The University of the State of New York

**The State Education Department**
**State Review Officer**
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**No. 15-089**

**Application of a STUDENT WITH A DISABILITY, by her parent, 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:**
Moritt Hock Hamroff, LLP, attorneys for petitioner, Nancy A. Hampton, 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. Petitioner (the parent) appeals from the decision of an impartial hearing officer (IHO) which denied her request to be reimbursed for the costs of her daughter's tuition at the Rebecca School for the 2014-15 school year. The appeal must be dismissed.

### II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law § 4402; see 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[*l*]).

New York State has implemented a two-tiered system of administrative review to address disputed matters 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" (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][6]-[7]; 34 CFR 300.503[a][1]-[2], 300.507[a][1]). First, after an opportunity to engage in a resolution process, the parties appear at an impartial hearing conducted at the local level before an IHO (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j]). An IHO typically conducts a trial-type hearing regarding the matters in dispute in which the parties have the right to be accompanied and advised by counsel and certain other individuals with special knowledge or training; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed five business days before the hearing; and obtain a verbatim record of the proceeding (20 U.S.C. § 1415[f][2][A], [h][1]-[3]; 34 CFR 300.512[a][1]-[4]; 8 NYCRR 200.5[j][3][v], [vii], [xii]). The IHO must render and transmit a final written decision in the matter to the parties not later than 45 days after the expiration period or adjusted period for the resolution process (34 CFR 300.510[b][2], [c], 300.515[a]; 8 NYCRR 200.5[j][5]). A party may seek a specific extension of time of the 45-day timeline, which the IHO may grant in accordance with State and federal regulations (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5]). 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 subsequently 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]).

## III. Facts and Procedural History

Regarding the student's educational history, the hearing record reveals that the student was eligible for special education and attended a 12:1+1 special class placement with a 1:1 paraprofessional and related services in a district public school from first through eighth grades (Tr. pp. 116-18; Dist. Exs. 5 at p. 1; 6 at pp. 1-2; 14 at p. 2). Thereafter, the student began attending the Rebecca School for the 2013-14 school year (Tr. pp. 124, 197).[1]

[1] The Commissioner of Education has not approved the Rebecca School as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

A CSE convened on June 6, 2014, to develop an IEP for the student for the 2014-15 school year (Dist. Ex. 19 at pp. 1, 12-13, 17). Finding the student eligible for special education as a student with autism, the June 2014 CSE drafted an IEP recommending a 12-month school year program consisting of a 6:1+1 special class placement in a specialized school with the following related services: one 45-minute session per week of individual occupational therapy (OT), one 45-minute session per week of OT in a group, two 45-minute sessions per week of individual physical therapy (PT), two 45-minute session per week of individual speech-language therapy, one 45-minute session per week of speech-language therapy in a group, and one 45-minute session per week of individual counseling (id. at pp. 1, 12-14, 17).[2] The June 2014 IEP also provided for two periods of adapted physical education per week, one period of travel training per week, and one 60-minute session of parent counseling and training per month (id. at pp. 12-13).

In a prior written notice dated June 10, 2014, and a school location letter dated June 16, 2014, the district summarized the 6:1+1 special class placement and related services recommended in the June 2014 IEP and identified the particular public school site to which the district assigned the student to attend for the 2014-15 school year (Dist. Exs. 22 at p. 1; 23). By letter to the district dated June 17, 2014, the parent indicated that the June 2014 CSE meeting minutes were not accurate because the minutes stated that the student "ha[d] always been classified as [a student with] autis[m]," despite the parent's repeated requests to change the student's eligibility classification to autism "for many years" (Parent Ex. E at p. 1). The parent further noted that the CSE meeting minutes indicated that the she had "no specific concerns regarding the student's academics," which was not accurate (id.). In addition, the parent informed the district that she had not yet received the student's June 2014 IEP or a "final notice of recommendation for a school placement" (id.). By letter to the district dated June 20, 2014, the parent indicated that she received the "final notice of recommendation of school placement" on June 18, 2014, but had been unable to reach the "placement officer" in order to schedule a visit to the assigned public school site (Parent Ex. F at p. 1). The parent further indicated that she would unilaterally place the student at a "private school" at district expense if the CSE did not provide "an appropriate educational program" for the student (id.).

According to the program director at the Rebecca School, in or around June 2014, the parent signed an enrollment contract and began making tuition payments for the student's attendance at the Rebecca School for the 2014-15 school year (see Tr. pp. 155-56).

By letter to the parent dated August 26, 2014, the district acknowledged receipt of the parent's June 20, 2014, letter and informed the parent that, "without any additional information," the student's June 2014 IEP and the assigned public school site were appropriate for the student's needs (Parent Ex. G). The district also referenced an enclosed copy of the parent's due process rights and noted that, if the parent had "updated materials" regarding the student, the CSE would consider them (id.).

[2] The student's eligibility for special education programs and related services as a student with autism is not in dispute (see 34 CFR 300.8[c][1]; 8 NYCRR 200.1[zz][1]).

### A. Due Process Complaint Notice

In a due process complaint notice dated January 20, 2015, the parent alleged that the district failed to offer the student a FAPE for the 2014-15 school year and that the Rebecca School was an appropriate unilateral placement for the student (Dist. Ex. 1 at p. 2). Initially, with respect to the June 2014 CSE meeting minutes, the parent argued that they contained several incorrect statements regarding her concerns and the student's eligibility classification history (id.). The parent further argued that the CSE failed to correct the erroneous CSE meeting minutes upon the parent's request (id.).

With respect to the student's June 2014 IEP, the parent asserted that the annual goals contained in the IEP were "vague and overbroad" and the short-term objectives lacked measurable criteria (Dist. Ex. 1 at p. 2). Next, the parent alleged that the CSE changed the student's special class placement recommendation "without justification" from a 12:1+1 to a 6:1+1, the latter of which was a "more restrictive setting with respect to peer interaction and social needs" (id.). The parent further alleged that the CSE's recommendation for a 6:1+1 special class placement did not provide for an appropriate amount of "direct teacher assistance" (id.). Additionally, the parent argued that the IEP did not include the appropriate OT "interventions" for the student as discussed at the CSE meeting (id.). The parent also indicated that the IEP did not sufficiently address the student's oral-motor or sensory needs (id.). Next, the parent contended that the IEP failed to include any "music intervention" for the student (id.). The parent further contended that the IEP failed to include a transition plan or results from the student's vocational assessment (id.). In addition, the parent alleged that she was unable to reach "the placement officer" regarding the assigned public school site and that the district failed to respond to the parent's request for assistance in reaching the assigned school (id.). As relief, the parent requested "direct funding and costs" for the student's attendance at the Rebecca School for the 2014-15 school year (id.).

### B. Impartial Hearing Officer Decision

An impartial hearing convened on April 21, 2015 and concluded on June 3, 2015, after three days of proceedings (Tr. pp. 1-288).[3] In a decision dated July 28, 2015, the IHO found that the district offered the student a FAPE for the 2014-15 school year (see IHO Decision at pp. 10-22). Initially, the IHO found that the lack of an additional parent member at the June 2014 CSE meeting constituted a procedural violation but that the procedural violation did not rise to the level of a denial of a FAPE as the parent was "fully allowed to participate" at the CSE meeting (id. at pp. 10-11). In addition, the IHO found that the June 2014 IEP accurately reflected the evaluative information that was in front of the June 2014 CSE (id. at pp. 11-19).

Turning to the IEP, the IHO found that the annual goals were "sufficiently clear and measurable" (IHO Decision at pp. 21-22). With respect to the parent's argument that the CSE did not provide the student with enough "direct intervention," the IHO noted that the IEP contained

[3] Although the IHO indicated during the impartial hearing that the parties participated in a prehearing conference on March 9, 2015, which was memorialized in an email to the parties (Tr. p. 6), no record of the conference appears in the hearing record. The IHO is reminded of his obligation under State regulation to enter the transcript or written summary of the prehearing conference into the administrative hearing record (8 NYCRR 200.5[j][3][xi]).

supports for the student's management needs, including "hand over hand support for writing" and "teacher prompting," which constituted "directive intervention" by a teacher (id. at p. 20). Additionally, the IHO further noted that the IEP contained annual goals and related services that offered the student a "significant amount of individualized intervention" (id.). The IHO also agreed with the district's assertion that the parent's argument was "inconsistent[]" insofar as the parent argued both that the district's recommendation of a 6:1+1 special class placement was "too restrictive" and that the student needed more "direct intervention" (id). Next, with respect to the parent's argument that the IEP did not provide for an appropriate amount of OT for the student, the IHO found that the CSE's recommendation exceeded the amount of OT the student received at the Rebecca School (id.). With respect to the parent's argument that the IEP did not appropriately address the student's oral motor needs, the IHO found that a speech-language therapist could develop an "oral motor protocol" for the student and, therefore, that any failure to specify an "oral motor protocol" in the student's IEP did not rise to a denial of a FAPE given the speech-language therapy services identified in the IEP (id.). Lastly, the IHO found that, based on the evaluative information and progress the student made at the Rebecca School, the June 2014 IEP offered the student with the opportunity to progress in the least restrictive environment (LRE) (id. at p. 22).

Having concluded that the district offered the student a FAPE for the 2014-15 school year, the IHO found that it was not necessary to determine whether the student's unilateral placement at the Rebecca School was appropriate or whether equitable considerations weighed in favor of the parent's request for relief (IHO Decision at p. 22).

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

The parent appeals and asserts that the IHO erred in finding that the district offered the student a FAPE for the 2014-15 school year. Initially, the parent asserts that the student's lack of progress in the district public school in prior school years would have continued under the June 2014 IEP, given the IEP's inaccurate reflection of the student's needs and the district's continuing failure to recognize the student's needs as a student eligible for special education as a student with autism (which lack of understanding the parent asserts is reflected in the erroneous CSE meeting minutes). Additionally, the parent asserts that the June 2014 IEP did not include information from the district's OT and speech-language evaluations and that the June 2014 CSE did not discuss related services with any related services providers. Thus, the parent argues that, despite the IHO's extensive recitation of the content of the evaluative information available to the CSE, he erred in finding that the CSE actually reviewed the evaluation reports.

Turning to the June 2014 IEP, the parent asserts that the annual goals were prepared after the CSE meeting without the input of the student's teacher or service provider who knew the student. The parent further asserts that the annual goals and short-term objectives did not align with the student's present levels of performance and were vague and lacked measurable criteria. Specifically, the parent asserts that the short-term objectives did not include any method of measurability to determine whether they were achieved and did not include any level of teacher assistance or processing time necessary to reach the objectives. In addition, the parent argues that the June 2014 IEP did not include any fine-motor goals for the student. Next, the parent alleges that the June 2014 CSE's recommendation of a 6:1+1 special class placement was not appropriate because the student required "direct teacher assistance" in order to learn, which the parent asserts could only be accomplished in a smaller student-to-teacher ratio, such as a "2:1 or 1:1" (Pet. ¶ 11).

The parent further alleges that the IHO erred in finding that the student would have received "direct intervention" from related service providers because such providers are not "equivalent to direct teacher intervention for educational learning" (Pet. ¶ 12). Next, the parent alleges that the IEP did not address the student's sensory needs or include an appropriate recommendation for OT services for the student. Additionally, the parent contends that the IEP did not address the student's oral motor deficits or her propensity to choke. Also, the parent notes that the IEP did not include a recommendation for music therapy, notwithstanding that the Rebecca School social worker discussed the service at the CSE meeting. The parent also argues that the IEP failed to include vocational training or measurable post-secondary goals for the student. The parent further argues that the district failed to respond to her request for assistance in reaching the assigned public school site in order to schedule a visit and that this failure impeded "her right to participate in the placement decision-making process," which procedural violation the IHO inappropriately failed to address. Lastly, the parent contends that the Rebecca School was an appropriate unilateral placement for the student and that equitable considerations weigh in favor of her requested relief.

In an answer, the district responds to the parent's allegations with admissions and denials, and argues to uphold the IHO's decision in its entirety.

**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]). 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).

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]). 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 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).

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]), 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]).

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 2014 IEP

By way of background, the hearing record reveals that attendees at the June 2014 CSE meeting included a district representative, a district special education teacher, the parent, and the student's teacher and social worker from the Rebecca School (Dist. Ex. 20).[4] The prior written notice issued by the district indicates that the June 2014 CSE considered the following evaluative information to develop the student's IEP: the February 2013 social history report; the March 2013 psychoeducational evaluation report; the March 2013 OT evaluation report; the March 2013 PT evaluation report; the March 2013 assistive technology evaluation report; the March 2013 speech-language evaluation report; the March 2013 vocational assessment; and the May 2014 Rebecca School progress report (Dist. Ex. 22 at p. 2; see generally Dist. Exs. 5; 7-14; 18).[5, 6]

While not directly at issue, a description of the student's needs as summarized in the June 2014 IEP facilitates the discussion of whether the IEP included supports and services sufficient to address those needs. First, the June 2014 IEP set forth information from the March 2014

[4] The IHO exceeded his jurisdiction by making a sua sponte determination that the absence of an additional parent member during the June 2014 CSE meeting was a procedural violation because the parent did not raise this issue in her due process complaint notice (compare IHO Decision at pp. 10-11, with Dist. Ex. 1 at p. 2; see 20 U.S.C. § 1415[c][2][E][i][II], [f][3][B]; 34 CFR 300.508[d][3], 300.511[d]; 8 NYCRR 200.5[i][7][i], [j][1][ii]; see, e.g., E.H. v. New York City Dep't of Educ., 611 Fed. App'x 728, 730 [2d Cir. May 8, 2015]; B.M. v New York City Dep't of Educ., 569 Fed. App'x 57, 59 [2d Cir. June 18, 2014]). However, as the IHO found that the procedural violation did not result in a denial of a FAPE and as the parties have not appealed this portion of the IHO decision, the IHO's determination on this point is final and binding and will not be disturbed (see 34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]). The IHO is reminded, however, that State regulations were updated in January 2013 to reflect an August 1, 2012, amendment to the New York State Education Law providing that an additional parent member need not attend a CSE meeting unless specifically requested in writing at least 72 hours prior to the meeting by the parents or a member of the CSE (Educ. Law § 4402[1][b][1][a]; 8 NYCRR 200.3[a][1][viii]). Thus, by way of dicta, on this record in which there is an absence of a written request, the IHO's finding was very likely incorrect and at the time of the CSE meeting at issue, an additional parent member was not required by State statute or regulation.

[5] While arguable that the IHO also made a sua sponte finding that the June 2014 IEP accurately reflected the evaluative information that was before the CSE (IHO Decision at pp. 11-19), as the parent has focused her appeal of such finding on the extent to which the CSE considered the March 2013 OT and speech-language evaluation reports and, as the parent's due process complaint notice alleged that the student's sensory and oral-motor needs were not addressed in the IEP (Dist. Ex. 1 at p. 2), the CSE's consideration of such evaluation reports is, in any event, discussed below in the context of the parent's properly raised claims.

[6] Additionally, while not identified in the prior written notice, the hearing record also indicates that the CSE had before it a December 2013 Rebecca School progress report (Tr. p. 33; Dist. Ex. 21 at p. 1; see generally Dist. Ex. 17). If offered by the participants and therefore before the CSE, the district should be listing the documents such as private school progress reports in the prior written notice for a student. The hearing record also includes a March 2013 speech-language progress report completed by the district and a March 2013 assistive technology evaluation addendum report that predate the June 2014 CSE meeting (see generally Dist. Exs. 6; 10); however, it is unclear whether or not the CSE had these documents before it (see Dist. Exs. 21 at p. 1; 22 at p. 2).

psychoeducational evaluation report (Dist. Exs. 5 at pp. 1-4; 19 at pp. 1-2). The IEP indicated that the evaluator was unable to assess the student's cognitive functioning with administration of the Wechsler Intelligence Scale for Children-Fourth Edition (Dist. Ex. 19 at p. 1). Administration of the Vineland Adaptive Behavior Scales, Second Edition, with the teacher and the parent as informants, yielded standard scores in the low range in the areas of adaptive behavior, communication, daily living skills, and socialization (id.). The IEP also reported that administration of the Gilliam Autism Rating Scale-Second Edition resulted in a score indicating a "possibility of [a]utism" (id.). With respect to academic skills, the IEP indicated that results could not be obtained as a result of administration of the Woodcock-Johnson III Tests of Achievement but that informal assessment indicated that the student was able to identify letters of the alphabet and numbers, as well as some shapes and colors (id. at pp. 1-2).

The June 2014 IEP also reported information provided by the student's teacher (Dist. Ex. 19 at 2). Specifically, the IEP indicated that the student's functioning in math and English language arts was at the kindergarten level (id. at pp. 2, 3, 17). The IEP indicated that the student could identify letters, her name, peers, functional site words, days of the week, and names of various animals (id.). The IEP indicated that she was working on pre-reading skills, visual tracking skills, turning pages of a book, and identifying pictures and objects (id.). The IEP reported that the student could express her wants and needs verbally and could speak in full sentences (id.). As for listening comprehension, with multiple readings and visual supports, the student could answer "who" and "what" questions (id.). For writing, the IEP indicated that, while the student did not yet write independently, she could verbalize answers, was able to "do hand over hand writing," was able to type with one finger, and was working on forming letters (id.). As for math, the IEP noted the students ability to recognize numbers one through ten and indicated that, with some supports, she was working on: "the concept of 1:1 correspondence after 10"; concepts of "more and less," "over and under," and "before and after"; and time (id. at p. 3). The IEP acknowledged that the student had not yet mastered identification of coins and bills or the concept of adding objects (id.). As for executive functioning, the IEP listed that the student needed sensory support to focus her attention and could "disengage and shut down at times" (id.). The IEP noted that the student's "learning style" was "multi modal" and that she would often repeat things that she heard (id.).

With respect to the student's social/emotional needs, the June 2014 IEP described the student as social and a good helper (Dist. Ex. 19 at p. 4). The IEP reported information from the teacher: that the student had a preferred peer; that, with prompting and support she would initiate with peers; and that she consistently responded to peers, at times nonverbally through smiling or laughter (id. at pp. 3, 4). As for adults, the IEP noted the student consistently initiated engagement (id.). The IEP indicated that the student did not exhibit any behavioral concerns that would warrant a behavioral intervention plan (id. at pp. 3, 5).

As for the student's physical needs, the IEP reported that the student had received a diagnosis for hypothyroidism, for which she took medication, and which impacted her energy level, weight, and ability to engage in physical activities (Dist. Ex. 19 at p. 4). In addition, the IEP indicated that the student was born with low muscle tone and slow metabolism, that the student's depth perception was an area of concern, that the student continued to work on toilet training skills, and that the student engaged in an oral motor protocol prior to eating (id.). The IEP noted the student's gravitational insecurity and indicated that she benefited from activities that involved "crossing mid line" and that supported the student's visual spatial and perceptual functioning (id.).

As for sensory supports, the IEP noted that the student benefited from related services, as well as a sensory diet with vestibular, proprioceptive, and tactile input (id.).

**1. Annual Goals and Short-Term Objectives**

Turning to the parent's arguments regarding the appropriateness of the annual goals in the June 2014 IEP, 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 is required to include the evaluative criteria, evaluation procedures, and schedules to be used to measure the student's progress toward meeting the annual goal (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 instructional objectives or benchmarks—described as "measurable intermediate steps between the student's present levels of performance and the measurable annual goal"—are required for students who participate in alternate assessment (8 NYCRR 200.4[d][2][iv]; see 20 U.S.C. §1414[d][1][A][i][I][cc]; 34 CFR 300.320[a][2][ii]).

In developing the annual goals in the June 2014 IEP, the district representative testified that the June 2014 CSE discussed the student's present levels of performance—including her reading, writing, and math skills, social functioning, physical concerns, and management needs—and indicated that the goals were "written based on that" information (Tr. pp. 35-36). In particular, the district representative testified that two academic goals were developed by using information "relayed" to the CSE from the student's Rebecca School teacher (Tr. p. 46). The district representative further stated that "notes were taken at the meeting" and the goals were "finalized" and "typed into the IEP" after the meeting (Tr. pp. 35, 46, 71). Even if the parent properly raised a claim regarding when the goals were drafted (see Dist. Ex. 1 at p. 2), under circumstances similar to the present case, courts have held that it is permissible to finalize a student's annual goals after the CSE meeting so long as it does not "seriously infringe" on the parent's opportunity to participate in the creation of the IEP (S.B. v. New York City Dep't of Educ., 2015 WL 3919116, at *6-*7 [S.D.N.Y. June 25, 2015]; E.A.M. v. New York City Dep't of Educ., 2012 WL 4571794, at *8 [S.D.N.Y. Sept. 29, 2012]; S.F. v. New York City Dep't of Educ., 2011 WL 5419847, at *10-*11 [S.D.N.Y. Nov. 9, 2011]). In this instance, based on the participation of the Rebecca School special education teacher and social worker, as well as that of the parent, the hearing record shows that the parent's opportunity to participate in the CSE meeting was not infringed as a consequence of when the goals were finalized (Tr. pp. 36-37; Dist. Exs. 19 at p. 2; 20).

Turning to the June 2013 IEP, a review thereof reveals that the CSE included 11 annual goals to address the student's needs in the areas of academics, social/emotional development, fine and gross motor skills, speech-language skills, and pre-vocational skills (Dist. Ex. 19 at pp. 7-12). For example, academic goals addressed the students need to develop functional literacy and math skills, number sense, and basic math concepts (id. at p. 8). Short-term objectives related to these goals included turning the pages in a book, identifying sight words, answering "wh" questions, counting with one-to-one correspondence, understanding "more" and "less," and following a schedule, which aligned with the student's needs as identified in the May 2014 Rebecca School progress report (compare Dist. Ex. 18 at pp. 3-6, with Dist. Ex. 19 at pp. 7-8). The counseling

goal focused on improving social/emotional functioning and included short-term objectives related to recognizing negative emotions, which targeted a need identified in the May 2014 Rebecca School progress report (compare Dist. Ex. 18 at p. 2, with Dist. Ex. 19 at p. 8). The IEP additionally included annual goals that targeted improving the student's gross motor skills, accompanied by nine short-term objectives—including crossing midline, improving bilateral coordination, improving core strength, using alternating foot pattern on stairs, and stepping up and down off uneven surfaces—that were identified as areas of need in the March 2013 PT evaluation report and in the May 2014 Rebecca School progress report (compare Dist. Ex. 13, and Dist. Ex. 18 at p. 7-8, with Dist. Ex. 19 at p. 8). The speech-language goals in the June 2014 IEP focused on improving pragmatic language, improving oral-motor skills, improving functional life skills, and improving receptive language skills and contained 12 short-term objectives that included, initiating interaction with peers, maintaining eye contact, following a daily oral-motor protocol, following one and two-step directions, and answering "wh" questions about functional things in the classroom and community, which aligned with the student's needs as identified in the March 2013 speech-language evaluation report and the May 2014 Rebecca School progress report (compare Dist. Ex. 7 at p. 5, and Dist. Ex. 18 at pp. 8-10, with Dist. Ex. 19 at pp. 10-11). Additionally, the goals included in the June 2014 IEP contained evaluative criteria (i.e., 80% of the time), a method for evaluating progress (i.e., teacher observation, teacher-made materials, student writing samples, observations, and checklists), and an evaluation schedule (i.e., one time per week) (Dist. Ex. 19 at pp. 7-12).

While the parent correctly argues that some of annual goals in the June 2014 IEP are overly broad (i.e., student will "develop literacy skills that are functional") (Dist. Ex. 19 at p. 7), courts generally have been reluctant to find a denial of a FAPE on the basis of deficient annual goals where, as is the case here, the corresponding short-term objectives mitigate the defect by providing sufficient specificity to evaluate the student's progress (A.D. v. New York City Dep't of Educ., 2013 WL 1155570, at *10-*11 [S.D.N.Y. Mar. 19, 2013]; J.L. v. City Sch. Dist., 2013 WL 625064, at *13 [S.D.N.Y. Feb. 20, 2013]). The parent additionally argues that some of the goals and short-term objectives were not aligned with the student's then-current functioning. For example, the parent points to testimony of the student's Rebecca School teacher and classroom supervisor for the 2014-15 school year that, because the student had not yet achieved answering basic "who" and "what" questions, the literacy goal inappropriately set forth short-term objectives that the student accomplish answering abstract "where" are "why" questions (Tr. pp. 208-09, 211-12, 215; Dist. Ex. 19 at p. 7). Review of the literacy goal in the June 2014 IEP shows that it includes objectives relating to "who," "when," "where," "what," and "why" questions (Dist. Ex. 19 at p. 7). Moreover, the Rebecca School progress report indicated that the student could answer "simple 'wh' ('who' and 'what') questions with visual support and restating the question" (Dist. Ex. 18 at p. 4), which tends to support the inclusion of the more abstract "wh" questions as short-term objectives. In any event, as a whole, the short-term objectives aligned with the student's abilities and, to the extent some could be deemed more ambitious, their inclusion does not result in a finding that the entire goal was inappropriate to meet the student's needs, particularly given the management strategies set forth in the June 204 IEP that would be available to help the student succeed (Dist. Ex. 19 at pp. 5, 7; see A.M. v. New York City Dep't of Educ., 964 F. Supp. 2d 270, 285 [S.D.N.Y. 2013]).

With respect to the parent's contention that the June 2014 IEP did not contain any fine-motor goals, a review of the hearing record reveals that the IEP included goals related to improving activities of daily living skills, improving visual scanning and visual processing, and improving

coordination and sensory processing, and contained 14 short-term objectives that addressed fine motor needs (i.e., toileting and dressing skills, closing buttons, snaps and zippers, and tying shoes), which related to the student's fine motor needs as identified in the March 2013 OT evaluation report, the May 2014 Rebecca School progress report, and the June 2014 IEP (compare Dist. Ex. 8 at pp. 3-6, and Dist. Ex. 18 at p. 6, with Dist. Ex. 19 at pp. 4, 9-10). The parent specifically contends that the June 2014 IEP lacked a fine motor goal related to writing; however, an IEP does not need to identify annual goals for every one of a student's deficits in order to offer a FAPE (R.B. v. New York City Dep't of Educ., 2013 WL 5438605, at *14 [S.D.N.Y. Sept. 27, 2013], aff'd 589 Fed. App'x 572 [2d Cir. Oct. 29, 2014]; J.L., 2013 WL 625064, at *13), and the issue when assessing whether a FAPE has been offered to a student is not whether an IEP is perfect but whether, as a whole, it is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; see also Karl v. Bd. of Educ., 736 F.2d 873, 877 [2d Cir. 1984] [finding that, although a single component of an IEP may be so deficient as to deny a FAPE, the educational benefits flowing from an IEP must be determined from the combination of offerings rather than the single components viewed apart from the whole]). Moreover, while not included as a specific fine motor goal, the student's needs related to writing were addressed by inclusion of hand over hand support for writing as a support for the student and by the short-term objectives accompanying the ELA goal—namely, providing that the student would: form letters, upper case or lower case, with decreasing hand over hand support, and identify keys on a keyboard for typing (Dist. Ex. 18 at pp. 5, 7).

The evidence leads to the conclusion that the CSE would be able to evaluate the student's rate of the progress toward these goals, even if the goals themselves were not perfect. Thus, overall, the evidence in the hearing record demonstrates that the annual goals in the June 2014 IEP, combined with the corresponding short-term objectives, were adequate to address the student's needs and provide for an appropriate method of measurement or evaluative procedure (see, e.g., P.K. v. New York City Dep't of Educ., 819 F. Supp. 2d 90, 109 [E.D.N.Y. 2011] [noting reluctance to find a denial of a FAPE based on failures in IEPs to identify annual goals or methods of measuring progress], aff'd, 526 Fed. App'x 135 [2d Cir. May 21, 2013]).

**2. 6:1+1 Special Class Placement**

Next, the parent asserts that the June 2014 CSE recommended a change in placement from a 12:1+1 special class to a 6:1+1 special class in a specialized school without justification. The parent further asserts that a 6:1+1 special class would not provide the student with an appropriate amount of "direct teacher assistance" (Pet. ¶ 11). A review of the hearing record does not support the parent's assertions.

In the instant case, the June 2014 CSE recommended a 12-month school year program in a 6:1+1 special class placement—together with adapted physical education, travel training, annual goals and short-term objectives, related services, and strategies to address the student's management needs—for the 2014-15 school year (Dist. Ex. 19 at pp. 12-13). State regulation provides that a 6:1+1 special class placement is designed for students "whose management needs are determined to be highly intensive, and requiring a high degree of individualized attention and intervention" (8 NYCRR 200.6[h][4][ii][a]). At the time of the June 2014 CSE meeting, the student was a 15 year old high school student and exhibited significant deficits in cognition, academic skills, social/emotional functioning, language and communication skills, oral motor

skills, fine and gross motor skills, sensory processing, and adaptive skills, and required adult support throughout the day (Dist. Exs. 19 at pp. 1-4, 5, 7, 8, 13, 14, 18). As noted above, the hearing record indicates that, prior to enrolling in the Rebecca School for the 2013-14 school year, the student attended a 12:1+1 special class placement in a district public school and was assigned a 1:1 paraprofessional (Tr. pp. 116-18; Dist. Exs. 5 at p. 1; 6 at pp. 1-2; 14 at p. 2). For the 2013-14 school year, the student attended an 8:1+3 class at the Rebecca School and did not have a 1:1 paraprofessional (Tr. pp. 102, 117; Dist. Ex. 5 at p. 1).

Initially, the parent argues that the June 2014 CSE changed the student's special class placement from a 12:1+1 to a 6:1+1 special class without justification. However, the parent's claim has no merit because, in reaching its decision to recommend a 6:1+1 special class placement, the evidence in the hearing record demonstrates that the CSE considered and rejected a number of other program options because they would not adequately meet the student's needs. For example, the hearing record indicates that the June 2014 CSE considered both 12:1+1 and 8:1+1 special classes in a specialized school, but ruled these options out as being "too large and insufficiently supportive," and the CSE specifically noted that the student required a "smaller student to teacher ratio" in order to address her "specific constellation of needs" (Dist. Exs. 19 at p. 19; 22 at p. 2). Furthermore, the hearing record reflects that, during the June 2014 CSE meeting, the parent specifically requested that the CSE avoid recommending a 1:1 paraprofessional for the student for the 2014-15 school year because she thought such a service would inhibit the student's independence (Dist. Exs. 19 a p. 4; 21 at p. 2). The district representative testified that the June 2014 CSE considered the parent's assertion that the student was making progress in an 8:1+3 classroom at Rebecca School, as well as her belief that the 8:1+3 ratio was "ideal" for the student (Tr. p. 52). Moreover, the district representative also indicated that the June 2014 CSE's decision to recommend a 6:1+1 special class placement was influenced by the students need for a "smaller setting with more adult support," "a smaller ratio," and "fewer students" (Tr. p. 101). According to the district representative, the June 2014 CSE listened to both the parent and Rebecca School staff and agreed that the student needed "greater adult support" than would be provided in the 12:1+1 setting, and, in light of this, the June 2014 CSE determined that a 6:1+1 classroom would be an appropriate setting for the student (Tr. p. 52). In light of the CSE's above considerations, which included the input of the parent and the student's educational history up to that point, the CSE's recommendation for the 6:1+1 special class was a reasonable compromise to achieve a sufficient amount of support in the classroom without the assignment of a dedicated 1:1 paraprofessional for the student and, as such, may be afforded some amount of deference (see Lessard v. Wilton-Lyndeborough Coop. Sch. Dist., 592 F.3d 267, 270 [1st Cir. 2010] [noting that "the underlying judgment" of those having primary responsibility for formulating a student's IEP "is given considerable weight"]; E.S. v. Katonah-Lewisboro Sch. Dist., 742 F. Supp. 2d 417, 436 [S.D.N.Y. 2010] ["The mere fact that a separately hired expert has recommended different programming does nothing to change [the] deference to the district and its trained educators"], aff'd, 487 Fed. App'x 619 [2d Cir. July 6, 2012]; Z.D. v. Niskayuna Cent. Sch. Dist., 2009 WL 1748794, at *6 [N.D.N.Y. June 19, 2009] [explaining that deference is frequently given to the

school district over the opinion of outside experts]).[7] While the parent may have preferred the class ratio at the Rebecca School, districts are not required to replicate the identical setting used in private schools (see, e.g., Z.D., 2009 WL 1748794, at *6; Watson v. Kingston City Sch. Dist., 325 F.Supp.2d 141, 145 [N.D.N.Y. 2004]).[8]

Turning to the parent's contention that the 6:1+1 special class placement was denied the student a FAPE because it did not offer the student an appropriate amount of "direct teacher assistance," the evidence in the hearing record indicates that the June 2014 IEP appropriately acknowledged the student's need for such support and recommended an appropriate program designed to provide the level of direct teacher intervention that the student's needs warranted (see Dist. Ex. 19 at pp. 2-5, 7-8, 12-13). To be sure, the student presented with significant special education needs; however, the June 2014 IEP set forth a highly supportive educational program and the evidence does not reveal any additional needs of significance that required teacher intervention in addition to that already identified in the IEP. Similarly, the Rebecca School social worker testified that, in terms of "teacher support," the student required a"2:1 or, sometimes, a 1:1 ratio (Tr. p. 263) but did not describe the factors upon which she based that conclusion or articulate instances when the student needed 2:1 or 1:1 support. Review of the evaluative information before the CSE also does not reveal the student's need for additional teacher intervention (see generally Dist. Exs. 5; 7-14; 18). Specifically, the March 2013 OT evaluation report and March 2013 PT evaluation report indicated that the student required supervision, support, step-by-step cueing, and assistance with classroom tasks, and suggested strategies such as simple cues with fewer words, extra time to process information, color-coded materials, and visual aids (Dist. Exs. 8 at pp. 3, 7; 13 at pp. 2, 4, 6). Additionally, the May 2014 Rebecca School progress report described that the student required "maximum adult support" on various tasks; however, in describing such support, referred to strategies, such as "verbal and gestural cues," "high affect encouragement," "verbal prompting," "gestural redirection," and "hand over hand assistance" (Dist. Ex. 18 at pp. 5, 6), all

[7] This might not be the case if the CSE recommended the same or a similar educational program as prior school years, pursuant to which the student had failed to make any progress (see Carlisle Area Sch. v. Scott P., 62 F.3d 520, 534 [3d Cir. 1995]). Here, however, the CSE noted parent concerns, the student's progress or lack thereof in different settings, as well as the particular needs of the student as identified in the evaluative information, and, therefore, struck an appropriate balance for the student.

[8] The parent also asserts that the IHO erred in finding her claim with respect to the restrictiveness of the classroom conflicted with her argument that the IEP offered insufficient direct teacher intervention. Regardless of its consistency with the parent's other claim, the parent's argument misunderstands LRE requirements, which are not defined by the particular special education student-to-adult staff ratio present in the placements considered by the CSE, in that they do not present varying degree of access to nondisabled peers (see 20 U.S.C. § 1412[a][5][A]; 34 CFR 300.114[a][2]; 300.116[b], [c]; 300.117; 8 NYCRR 200.1[cc]; 200.6[a][1]). Instead, as described by the Second Circuit, LRE determinations are made by considering the extent to which the student has been placed with nondisabled peers; that is, "whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child,' and, if not, then 'whether the school has mainstreamed the child to the maximum extent appropriate'" (Newington, 546 F.3d at 120, quoting Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1048, [5th Cir. 1989]; see J.G. v. Kiryas Joel Union Free Sch. Dist., 777 F. Supp. 2d 606, 639 [S.D.N.Y. 2011]). In any event, the hearing record does not support a finding that the student needed access to more than five other students for socialization purposes in order to benefit from instruction and, while the Rebecca School social worker testified that she was concerned about a 6:1+1 special class because the student was social and such a class size did not offer many peers for socialization, there is no indication in the hearing record as to whether or not she expressed this concern at the CSE meeting (Tr. pp. 263-64; see Tr. pp. 274-75; Dist. Ex. 21 at pp. 1-2). Accordingly, this argument is also without merit.

of which, by their nature, are common strategies used in a special class. The progress report also indicated that the student generally remained regulated throughout the day (id. at p. 1). The report clarified that there were "not many" precipitating factors that caused the student distress but related that, when distressed, the student could become emotionally dysregulated and "shut down" or become "frozen in space" (id. at p. 2). The report described that, when dysregulation occurred, Rebecca School staff used strategies such as "calming breaths, comforting language, narration of [the student's] surroundings and singing," as well as "verbal narration and gestural support" (id.).

The June 2014 IEP reflected many of these supports and, additionally included provision for direct teacher assistance (see Tr. p. 57; Dist. Ex. 19 at pp. 2-5, 7-8, 12-13). Notably, the IEP reflected the student's need for "a lot of direct teacher assistance" (Dist. Ex. 19 at p. 4). Moreover, the IEP identified the student's needs for, among other supports, hand over hand assistance for writing, prompting and support to initiate with peers, visual cues, teacher prompting, multi-modal instruction, and directions broken down (id. at pp. 2-5). The IEP also provided for teacher support by including the use of visual cues, teacher prompts, and teacher support within the ELA and math goals (id. at pp. 7-8). These management needs, in combination with those supports identified in the IEP targeted to address the student's sensory needs, discussed in more detail below, are appropriately described as "highly intensive, and requiring a high degree of individualized attention and intervention," consistent with the State regulatory definition of a 6:1+1 special class (8 NYCRR 200.6[h][4][ii][a]).

In view of the foregoing evidence, there is insufficient basis in the hearing record reason to depart from the IHO's conclusion that a 12-month school year program in a 6:1+1 special class placement, together with adapted physical education, travel training, annual goals and short-term objectives, related services, and strategies to address the student's management needs, offered the student adequate individualized support and was reasonably calculated to enable the student to receive educational benefits for the 2014-15 school year. While I can sympathize with the parent in this case, who may desire a more ideal program for her daughter that would offer even greater educational benefits through the auspices of special education, it does not follow that the district has failed in meeting the more modest standard offering the student an appropriate program, because 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). The IDEA 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, 873 F.2d at 567 [citations omitted]).

**3. Sensory Needs and Occupational Therapy**

On appeal from the IHO's decision, the parent claims that the June 2014 IEP failed to adequately address the student's sensory needs or to include a sufficient amount of OT to address the student's sensory and fine motor deficits, including additional "push in" OT as recommended by the Rebecca School teacher. A review of the evidence in the hearing record does not support the parent's assertions.

With respect to the student's sensory needs, the May 2014 Rebecca Report indicated that the student needed regular sensory input throughout the day, which was provided through an individualized sensory diet (Dist. Ex. 18 at p. 6). Correspondingly, the June 2014 IEP indicated

that the student needed a five to ten minute sensory diet implemented every one and one-half to two hours (Dist. Ex. 19 at p. 4). In order to address the student's sensory needs, the June 2014 IEP included management needs—specifically: sensory supports; vestibular, tactile, and proprioceptive input; and a sensory diet (id. at p. 5). Additionally, the IEP contained annual goals and short-term objectives to address the student's sensory needs, including improving coordination and sensory processing through engaging in a daily sensory diet (id. at pp. 9-10). The parent's contention that such sensory supports and strategies could not be implemented in the recommended 6:1+1 special class placement without additional OT services (and, specifically, OT services delivered in the classroom) is without merit. As discussed above, the 6:1+1 special class offered a supportive placement to address the student's highly intensive management needs, including her sensory needs.

The June 2014 CSE also recommended that the student receive one 45-minute session per week of individual OT and one 45-minute session per week of OT in a group (Dist. Ex. 19 at p. 12-13). As to the frequency and duration of this recommendation, the hearing record indicates that the June 2014 CSE discussed an increase in the student's OT services relative to the 2013-14 school year (see Tr. pp. 125, 135-37, 259). The hearing record shows that, at the time of the June 2014 CSE meeting, the student was receiving one 30-minute session of individual OT and one 30-minute session of group OT at the Rebecca School (Dist. Ex. 18 at p. 1). With respect to the June 2014 IEP OT recommendation, the district representative testified that the frequency was based on the student's IEP from the prior school year and the frequency of services the student received at Rebecca during the 2013-14 school year and that the duration was increased to reflect the length of a "high school" period, which is "generally 45 minutes" (Tr. pp. 53-54, 96-97). Thus, the June 2014 IEP reflected an increase in the duration of services relative to what the student received at the Rebecca School (compare Dist. Ex. 18 at p. 6, with Dist. Ex. 19 at pp. 12-13). The parent points to a recommendation in a December 2014 Rebecca School progress report for an increase in OT services as evidence that the OT mandate included in the June 2014 IEP was inappropriate (see Parent Ex. K at pp. 7-8); however, as this report postdated the June 2014 CSE meeting, it constitutes retrospective evidence that may not be relied upon to attack the appropriateness of the June 2014 IEP (see C.L.K. v. Arlington Sch. Dist., 2013 WL 6818376, at *13 [S.D.N.Y. Dec. 23, 2013] [finding that "a substantively appropriate IEP may not be rendered inadequate through testimony and exhibits that were not before the CSE about subsequent events and evaluations that seek to alter the information available to the CSE"]). In contrast, the OT recommended in the June 2014 IEP was consistent with (and exceeded in duration) the information and recommendations included in the evaluative information available to the CSE, including the March 2014 OT evaluation report and the May 2014 Rebecca School progress report (Dist. Exs. 8 at pp. 1, 7; 18 at p. 6).

As to the location of the OT services, State regulation provides that an IEP shall describe the "anticipated frequency, duration and location . . . for each of the recommended programs and services" to be provided to the student (8 NYCRR 200.4[d][2][v][b][7]; see also "Guide to Quality Individualized Education Program (IEP) Development and Implementation," at pp. 44-45, Office of Special Educ. [Dec. 2010] [indicating that the location for services should be clearly stated], available at http://www.p12.nysed.gov/specialed/publications/iepguidance/IEPguideDec2010.pdf). Although the hearing record indicates that, during the June 2014 CSE meeting, there may have been some discussion of incorporating "push in" OT services into the student's program (see Tr. pp. 136, 259; but see Tr. pp. 83-84, 98), the March 2013 OT evaluation

report considered by the CSE recommended that the student receive OT services in a "separate location" (Dist. Ex. 8 at pp. 1, 7). The May 2014 Rebecca School progress report indicated that the student received OT during the 2013-14 school year "in the classroom, hallways, the therapist's office, the sensory gym, and the community" (Dist. Ex. 18 at p. 6). The hearing record shows that the June 2014 IEP recommended OT services be delivered in a "separate location" at "provider's discretion" (Dist. Ex. 19 at pp. 12-13). In this case, the June 2014 CSE failed to clearly specify the location in which the student's OT services would be provided, instead leaving discretion to the provider to choose a location (id.; see 8 NYCRR 200.4[d][2][v][b][7]; "Guide to Quality Individualized Education Program (IEP) Development and Implementation," at pp. 44-45). However, assuming this constituted a procedural violation, the evidence in the hearing record does not support a finding that it resulted in a denial of a FAPE. Rather, the June 2014 CSE's recommendation, while lacking the specificity contemplated by State regulation and State guidance, was consistent with the evaluative information before the CSE while leaving flexibility to the provider to perhaps pursue a "push-in" model for a more integrated approach consistent with the discussion at the CSE meeting and the apparent diversity in delivery locations used at the Rebecca School (see Tr. pp. Dist. Exs. 8 at pp. 1, 7; 18 at p. 6). Further, there is no indication in the hearing record that the recommended location of the OT services would have prevented the student from demonstrating progress in fine-motor and sensory-processing skills.

Based on the foregoing, the evidence in the hearing record shows that the June 2014 IEP contained sufficient information regarding the student's sensory needs, included appropriate OT goals, reflected an increase in the duration of OT services, and, while failing to detail a location for OT services with specificity, recommended sufficient and appropriate OT services for the student to receive educational benefit. Accordingly, there is no basis in the hearing record to disturb the IHO's determination that the June 2014 CSE recommended appropriate OT services for the student for the 2014-15 school year.

**4. Oral-Motor Needs**

Next, the parent contends that the March 2013 speech-language evaluation failed to recognize the student's oral-motor deficits and that the June 2014 IEP failed to include specific oral-motor exercises and/or indicate the student's "propensity" to choke. A review of the hearing record does not support the parent's contentions.

Although the March 2013 speech-language evaluation report included a cursory oral-motor examination and concluded that student had adequate structure, function, and range of motion for speech and non-speech tasks, a review of the hearing record reveals that information before the June 2014 CSE described that the student had low muscle tone and oral-motor deficits, including " limited airflow, difficulty sliding her jaw and transferring her food from side to side," and decreased "awareness, strength and coordination" in her mouth (Dist. Exs. 5 at p. 1; 7 at pp. 1, 3; 8 at pp. 4, 6; 13 at p. 6; 18 at p. 10). The evidence in the hearing record shows that, while the student was able to feed herself, she was unable to monitor the amount of food she put in her mouth, required supervision while eating, and needed verbal cues to eat slowly and chew sufficiently (Dist. Exs. 5 at p. 1; 8 at pp. 4, 6; 13 at p. 6). The May 2014 Rebecca School progress report described that the student benefited from oral input prior to mealtime (Dist. Ex. 18 at p. 10). The report detailed the sensory input and oral exercises in which the student engaged as part of her oral motor protocol, including facial massage, check and upper lip stretches, bilateral tongue hugs,

and "chewing hierarchy level one" exercises, which entailed chewing, stabilizing, and laterally transferring in her mouth a chewy tube or stick-shaped food (id.). The report noted the student's success with these types of input and noted that the student's abilities in this area would be addressed in speech-language therapy (id.). With respect to the student's alleged propensity for choking, while the March 2013 OT evaluation reflected that, according to the student's health paraprofessional, the student tended to stuff her mouth with food creating a potential choking hazard, there is no indication that the CSE was informed or had before it information that the student actually exhibited a "propensity" for choking, as the parent alleges (Dist. Ex. 8 at pp.4-6; see generally Dist. Exs. 5; 7; 9-14; 18).[9]

The June 2014 IEP did describe the student's oral-motor deficits within the present levels of performance and specifically indicated that, prior to eating, the student "engage[d] in an oral motor protocol to help her to chew consistently with her teeth[,] to [not] overstuff her mouth and [to] transfer food from side to side" (Dist. Ex. 19 at p. 4). The IEP also indicated that the student had "reduced sensitivity" in her mouth and that the oral motor protocol was needed prior to eating each day (id.). The IEP included a speech-language therapy goal for improving oral-motor skills with a short-term objective related to following an oral-motor protocol (id. at p. 10). The June 2014 IEP recommended two 45-minute individual speech-language therapy sessions per week and one 45-minute group speech-language therapy session per week (id. at p. 13). The parent asserts that the IEP was insufficiently detailed regarding the oral motor protocol and failed to specify exercises or supports. However, at the impartial hearing, the student's Rebecca School speech-language pathologist for the 2014-15 school year affirmed that "oral motor protocol" is a term of art in the field of speech-language services and admitted that any speech-language therapist should understand this term (Tr. pp. 236, 245). She acknowledged that a speech-language therapist meeting the student for the first time would evaluate the student's oral-motor function and use "professional opinion" to develop exercises to target those deficits (Tr. p. 238).

Based on the foregoing, the evidence in the hearing record demonstrates that, while the March 2013 speech-language evaluation report did not recognize the student's oral-motor deficits, these deficits were well documented in the other evaluative information available to the June 2014 CSE and were reflected in the June 2014 IEP (see E.E. v New York City Dep't of Educ., 2014 WL 4332092, at *10 [SDNY Aug. 21, 2014] [finding a student's feeding needs sufficiently addressed in the IEP]). Moreover, based upon the evidence in the hearing record, any failure to include information about a propensity to choke or to detail a specific oral-motor protocol in the June 2014 IEP did not rise to a denial of a FAPE.

**5. Music Therapy**

The parent asserts that the June 2014 IEP failed to include music therapy despite the Rebecca School social worker's suggestion at the June 2014 CSE and the student's interest in music. However, while the parents' desire for the student to receive music therapy is understandable, under the circumstances presented, it is not a service that the district was required to include in the May 2012 IEP in order to offer the student a FAPE (see N.K. v. New York City

[9] While the parent cites the testimony of the student's Rebecca School speech-language pathologist for the 2014-15 school year that the student exhibited a propensity to choke, there is no indication that the CSE was made aware of the same (see Tr. pp. 235, 240; Parent Ex. M at pp. 3, 4; see also C.L.K., 2013 WL 6818376, at *13).

Dep't of Educ., 961 F.Supp.2d 577, 592-93 [S.D.N.Y. 2013] [finding that music therapy was not necessary to provide a FAPE]).

At the impartial hearing, the district representative testified that, "to the best of her recollection," the student was not receiving music therapy at the Rebecca School during the 2013-14 school year but recalled that the June 2014 CSE "discussed the fact that music was a motivator" for the student and included this information in the present levels of performance on the June 2014 IEP (Tr. p. 54; Dist. Exs. 19 at p. 3; 21 at p. 2). The district representative emphasized that music therapy was not listed as a related service on the May 2014 Rebecca School progress report and indicated that the May 2014 progress report referred to "music integration" within the description of the student's weekly program (Tr. pp. 55-56; Dist. Ex. 18 at p. 1). The Rebecca School program director initially testified that the student received music therapy "one time per week" but, when questioned further, could not remember if the student was receiving music therapy during the time period leading up to the June 2014 CSE (Tr. pp. 185, 226). The Rebecca School social worker testified that music therapy was discussed at the June 2014 CSE and opined that it was a "more appropriate" means through which the student could express her "social/emotional and internal thoughts," as compared to traditional counseling, because the student was not a symbolic thinker (Tr. p. 260). She added that the June 2014 CSE responded to this discussion by adding counseling to the student's IEP (Tr. pp. 260-61). The Rebecca School social worker further testified that the student received "music therapy" during the 2013-14 school year and clarified that a "licensed music therapist" provided music therapy, either in or out of the classroom as a form of counseling (Tr. p. 265-66). When asked if music therapy was treated like a related service—and therefore described in Rebecca School progress reports—the social worker indicated that "typically individual [music therapy] is listed on the IEP" but "group is often not" and added that the student had "group music therapy" during the 2013-14 school year (Tr. pp. 266-67). Nevertheless, according to the May 2014 Rebecca School progress report, while the student enjoyed and was motivated by music, she was able to initiate interaction, share attention, and communicate with peers and adults outside of musical activities (Dist. Ex. 18 at pp. 1-2). Accordingly, although the student may have benefitted from music therapy due to her love of music, the hearing record does not support a finding that the student would not have also benefitted from other forms of counseling such that the failure to provide music therapy constituted a denial of a FAPE (see Walczak, 142 F.3d at 132).

**6. Transition Services**

The parent next asserts that the June 2014 IEP failed to include vocational training and measureable post-secondary goals. As more fully explained below, the hearing record does not support the parent's contentions.

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]).[10] An IEP must also include the transition services needed to assist the student in reaching those goals (id.). 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]; 8 NYCRR 200.1[fff]). It has been found that "the failure to provide a transition plan is a procedural flaw" (M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6, *9 [S.D.N.Y. Mar. 21, 2013], citing Klein Indep. Sch. Dist. v. Hovem, 690 F.3d 390, 398 [5th Cir. 2012] and Bd. of Educ. v. Ross, 486 F.3d 267, 276 [7th Cir. 2007]; see also A.D., 2013 WL 1155570, at *11).

In this case, the hearing record reveals that the district conducted a vocational assessment of the student through parent and teacher interview in March 2013, which was considered by the June 2014 CSE in drafting the IEP (Tr. pp. 33-34; Dist. Exs. 11 at pp. 1-3; 12 at pp. 1-2; 21 at p. 1). The June 2014 IEP contained measureable post-secondary goals to address long-term goals for living, working, and learning as an adult that were directly related to the March 2013 vocational assessment (compare Dist. Ex. 11 at pp. 1-2, with Dist. Ex. 19 at p. 6). Consistent with the vocational assessment, the June 2014 IEP outlined that the student required adult support with shopping, traveling, and financial management, and reflected the parent's desire for the student to have additional schooling after high school (compare Dist. Ex. 11 at pp. 1-2, with Dist. Ex. 19 at p. 6). It also reflected the parent's interest in having the student obtain supportive employment in a job related to cooking, music, or interacting with people (id.). With respect to independent living, the June 2014 IEP noted that the parent intended to have the student reside at home for as long as possible, and hoped for the student to be as independent as possible (Dist. Ex. 19 at p. 6). Additionally, in considering transition needs, the June 2014 IEP noted that the parent would explore state and local agencies that could provide the student support after high school (id.).

To further address the student's post-secondary and transition needs, the June 2014 IEP indicated that the assigned school would be responsible for the transition activities necessary to facilitate the student's movement from school to post-school activities, including instruction, related services, community experiences, employment and independent living objectives, and daily living skills(Dist. Ex. 19 at p. 15). To meet the student's identified post-secondary goals, the June 2014 CSE recommended the following: (1) instruction to facilitate following 2-step novel directions; (2) related services to address dressing and toileting skills; and (3) community experiences to facilitate travel training and skills related to identifying strangers and helpers in the community (id.). In addition, the June 2014 IEP addressed the student's transition needs by focusing on her financial management skills, including recognizing and knowing the value of bills and coins, shopping for food and clothing and ordering food in a restaurant (id.). The district representative testified that the measureable post-secondary goals (i.e., "requires adult support with shopping…") were addressed through transition activities (i.e., "shopping for food and clothing"),

[10] In addition, State regulations require districts to conduct vocational assessments of students age 12 to determine their "vocational skills, aptitudes and interests" (8 NYCRR 200.4[b][6][viii]).

and through corresponding goals and short-term objectives (i.e., "visual scanning skills") (Tr. pp. 91-93; Dist. Ex. 19 at pp. 6, 9, 15).

Based on the above-information, the hearing record supports a finding that, as a whole, the June 2014 IEP adequately set forth the student's transition needs and post-secondary goals consistent with State regulation.

**B. Assigned Public School Site—Parental Visitation**

Turning next to the parent's allegation that the district's failure to respond to her request for assistance in reaching the assigned public school site in order to schedule a visit significantly impeded her opportunity to participate in the decision-making process concerning the provision of a FAPE, the applicable law and the evidence in the hearing record do not support this claim.

The IDEA sets forth procedural safeguards that include providing parents 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]). While parents are entitled to participate in the determination of the type of placement set forth on their child's IEP, the IDEA confers no rights on parents with regard to school site selection (C.F. v. New York City Dep't of Educ., 746 F.3d 68, 79 [2d Cir. 2014]; see Luo v. Baldwin Union Free Sch. Dist., 2013 WL 1182232, at *5 [E.D.N.Y. Mar. 21, 2013], aff'd, 556 Fed. App'x 1 [2d Cir. Dec. 23, 2013]; J.L., 2013 WL 625064, at *10; see also R.E., 694 F.3d at 191-92 [finding that a district may select a specific public school site without the advice of the parents]; F.L. v. New York City Dep't of Educ., 2012 WL 4891748, at *11 [S.D.N.Y. Oct. 16, 2012] [noting that parents are not procedurally entitled to participate in decisions regarding public school site selection], aff'd, 553 Fed. App'x 2 [2d Cir. Jan. 8, 2014]).

Rather, once a district has met its legal obligation to have an IEP in effect for a student with a disability at the beginning of each school year (34 CFR 300.323[a]; 8 NYCRR 200.4[e][1][ii]; Cerra, 427 F.3d at 194; K.L. v. New York City Dep't of Educ., 2012 WL 4017822, at *13 [S.D.N.Y. Aug. 23, 2012], aff'd, 530 Fed. App'x 81 [2d Cir. July 24, 2013]; B.P. v. New York City Dep't of Educ., 841 F. Supp. 2d 605, 614 [E.D.N.Y. 2012]; Tarlowe, 2008 WL 2736027, at *6) and a parent consents to a district's provision of special education services, such services must be provided by the district in conformity with the student's IEP (20 U.S.C. § 1401 [9][D]; 34 CFR 300.17 [d]; see 20 U.S.C. § 1414 [d]; 34 CFR 300.320). A district's assignment of a student to a particular public school site is an administrative decision; however, it must be made in conformance with the CSE's educational placement recommendation, and the district is not permitted to assign the student to a school that cannot implement the IEP (M.O. v. New York City Dep't of Educ., 793 F.3d 236, 244-45 [2d Cir. 2015]; R.E., 694 F.3d at 191-92; T.Y. v. New York City Dep't of Educ., 584 F.3d 412, 419-20 [2d Cir. 2009]; see C.F., 746 F.3d at 79).

Additionally, the United States Department of Education has opined that the IDEA does not provide a general entitlement to parents of students with disabilities to observe proposed school placement options for their children (Letter to Mamas, 42 IDELR 10 [OSEP 2004]); see G.J. v. Muscogee County Sch. Dist., 668 F.3d 1258, 1267 [11th Cir. 2012] [noting that rather than

forbidding or mandating access for parents, "the process contemplates cooperation between parents and school administrators"]; J.C. v New York City Dep't of Educ., 2015 WL 1499389, at *24 n.14 [S.D.N.Y. Mar. 31, 2015] [acknowledging that courts have rejected the argument that parents have a right under the IDEA to visit assigned schools and listing authority]; E.A.M., 2012 WL 4571794, at *11 [finding that a district has no obligation to allow a parent to visit an assigned school or proposed classroom before the recommendation is finalized or prior to the school year]; S.F., 2011 WL 5419847, at *12 [same]; see also Hanson v. Smith, 212 F. Supp. 2d 474, 487 [D. Md. 2002] [noting that the IDEA contains no requirement for districts to permit parents to visit assigned public school sites]).[11] Similarly, parents may not direct through veto a district's efforts to implement a student's IEP by personally viewing and approving the assigned public school site (T.Y., 584 F.3d at 420; see C.F., 746 F.3d at 79). On the other hand, there is some district court authority indicating that a parent has a right to obtain information about an assigned public school site (F.B. v New York City Dep't of Educ., 2015 WL 5564446, at *11-*18 [S.D.N.Y. Sept. 21, 2015] [finding "implicit" in the reasoning of the Second Circuit's decision in M.O. the proposition that parents have the right to obtain information on which to form a judgment about an assigned school]; V.S. v New York City Dep't of Educ., 25 F. Supp. 3d 295, 299-301 [E.D.N.Y. 2014] [finding that the "parent's right to meaningfully participate in the school selection process" should be considered, rather than, the "parent's right to determine the actual school selection"]; C.U. v. New York City Dep't of Educ., 2014 WL 2207997, at *14-*16 [S.D.N.Y. May 27, 2014] [holding that "parents have the procedural right to evaluate the school assignment" and "acquire relevant information about" it]).

In this case, there is no dispute that the June 2014 IEP was completed prior to the beginning of the 2014-15 school year and that, by letter dated June 16, 2014, the district provided the parent with notice of the particular public school site to which it assigned to the student to attend for the 2014-15 school year (Dist. Ex. 23).[12] Rather, the parent's only claim relating to the assigned public school site arises from her difficulty reaching the school to schedule a visit and the district's failure to offer help in contacting the school after the parent's letter to the district dated June 20, 2014 (Parent Ex. F at p. 1). The parent's claim must fail because, consistent with its legal obligation, described above, the district developed an IEP and provided a school assignment prior to the time it became obligated to implement the June 2014 IEP (Dist. Exs. 19; 23), and the parent has not argued facts that support a finding that the district failed to properly communicate with her regarding the assigned public site. That is, even if a parent's difficulty obtaining information about an assigned public school site might, under certain circumstances, present facts in support of a

[11] Nothing in this decision is intended to discourage districts from offering parents the opportunity to view school or classroom placements, as such opportunities can only foster the collaborative process between parents and districts envisioned by Congress as the "core of the [IDEA]" (Schaffer v. Weast, 546 U.S. 49, 53 [2005], citing Rowley, 458 U.S. at 205-06; see also 20 U.S.C. § 1400[c][5]).

[12] In her memorandum of law, the parent does cite the district's standard operating procedure manual for the proposition that the June 16, 2015, school location notice was untimely (see Parent Mem. of Law at p. 13); however, there is no allegation or evidence that the timing of the school location letter in this matter had any bearing on the parent's decision to reject the June 2014 IEP and/or unilaterally place the student. Furthermore, I would, in any event, be unable to find that a deviation from a district's internal policies that does not constitute a violation of State or federal law would, by itself, constitute a denial of a FAPE warranting tuition reimbursement (see, e.g., M.P.G., 2010 WL 3398256, at *9-*10; Application of the Dep't of Educ., Appeal No. 13-032; Application of the Dep't of Educ., Appeal No. 12-103).

procedural violation, here the parent does not set forth facts in the hearing record supportive of a finding that, despite her efforts, she could not visit the assigned school site.

The school location letter stated that the parent could visit the recommended school site and set forth the name, telephone number, and address of an individual that the parent could contact for assistance in arranging the visit (Dist. Ex. 23). In her June 20, 2014 letter to the district, the parent indicated she had "been unable to reach the placement officer to schedule a visit to the recommended school" before her upcoming vacation (Parent Ex. F at p. 1; see Tr. p. 128). It is unclear from the hearing record whether the referred to "placement officer" was the same individual identified in the school location letter (see Dist. Ex. 23; Parent Ex. F at p. 1). Further, the parent's efforts to reach the "placement officer" were not specified in the hearing record beyond the general assertion that the parent made an "attempt" to reach him or her (Tr. p. 128; Parent Ex. F at p. 1).[13] In addition, the letter did not set forth any requests for information about the school and did not request that the district help her schedule a tour (Parent Ex. F at p. 1). Instead the letter noted her inability to make a decision about a school without viewing it and stated her intent to unilaterally place the student if the district did "not work with [the parent] to provide an appropriate educational program" (id.). The June 20, 2014 letter reveals that the parent rejected the district recommended program at that time and instead chose to enroll the student in a nonpublic school of her choosing (see Parent Ex. F; see also Tr. pp. 155-56).[14] Finally, the parent testified that she did not contact the district after her June 20, 2014 letter and that, after she sent her letter, she "waited for them to respond" (Tr. p. 139). There was nothing that indicated that the IEP would be "implemented at a proposed school that lacks the services required by the IEP"(M.O., 793 F.3d 236, 244 (2d Cir. 2015).

Based on the foregoing, the evidence in the hearing record does not establish that the parent "made good-faith attempts to acquire relevant information" about the assigned public school site, which she was denied as a consequence of a "series of lapses" or prolonged "unresponsiveness" by the district (F.B., 2015 WL 5564446, at *14, *16, *18; see C.U., 23 F. Supp. 3d at 227-28). Accordingly, the parent's claim that the district impeded her opportunity to participate in the decision-making process concerning the student's educational program or placement is without merit.

[13] Further, assertions in the parent's memorandum of law that the parent "repeatedly called the [p]lacement [o]fficer" and subsequently "attempted to advise the CSE by fax, phone calls and letter" of her difficulties are without citation to the hearing record beyond the school location letter and the parent's June 20, 2014 letter to the district (Parent Mem. of Law at p. 13; see Dist. Ex. 23; Parent Ex. F). The parent's June 20, 2014 letter was addressed to a CSE "chairperson" and accompanied by three facsimile error reports indicating that the letter was not delivered on June 20, 2014 by facsimile (Parent Ex. F at pp. 1-4). Although the letter indicates that it was also delivered by mail and the district's August 26, 2014 acknowledges its ultimate receipt of the parent's letter, the timing of the same is unclear (Parent Exs. F at p. 1; G) as there was no further testimony or evidence offered at the impartial hearing relating to the delivery of the letter.

[14] Although the hearing record does not include a copy of that the enrollment contract with the Rebecca School for the student's attendance for the 2014-15 school year, testimony at the impartial hearing indicates that the parent entered the contract around the time that she prepared the June 20, 2014 letter to the district (see Tr. pp. 142, 155-56).

## VII. Conclusion

Having determined that the evidence in the hearing record establishes 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 whether the student's unilateral placement at the Rebecca School was an appropriate placement or whether equitable considerations would have supported an award of tuition reimbursement (Burlington, 471 U.S. at 370; see M.C. v. Voluntown, 226 F.3d 60, 66 [2d Cir. 2000]). In light of these determinations, I need not address the parties' remaining contentions.

**THE APPEAL IS DISMISSED.**

**Dated:** **Albany, New York**
**November 4, 2015**

**JUSTYN P. BATES**
**STATE REVIEW OFFICER**