



The University of the State of New York

The State Education Department

State Review Officer

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No. 13-025

Application of a STUDENT WITH A DISABILITY, by his parents, for review of a determination of a hearing officer relating to the provision of educational services by the New York City Department of Education

Appearances:

Law Offices of Regina Skyer & Associates, LLP, attorneys for the petitioner, William Meyer, Esq., of counsel

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 Bay Ridge Preparatory School (Bay Ridge) for the 2011-12 school year. Respondent (the district) cross-appeals from the IHO's determination that it failed to offer an appropriate educational program to the student for that year. The appeal must be dismissed. The cross-appeal must be sustained.

II. Overview—Administrative Procedures

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]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which

the SRO may grant in accordance with State and federal regulations (34 CFR 300.515[b], [c]; 8 NYCRR 200.5[k][2]).¹

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.² The Committee on Special Education (CSE) convened on June 15, 2011, to formulate the student's individualized education program (IEP) for the 2011-12 school year (see generally Dist. Ex. 1 at pp. 1-16). The parents disagreed with the recommendations contained in the June 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 Bay Ridge (see Parent Exs. A; D). In a due process complaint notice, dated July 26, 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. B).³

An impartial hearing convened on December 4, 2012 and concluded on December 5, 2012 after two days of proceedings (see Tr. pp. 1-348). In a decision dated January 14, 2013, the IHO determined that the district failed to offer the student a FAPE for the 2011-12 school year that Bay Ridge was not an appropriate unilateral placement, and that equitable considerations weighed in favor of the parents' requested relief (see IHO Decision at pp. 17-23). Consequently, the IHO dismissed the parents' due process complaint notice (id. at p. 23).

IV. Appeal for State-Level Review

The following issues presented on appeal must be resolved:⁴

1. Did the IHO err in finding that the use of teacher estimates and observations to describe the student's functioning levels in reading and math was insufficient to develop the present levels of performance?

¹ The administrative procedures applicable to the review of disputes between parents and school districts regarding any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student are well established and described in broader detail in previous decisions issued by the Office of State Review (e.g., Application of the Dep't of Educ., Appeal No. 12-228; Application of the Dep't of Educ., Appeal No. 12-087; Application of a Student with a Disability, Appeal No. 12-165; Application of the Dep't of Educ., Appeal No. 09-092).

² Any additional facts necessary to the disposition of the parties' arguments will be set forth below as necessary to resolution of the issues presented in this appeal.

³ Although the parents' due process complaint notice contained allegations related to the assigned public school site, the IHO did not address these allegations and neither party raised any of the allegations on appeal; as such, the issues in the due process complaint notice related to the assigned public school site have been abandoned and will not be further addressed in this decision (compare Parent Ex. B at pp. 2-3, with IHO Decision at pp. 17-20, and Pet. at pp. 1-14, and Answer & Cr. Appeal at pp. 1-20, and Answer to Cr. Appeal at pp. 1-13).

⁴ To the extent that the IHO found that the June 2011 CSE developed the annual goals without the parents input and without the participation of a speech-language provider, the Second Circuit has held that issues not included in a due process complaint notice may be ruled on by an administrative hearing officer when the district "opens

2. Did the IHO err in determining that the annual goals in the June 2011 IEP were not measurable?
3. Did the IHO err in determining that the district failed to develop appropriate transition services in accordance with State regulations?

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.

the door" to such issues with the purpose of defeating a claim that was raised in the due process complaint notice (M.H. v. New York City Dep't of Educ., 685 F.3d 217, at 250-51 [2d Cir. 2012]; see D.B. v. New York City Dep't of Educ., 2013 WL 4437247, at *6-*7 [S.D.N.Y. Aug. 19, 2013]; N.K. v. New York City Dep't of Educ., 2013 WL 4436528, at *5-*7 [S.D.N.Y. Aug. 13, 2013]; A.M. v. New York City Dep't of Educ., 2013 WL 4056216, at *9-*10 [S.D.N.Y. Aug. 9, 2013]; J.C.S. v. Blind Brook-Rye Union Free Sch. Dist., 2013 WL 3975942, *9 [Aug. 5, 2013]; B.M. v. New York City Dep't of Educ., 2013 WL 1972144, at *5-*6 [S.D.N.Y. May 14, 2013]). In this instance, the issues raised sua sponte by the IHO were first raised—if at all during the impartial hearing—by the parents or by counsel for the parents on cross-examination of a district witness (see, e.g., Tr. pp. 41-43, 61-64, 66-67). Here, the district did not initially elicit testimony regarding these issues, and therefore, the district did not "open the door" to these issues under the holding of M.H.

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

A. June 2011 IEP

1. Evaluative Information and Present Levels of Performance

Turning to the parties' dispute, the evidence in the hearing record reveals that the June 2011 CSE appropriately relied upon evaluative information and teacher input regarding the student's daily classroom functioning to develop the present levels of performance (Tr. pp. 22-25; Dist. Exs. 1 at pp. 3-5; 2 at pp. 1-2; 3 at pp. 1-2; 4 at pp. 1-3).

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]). Furthermore, although federal and State regulations require that an IEP report the student's present levels of academic achievement and functional performance, those regulations do not mandate or specify a particular source from which that information must come, and teacher estimates may be an acceptable method of evaluating a student's academic functioning. When a student has not been attending public school, it is also appropriate for the CSE to rely on the assessments, classroom observations, or teacher reports provided by the student's nonpublic school (S.F. v. New York City Dep't of Educ., 2011 WL 5419847, at *10 [S.D.N.Y. Nov. 9, 2011] [indicating that based upon 20 U.S.C. § 1414 (c)(1)(A), a CSE is required in part to "review existing evaluation data on the child, including (i) evaluations and information provided by the parents of the child; (ii) current classroom-based, local, or State assessments, and classroom-based observations; and (iii) observations by teachers and related services providers"]).

A careful review of the June 2011 IEP shows that much of the information presented in the present levels of performance was drawn directly from a May 2011 speech-language progress report completed by the student's Bay Ridge speech-language provider (compare Dist. Ex. 1 at pp.

3-4, with Dist. Ex. 2). For example, the present levels of performance incorporated the input from the speech-language progress report, detailing the student's strengths and weaknesses with regard to a range of speech-language functioning, including a strength in vocabulary skills, as well as problems with auditory sequential memory, sustained listening attention, and receptive and expressive language (see Dist. Exs. 1 at p. 3; 2 at pp. 1-2). The June 2011 IEP also noted the effect of student's speech-language delays on his reading and writing skills (id.). The hearing record indicates that the student's Bay Ridge biology teacher participated in the June 2011 CSE meeting via telephone and the IEP documented the teacher's input with regard to the day-to-day challenges the student encountered with attention and written language activities (see Tr. pp. 18-19, 22; Dist. Ex. 1 at p. 3). The district school psychologist who attended the June 2011 CSE meeting testified that the biology teacher's comments about the student's challenges were consistent with the information presented in the speech-language report (see Tr. pp. 23-24).

The IHO expressed particular concern regarding the fact that the biology teacher provided estimates of the student's reading and math skills reflected in the June 2011 IEP (IHO Decision at pp. 18-19). More specifically, the IHO found that the June 2011 CSE could not rely upon "teacher estimates of performance when the teacher giving this information was not a teacher in the subject area" (IHO Decision at p. 18). However, the estimated levels of the student's reading and math achievement provided by the biology teacher are generally consistent with the assessment results reported in the November 2008 psychological evaluation of the student (Dist. Exs. 1 at pp. 3-4; 4 at pp. 1-4).⁵

In addition, the June 2011 IEP includes narrative descriptions of the student's difficulty with attention in the classroom, as well as the beneficial use of supportive teaching strategies to enhance the student's engagement, consistent with the information presented in the March 2011 classroom observation of the student (Dist. Exs. 1 at pp. 3-4; 3 at pp. 1-2). Specifically, the June 2011 IEP indicated the student's management needs included "verbal and visual cuing," as reflected in the March 2011 classroom observation that the student responded to "teacher cues" and that these "interventions" helped the student remain "focused and alert" (Dist. Ex. 1 at p. 4; 3 at pp. 1-2).

The June 2011 IEP provided limited information regarding the student's social/emotional functioning, relying primarily on annotations indicating that the student's behavior did not present a serious concern and that his needs in this area—primarily, his tendency towards distractibility—could be met by the special education teacher (Dist. Ex. 1 at p. 5). As reported by the district school psychologist, she did not recall that the student presented with "any great concerns with regard to social/emotional functioning," but rather, that the student was "generally cooperative, and friendly, and likable" (Tr. pp. 44-45). Strategies to address the student's needs in this area included the use of positive reinforcement and feedback, which was consistent with a notation in the March 2011 classroom observation indicating that the student responded well to simple feedback and cuing from his teacher (Tr. p. 47; Dist. Exs. 1 at p. 5; 3 at pp. 1-2).

Based upon a careful review of the present levels of performance, the June 2011 CSE properly relied upon evaluative information and teacher input to identify the student's areas of need

⁵ At the impartial hearing, the parents withdrew claims regarding transportation services for the 2011-12 school year and the district's alleged failure to conduct a timely triennial reevaluation of the student (see IHO Decision at p. 6).

and to describe the student's academic achievement and functional performance—including his individual strengths—which served as a foundation upon which to develop the annual goals. Accordingly, the IHO's determination must be reversed.

2. Annual Goals

Turning to the parties' dispute regarding the annual goals, 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][III]; 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]).

In this case, the June 2011 IEP includes approximately nine annual goals designed to address the student's identified needs in the areas of speech-language, math, English language arts (ELA) (including reading and writing), and organizational strategies, such as outlining and multi-step direction following (Tr. pp. 26, 46; Dist. Ex. 1 at pp. 7-8). Several of the annual goals focus on enhancing the student's vocabulary and comprehension in applied settings and across academic domains (see Dist. Ex. 1 at pp. 7-8). To create the speech-language and ELA annual goals, the June 2011 CSE considered information presented in the May 2011 speech-language progress report, and overall, the annual goals reflected consideration of the student's needs as set forth in the present levels of performance (Tr. pp. 26, 46-48; Dist. Ex. 1 at pp. 7-8; 2 at pp. 1-2). A review of the annual goals reveals that, contrary to the IHO's finding, most of the annual goals included the required evaluative criteria (i.e., 80 percent accuracy, 8 out of 10 trials), evaluation procedures (i.e., teacher assessment, speech provider observation, teacher-made tests or class work), and schedules to be used to measure progress (i.e., at the end of each marking period, weekly assessments) (Dist. Ex. 1 at pp. 7-8). In addition, to the extent that the IHO found that the annual goals were not appropriate because they lacked baselines upon which to measure progress, the applicable State regulations cited above do not require "baseline" functioning levels to be included in annual goals in an IEP (R.B. v. New York City Dep't of Educ., 2013 WL 5438605, at *13 [S.D.N.Y. Sept. 27, 2013] [noting that with respect to drafting annual goals "[c]ontrary to Plaintiffs contention . . . , nothing in the state or federal statute requires that an IEP contain 'baseline levels of functioning' from which progress can be measured]). Instead, the annual goals must meet a simpler criterion—which is the annual goal must be "measurable." Accordingly, the IHO's conclusion on this issue must be reversed.⁶

3. Transition Services

As explained herein, the IHO erred in finding that the district did not develop an appropriate transition plan for the student. Under the IDEA, to the extent appropriate for each individual

⁶ Finally, even if the annual goals in the June 2011 IEP were drafted after the conclusion of the CSE meeting outside the presence of the parents, the IDEA does not require that annual goals must be drafted at the CSE meeting (see E.A.M. v. New York City Dep't of Educ., 2012 WL 4571794, at * 8 [S.D.N.Y. Sept. 29, 2012]).

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][b]).⁷

IEPs 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 focuses 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 (8 NYCRR 200.4[d][2][ix][e]).

Furthermore, transition services must be "based on the individual child's needs, taking into account the child's strengths, preferences, and interests" and must include "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 functional vocational evaluation" (20 U.S.C. § 1401[34][B]-[C]; 34 CFR 300.43[a][2]; 8 NYCRR 200.1[fff]).

The June IEP transition plan identified long term adult outcomes, albeit generally, and delineated in the instructional activities, community integration, post high school career exploration, and independent living expectations (Dist. Ex. 1 at pp. 12-13). In addition, the June 2011 CSE noted the student's post-secondary plans to attend college in the June 2011 IEP, and in testimony, the district school psychologist explained that the June 2011 IEP included a goal for developing the student's outlining and note-taking skills in preparation for "future endeavors, such as college" (Tr. p. 27; Dist. Ex. 1 at p. 12). The transition plan also identified the parties responsible for implementing the transition plan, including the parent, the student, and the school (Dist. Ex. 1 at pp. 12-13). Accordingly, the IHO's conclusion on this issue must be reversed.

Nonetheless, the hearing record also indicated the district did not complete a functional vocational assessment of the student (Tr. pp. 51, 288; Dist. Ex. 1 at p. 13). However, the district's failure to conduct a vocational assessment, although a procedural violation, does not necessarily render an IEP inadequate where the CSE relied on sufficient information (R.B. v. New York City

⁷ State regulations also require that "students age 12 and those referred to special education for the first time who are age 12 and over, shall receive an assessment that includes a review of school records and teacher assessments, and parent and student interviews to determine vocational skills, aptitudes and interests" (8 NYCRR 200.4[b][6][viii]).

Dep't of Educ., 2014 WL 1618383, at *7 [S.D.N.Y. March 26, 2014]). Under these circumstances, the district had sufficient information to determine the student's vocational skills, aptitudes, and interests and the failure to conduct a vocational assessment did not impede the student's right to a FAPE, significantly impede the parents' opportunity to participate in the decision making process, or cause a deprivation of educational benefits (see, e.g., R.B., 2014 WL 1618383, at *7; Scott v. New York City Dep't of Educ., 2014 WL 1225529, at *12 [S.D.N.Y. March 25, 2014]).

VII. Conclusion

Having determined that the evidence in the hearing record does not support the IHO's conclusion that the district failed to offer 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 Bay Ridge 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.

THE CROSS-APPEAL IS SUSTAINED.

IT IS ORDERED that the IHO's decision, dated January 14, 2013, is modified by reversing that portion which found that the district failed to offer the student a FAPE for the 2011-12 school year.

Dated: **Albany, New York**
 October 31, 2014

CAROL H. HAUGE
STATE REVIEW OFFICER