The University of the State of New York

The State Education Department
State Review Officer
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No. 13-102

Application of the NEW YORK CITY DEPARTMENT OF EDUCATION for review of a determination of a hearing officer relating to the provision of educational services to a student with a disability

Appearances:
Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for petitioner, Alexander M. Fong, Esq., of counsel

Law Offices of Lauren A. Baum, PC, attorneys for respondents, Richard A. Liese, 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. Petitioner (the district) appeals from the decision of an impartial hearing officer (IHO) which found that it failed to offer an appropriate educational program to respondents' (the parents') son and ordered it to reimburse the parents for the costs of the student's tuition at the Cooke Center for Learning and Development (Cooke) for the 2011-12 school year. The parents cross-appeal from the IHO's determination that the annual goals in the March 2011 IEP were sufficient. The appeal must be sustained. 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 28, 2011, to formulate the student's IEP for the 2011-12 school year (see generally Dist. Ex. 1). Finding that the student remained eligible for special education and related services as a student with an intellectual disability, the March 2011 CSE recommended a 12:1+1 special class placement and related services consisting of counseling, speech-language therapy, and occupational therapy (OT) (Dist. Ex. 1 at pp. 1, 13, 15).[1] By final notice of recommendation (FNR) dated June 10, 2011, the district summarized the special education and related services recommended in the March 2011 IEP, and identified the particular public school site to which the district assigned the student to attend for the 2011-12 school year (Dist. Ex. 3). In a letter dated August 4, 2011, the parents disagreed 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 Cooke (Dist. Ex. 4; see Dist. Ex. 3). In a due process complaint notice, dated October 3, 2012, the parents alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2011-12 school year (Parent Ex. A at pp. 1-5).

An impartial hearing convened on December 19, 2012 and concluded on April 15, 2013 after three days of proceedings (Tr. pp. 1-365). In a decision dated May 9, 2013, the IHO determined that the district failed to offer the student a FAPE for the 2011-12 school year, that Cooke was an appropriate unilateral placement, and that equitable considerations weighed in favor of the parents' request for an award of tuition reimbursement (IHO Decision at pp. 9-11). As relief, the IHO ordered the district to reimburse the parents for the cost of the student's tuition at Cooke for the 2011-12 school year (id. at p. 11).

IV. Appeal for State-Level Review

The parties' familiarity with the particular issues for review on appeal in the district's petition, the parents' answer and cross-appeal, and the district's answer to the cross-appeal thereto is also presumed and will not be recited here. The gravamen of the parties' dispute on appeal is whether the annual goals and transition services in the March 2011 IEP were sufficient, and therefore, offered the student a FAPE for the 2011-12 school year.

[1] While the IEP uses the term mental retardation, State regulations were amended in October 2011 to replace the term mental retardation with the term intellectual disability while retaining the same definition (compare 8 NYCRR 200.1[zz][7], with 34 CFR 300.8[c][6]). The student's eligibility for special education programs and related services as a student with an intellectual disability is not in dispute (34 CFR 300.8 [c][6]; 8 NYCRR 200.1[zz][7]).

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

A. March 2011 IEP

1. Annual Goals

Turning first to the annual goals in the March 2011 IEP, the parents contend that the IEP failed to include sufficient, appropriate, and objectively measureable annual goals and short-term objectives to address the student's needs, and that the IHO erred in finding that the annual goals were sufficient. As detailed below, a review of the hearing record does not support the parents' assertion, and therefore, there is no reason to disturb the IHO's determination that the annual goals were appropriate and designed to meet the educational needs of the student.

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 CSE (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]). Short-term objectives are required for a student who takes New York State alternate assessments (8 NYCRR 200.4[d][2][iv]).

The March 2011 IEP included approximately 10 annual goals with corresponding short-term objectives (Dist. Ex. 1 at pp. 7-12). The hearing record reflects that in creating the annual goals for the March 2011 IEP, the CSE considered the student's progress report, a November 2010 IEP, and the input by the parents and the student's then-current teachers at Cooke (Tr. pp. 17, 40-41, 284-85, 307; Dist. Ex. 2 at pp. 1-2; see Dist. Ex. 5; Parent Ex. B). To address the student's identified needs in problem solving and analysis, the March 2011 IEP included math annual goals addressing calculations, word problems, and problems that related to real-life situations (compare Dist. Ex. 1 at pp. 3-4, with Dist. Ex. 1 at pp. 7, 12). The March 2011 IEP included English language arts (ELA) annual goals to address the student's weaknesses in reading comprehension, focusing on a topic, and writing more complex sentences (compare Dist. Ex. 1 at p. 3, with Dist. Ex. 1 at pp. 7-8). The speech-language annual goals in the March 2011 IEP targeted the student's identified needs in the areas of reading fluency, comprehension, spontaneous speech, and conversational skills (compare Dist. Ex. 1 at p. 3, with Dist. Ex. 1 at pp. 8-9). The OT annual goal targeted the student's needs in improving fine and gross motor skills, pencil grasp, and self-care tasks (compare Dist. Ex. 1 at p. 6, with Dist. Ex. 1 at p. 10). The transition annual goal in the March 2011 IEP addressed the student's need to improve conversational skills and his ability to travel independently (compare Dist. Ex. 1 at pp. 3, 5, with Dist. Ex. 1 at p. 11). The March 2011 IEP also included a counseling annual goal to foster growth in the student's peer and adult interactions (id.).

Consistent with regulations, all of the annual goals in the March 2011 IEP specified the evaluative criteria (i.e., 4 out of 5 trials with 80 percent mastery), evaluation procedures (i.e., as observed by teacher), and schedules to measure progress (i.e., 3 reports of progress this school year) (Dist. Ex. 1 at pp. 7-12). Further, consistent with the March 2011 CSE's determination that

the student participate in the alternate assessment, all of the goals included short-term objectives (id.).

Additionally, the parents claim that the CSE "effectively photo-copied" the annual goals and short-term objectives from the student's prior IEP. Although a review of the two IEPs reveals that the nine annual goals in the November 2010 IEP were continued in the March 2011 IEP, the March 2011 IEP included an additional math annual goal involving solving problems that related to real life situations (compare Parent Ex. B at pp. 7-11, with Dist. Ex. 1 at pp. 7-12).[2] Further, most of the annual goals in the March 2011 IEP contained additional short-term objectives (id.). For example, one speech-language annual goal included two additional short-term objectives involving producing accurate written responses to "wh" questions and following multi-step verbal and written directions (compare Parent Ex. B at p. 8, with Dist. Ex. 1 at p. 8). Also, the written expression annual goal in the March 2011 IEP included additional short-term objectives involving describing the character, setting, and the story's problem and solution and applying new vocabulary in written samples (id.). The March 2011 IEP's OT annual goal included eight additional short-term objectives (compare Parent Ex. B at p. 10, with Dist. Ex. 1 at p. 10).

Finally, the parents assert that the annual goals in the March 2011 IEP were not appropriate for the 2011-12 school year because, according to the student's 2011-12 school year mathematics teacher at Cooke, the student mastered some of the math annual goals by September 2011 (Tr. pp. 135, 149). In this case, the IHO correctly determined that the March 2011 CSE could not know what annual goals may be mastered or accomplished by the student before the end of the 2010-11 school year and that the March 2011 IEP must be an "accurate snapshot" of the student at the time of its creation (see IHO Decision at pp. 9-10). Therefore, as detailed more fully below, the evidence in the hearing record supports a finding that the IHO correctly determined that the annual goals on the March 2011 IEP were sufficient.

In this case, although the student's math teacher at Cooke testified that the student had already met some of the short-term objectives in the March 2011 IEP as of September 2011, he also testified that at the time of the March 2011 CSE meeting, the student had not yet mastered the annual goals (Tr. pp. 149-51). The ELA teacher who attended the March 2011 CSE meeting testified that she did not participate in the creation of the annual goals, yet she did share some ideas for annual goals and discussed the student's progress and current performance (Tr. pp. 181-82). The district special education teacher indicated that the Cooke staff at the March 2011 CSE meeting were involved in the creation of the annual goals for the March 2011 IEP, and she further testified that neither the Cooke staff nor the parents indicated that they wanted additional annual goals in the March 2011 IEP (Tr. p. 41).[3]

In light of the above, consistent with the IHO's determination, the annual goals in the March 2011 IEP, together with their corresponding short-term objectives, were sufficiently designed to

[2] In addition, the November 2010 IEP was created just 4 months before the March 2011 CSE meeting (compare Parent Ex. B, at p. 1, with Dist. Ex. 1 at p. 1).

[3] Moreover, the evidence in the hearing record does not reflect that the parents objected to the timing of the March 2011 CSE meeting, requested to meet later in the school year to update the student's performance levels or to otherwise update the student's March 2011 IEP or the annual goals in the March 2011 IEP, or that the district thereafter denied any request by the parents for another CSE meeting.

meet the student's needs and to enable the student to be involved in and make progress in the general education curriculum.

2. Transition Services

Turning next to transition services, the IHO found that the transition services in the March 2011 IEP were "fatally deficient" in the areas of transition and vocational goals. Further, the parents contend in their cross-appeal that the transition services were generic and that the March 2011 CSE failed to conduct vocational assessments of the student. However, for the reasons detailed below, the evidence in the hearing record indicates that the IHO erred in finding that any deficiencies regarding the transition services in the March 2011 IEP rose to the level of a denial of a FAPE. Accordingly, the IHO's conclusion must be reversed.

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.

While there is no indication in the record that the March 2011 CSE conducted a formal vocational assessment of the student, the head of Cooke (headmaster) testified that the student's transition needs were assessed, although he also stated that he did not know what the assessments indicated as far the student's needs (Tr. pp. 207, 226-27). Further the headmaster testified that while Cooke staff generally provided the CSE with "extensive" transition planning and goals, in this case "it wasn't done" (Tr. pp. 245-46).

Notwithstanding the foregoing, the evidence in the hearing record indicates that in developing the transition services, the March 2011 CSE obtained information about the student's strengths and interests, needs, current vocational experiences and long-term outcomes from the

parents and Cooke staff (Tr. pp. 34-37, 67-68, 70-72, 303-06; Dist. Ex. 2 at p. 2). The present levels of performance in the March 2011 IEP identified the student's needs in the areas of problem solving, language, spontaneous speech, conversational skills, frustration, socially appropriate behavior, and self-care skills (Dist. Ex. 1 at pp. 3, 5-6). In addition, the present levels of performance in the March 2011 IEP indicated that the student participated in a transition program to support his long-term goal toward independence and a school internship at the school for the visual arts (id. at p. 5). The March 2011 IEP also noted the student's interest in sports, computers, and electronics (id.).

The headmaster testified that it was hard to know vocational outcomes for ninth graders and since interests often changed dramatically for students of this age, it would not be "prudent" to make decisions in this area too early (Tr. pp. 239-40). Further, in discussing transition services, the headmaster also testified that transition planning depended upon when a student would exit school and would vary depending on the student's age (Tr. p. 241). At the time of the March 2011 CSE meeting, the student was 15 years old and in the ninth grade (Tr. pp. 204-05, 249; Dist. Ex. 1 at p. 1). In this case, although the March 2011 CSE failed to conduct a functional vocational assessment of the student when developing the March 2011 IEP, the hearing record fails to contain sufficient evidence to find that such procedural inadequacy (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]).

Regarding transition goals, the district special education teacher who attended the March 2011 CSE meeting indicated that the CSE developed the IEP's long-term outcomes and post-secondary goals based on information provided by the parents and Cooke staff (Tr. p. 35; see Dist. Ex. 1 at pp. 2, 16). Although the IHO opined—and the special education teacher agreed—that the March 2011 IEP included only "very general" vocational goals, a review of the IEP reveals that it included long-term adult outcomes in the areas of community integration, post-secondary placement, independent living and employment supported by measureable annual goals (Tr. p. 81; Dist. Ex. 1 at pp. 7-12, 16). For example, the March 2011 IEP included long-term goals that the student would integrate into the community with support and be competitively employed with supports, which were augmented by the following annual goals: improving the student's pragmatic language skills and intelligibility, improving independent travel, improving appropriate interactions with peers and adults, and improving the student's ability to solve math problems that related to real life situations (compare Dist. Ex. 1 at p. 16, with Dist. Ex. 1 at pp. 7-12).

The Cooke headmaster did acknowledge in his testimony that the transition goals in the March 2011 IEP were "general" and written by the CSE for "just about every student" at Cooke (Tr. p. 230). Moreover, the assistant principal of the assigned public school site noted that the transition services did not fully describe what the student's interests were or what the student would be working toward (Tr. p. 118). However, although some parts of the transition services in the March 2011 IEP could be considered generic, a closer review of the IEP—as compared with the student's November 2010 IEP—revealed that in response to input from the March 2011 CSE members, the CSE made additions to the transition services to address the individual needs of the student (compare Dist. Ex. 1 at p. 16, with Parent Ex. B at p. 15; see Tr. pp. 37, 70-72). Specifically, in response to the parents' request at the March 2011 CSE meeting, the March 2011

IEP's coordinated set of transition activities included learning about finance and budgeting and shopping (Tr. p. 37; Dist. Exs. 1 at p. 16; 2 at p. 2).

In consideration of the foregoing, while the evidence in the hearing record supports the IHO's finding that certain aspects of the transition services in the student's March 2011 IEP did not entirely comport with statutory or regulatory requirements, the evidence in the hearing record does not demonstrate that the any inadequacies present in the recommended transition services 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, caused a deprivation of educational benefits, or otherwise caused substantive harm which rose to the level of a denial of a FAPE (see 20 U.S.C. § 1415[f][3][E][ii]; 34 CFR § 300.513[a][2]; 8 NYCRR 200.5[j][4]).

B. Challenges to the Assigned Public School Site

With respect to the parents' claims relating to the assigned public school site, 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' claims regarding the functional grouping of the students in the proposed classroom and the vocational opportunities at the assigned public school site 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 Tr. 204-05; Dist. Ex. 4), 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 demonstrates that the district sustained its burden to establish that it 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 the student's unilateral placement at Cooke was an appropriate placement or whether equitable considerations weighed in favor of the parents' request for relief (Burlington, 471 U.S. at 370; see M.C. v. Voluntown, 226 F.3d 60, 66 [2d Cir. 2000]). I have considered the remaining contentions and find it is unnecessary to address them in light of my determinations above.

THE APPEAL IS SUSTAINED.

THE CROSS-APPEAL IS DISMISSED.

IT IS ORDERED that the IHO's decision dated May 9, 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; and,

IT IS FURTHER ORDERED that the IHO's decision, dated May 9, 2013, is modified by reversing that portion which ordered the district to reimburse the parents for the costs of the student's tuition at Cooke for the 2011-12 school year.

Dated: **Albany, New York**
December 5, 2014

CAROL H. HAUGE
STATE REVIEW OFFICER