient to find that the district failed to offer the student a FAPE when, as discussed above, overall, the annual goals in the March 2011 IEP were appropriate.

Finally, with respect to parental participation, the IDEA sets forth procedural safeguards that include providing parents with an opportunity "to participate in meetings with respect to the identification, evaluation, and educational placement of the child" (20 U.S.C. § 1415[b][1]). Federal and State regulations governing parental participation require that school districts take steps to ensure that parents are present at their child's IEP meetings or are afforded the

opportunity to participate (34 CFR 300.322; 8 NYCRR 200.5[d]). Although school districts must provide an opportunity for parents to participate in the development of their child's IEP, mere parental disagreement with a school district's proposed IEP and placement recommendation does not amount to a denial of meaningful participation (see P.K. v. Bedford Cent. Sch. Dist., 569 F. Supp. 2d 371, 383 [S.D.N.Y. 2008] [noting that a "professional disagreement is not an IDEA violation"]; Sch. for Language & Comm'n Dev. v. New York State Dep't of Educ., 2006 WL 2792754, at *7 [E.D.N.Y. Sept. 26, 2006] [finding that "[m]eaningful participation does not require deferral to parent choice"]; Paolella v. Dist. of Columbia, 210 Fed. App'x 1, 3, 2006 WL 3697318 [D.C. Cir. Dec. 6, 2006]).

The hearing record demonstrates that the parent was provided with a ample opportunity to participate in the March 2011 CSE meeting and the development of the student's IEP. Specifically, consistent with testimony by the district school psychologist and information in the minutes of the March 2011 CSE meeting, the IEP included information in the present levels of performance sections that was provided by the student's mother and grandmother, her then-current classroom teacher, and her therapists regarding the student's academic functioning, her shy behavior, and her seizure disorder (see Tr. pp. 180, 190-91; Dist. Ex. 5 at pp. 3, 5, 6; see also Dist. Ex. 6 at pp. 2-4). Information included in the academic management needs section of the IEP was provided by the student's teacher based on strategies she used in the classroom to work with the student at that time (Tr. p. 190). The IEP also included information in the present level of social/emotional performance provided by the parent, the student's teacher, and by the parent's responses on the February 2011 Vineland-II parent/caregiver rating report related to the student's adaptive behavior, her level of responsibility at home, her improved pragmatics including eye contact, her ability to attempt new tasks independently, and her need for monitoring due to impulsivity (Tr. pp. 190-91; Dist. Ex. 5 at p. 5). With regard to the annual goals, the district school psychologist and the parents testified that the March 2011 CSE discussed the annual goals at the CSE meeting and no one disagreed with them (Tr. pp. 175, 177, 353, 372).

With regard to the parents' claim that the CAHAL attendees at the March 2011 CSE meeting were not asked if the recommended 12:1+1 special class placement was appropriate for the student, neither federal nor State regulations require a CSE to request an opinion as to the appropriateness of its placement recommendation (see 34 CFR 300.322; 8 NYCRR 200.5[d]). Moreover, the district school psychologist testified that the March 2011 CSE recommended the 12:1+1 special class placement "based on all the assessments, all the provider reports, the teacher report, the actual meeting, any input that was given at the meeting by the parent, the teacher," and that "[i]t was a collective decision" (Tr. p. 193). She further testified that the March 2011 CSE discussed the 12:1+1 special class placement at the CSE meeting and that no one disagreed with the recommendation (Tr. pp. 194-95). Based on the evidence in the hearing record, there is no reason to disturb the IHO's finding that the parents were provided with an opportunity to meaningfully participate at the March 2011 CSE meeting and in the development of the March 2011 IEP.

B. Challenges to the Assigned Public School Site

With respect to the parents' claims relating to the assigned public school site, which the IHO did not 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 (see, 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' claims regarding whether the assigned public school site could provide the student with appropriate mainstream opportunities, a 12:1+1 special class placement for all areas of instruction as recommended in the March 2011 IEP, an appropriate functional group, social skills support, a safe and supervised environment, appropriate related services, and would require the student to work independently beyond her ability (see Parent Ex. A), 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. C-D; N), 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]; K.L. v. New York City Dep't of Educ., 530 Fed. App'x 81, 87, 2013 WL 3814669 [2d Cir. July 24, 2013]; 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]; 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 determination that the district offered the student a FAPE in the LRE for the 2011-12 school year, the necessary inquiry is at an end and there is no need to reach the issue of 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.

THE CROSS-APPEAL IS DISMISSED.

**Dated: Albany, New York
December 19, 2014**

**CAROL H. HAUGE
STATE REVIEW OFFICER**