The University of the State of New York

The State Education Department
State Review Officer
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No. 13-092

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, Brian J. Reimels, Esq., of counsel

DLA Piper, LLP, attorneys for respondents, Justin J. Farrell, Esq. and Shanai T. Watson, 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') daughter and ordered it to pay the costs of the student's tuition and paraprofessional services at the Cooke Center for Learning and Development (Cooke) for the 2012-13 school year. The appeal must be sustained.

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 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]).[1]

III. Facts and Procedural History

In this case, the student's educational history was described as part of a previous administrative appeal regarding the 2011-12 school year (see Application of the Dep't of Educ., Appeal No. 12-145 [finding that the 15:1 special class placement for instruction in English Language arts (ELA), mathematics, social studies, and sciences at a community school together with related services and the services of a full-time, 1:1 paraprofessional offered the student a free appropriate public education (FAPE) in the least restrictive environment (LRE) for the 2011-12 school year]).[2]

With respect to the instant appeal, 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 in detail here.[3] Briefly, however, for the 2012-13 school year the CSE convened on March 8, 2012 to conduct the student's annual review and to develop the student's individualized education program (IEP) for the 2012-13 school year (see generally Dist. Ex. 4 at pp. 1-19). The March 2012 CSE recommended a 15:1 special class placement for instruction in ELA, mathematics, social studies, and sciences at a community school together with two sessions per week of special education teacher support services (SETSS) to support the student in mathematics; related services (speech-language therapy, occupational therapy, physical therapy, and counseling); and the services of a full-time, 1:1 health paraprofessional (id. at pp. 9-11, 15).[4] In a letter dated August 24, 2012, the parents disagreed with the recommendations contained in the March 2012 IEP, as well as with the particular public school site to which the district assigned the student to attend for the 2012-13

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

[2] In reaching the decision to recommend a 15:1 special class placement at a community school with related services and a 1:1 health paraprofessional, the April 2011 CSE considered an April 2009 psychoeducational evaluation report, a November 2010 classroom observation report, and a December 2010 Cooke progress report (see Application of the Dep't of Educ., Appeal No. 12-145). At that time and per teacher report, the student functioned at a beginning fourth grade level in reading and a mid-third grade level in mathematics (id.).

[3] Any additional facts necessary to the disposition of the parties' arguments will be set forth below as necessary to resolve the issues presented in this appeal.

[4] On April 4, 2012, the parents executed an enrollment contract with Cooke for the student's attendance during the 2012-13 school year (see Dist. Ex. 13 at pp. 1-2).

school year and, as a result, notified the district of their intent to unilaterally place the student at Cooke (see Dist. Exs. 9; 12 at pp. 1-2). In a due process complaint notice, dated September 7, 2012, the parents alleged that the district failed to offer the student a FAPE for the 2012-13 school year (see Dist. Ex. 1 at pp. 1-4).

On November 16, 2012, the IHO conducted a prehearing conference, and on November 30, 2012, the parties proceeded to an impartial hearing, which concluded on March 14, 2012, after six days of proceedings (see Tr. pp. 1-412). In a decision dated April 18, 2013, the IHO determined that the district failed to offer the student a FAPE for the 2012-13 school year, that Cooke was an appropriate unilateral placement, and that equitable considerations weighed in favor of the parents' requested relief (see IHO Decision at pp. 8-13). As such, the IHO ordered the district to directly pay Cooke for the costs of the student's tuition and 1:1 paraprofessional services for the 2012-13 school year (id. at p. 13).

IV. Appeal for State-Level Review

The parties' familiarity with the particular issues for review on appeal in the district's petition for review and the parents' answer thereto is also presumed and will not be recited here.[5] The gravamen of the parties' dispute on appeal is whether the March 2012 CSE's recommendation for a 15:1 special class placement at a community school with SETSS, related services, and the services of a full-time, 1:1 health paraprofessional was appropriate for the student. The parties additionally argue the merits of certain claims that the IHO did not address, including the parents' claims relating to the appropriateness of the assigned public school site. Further, the district also alleges that the IHO erred in sua sponte finding that the March 2012 CSE failed to conduct any new or additional testing prior to making its recommendations since the parents did not raise this issue in the due process complaint notice and, further, the IHO erred in finding that equitable considerations weighed in favor of the parents' requested relief.

In addition, the district argues that the IHO improperly found that the district school psychologist did not testify in a credible manner at the impartial hearing because her "testimony was vague an[d] contradictory" (IHO Decision at p. 8). An SRO gives due deference to the credibility findings of an IHO, unless non-testimonial evidence in the hearing record justifies a contrary conclusion or the hearing record, read in its entirety, compels a contrary conclusion (see Carlisle Area School v. Scott P., 62 F.3d 520, 524, 528-29 [3d Cir. 1995]; M.W. v. New York City Dep't of Educ., 869 F. Supp. 2d 320, 330 [E.D.N.Y. 2012]; Bd. of Educ. v. Schaefer, 84 A.D.3d 795, 796 [2d Dep't 2011]; Application of a Student with a Disability, Appeal No. 12-076). However, I agree with the district that the IHO provided insufficient rationale for the bare assertion that the district school psychologist's testimony was not credible when compared to that of the remaining witnesses, especially when, as here, the IHO failed to point to any examples to support

[5] The district does not appeal the IHO's determination that Cooke was an appropriate unilateral placement for the student for the 2012-13 school year; as such, the IHO's finding is final and binding upon the parties and will not be addressed (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; see M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6-*7, *10 [S.D.N.Y. Mar. 21, 2013]; IHO Decision at pp. 10-12).

this conclusion,[6] and the non-testimonial evidence before the CSE lead to the opposite conclusion—that the district offered the student a program that may not have been perfect, but nevertheless was sufficient to offer the student a FAPE. Consequently, I find that the IHO made findings relating to the weight to be accorded to the testimony of various witnesses, rather than their credibility (see, e.g., Matrejek, 471 F. Supp. 2d at 429; Application of the Bd. of Educ., Appeal No. 08-074). Accordingly, to the extent that I disagree with certain of the IHO's findings of fact, it is with regard to the weight to be accorded to various witnesses' testimony, not their credibility (see L.K. v. Northeast Sch. Dist., 2013 WL 1149065, at *16 [S.D.N.Y. Mar. 19, 2013]; E.C. v. Bd. of Educ., 2013 WL 1091321, at *18 [S.D.N.Y. Mar. 15, 2013]; J.L. v. City Sch. Dist. of New York, 2013 WL 625064, at *9-*10 [S.D.N.Y. Feb. 20, 2013]; F.B. v. New York City Dep't of Educ., 2013 WL 592664, at *8 [S.D.N.Y. Feb. 14, 2013]).

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.,

[6] The witness indicated with candor that she lacked an independent recollection of most aspects of the March 2012 CSE meeting and needed to refer to documentary evidence to complete many of her answers, but other than differing in opinion from the parents' witnesses as to the ultimate conclusion of what constituted an appropriate program and why—which frequently occurs when parties are engaged in this kind of unilateral placement dispute—its difficult to discern what the IHO meant when indicating that the witness' testimony was "contradictory." The IHO's questions suggest that he believed that updated assessment of the student's cognitive levels should have been conducted, but the psychologist explained why she believed such cognitive testing would not yield significant new information useful in addressing the student's needs. She also explained that the CSE relied upon reports from Cooke as further described below.

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 final criterion for a reimbursement award is that the parents' claim must be supported by equitable considerations. Equitable considerations are relevant to fashioning relief under the IDEA (Burlington, 471 U.S. at 374; R.E., 694 F.3d at 185, 194; M.C. v. Voluntown Bd. of Educ., 226 F.3d 60, 68 [2d Cir. 2000]; see Carter, 510 U.S. at 16 ["Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable"]). The IDEA also provides that reimbursement may be reduced or denied when parents fail to challenge the appropriateness of an IEP in a timely manner, fail to make their child available for evaluation by the district, or upon a finding of unreasonableness with respect to the actions taken by the parents (20 U.S.C. § 1412[a][10][C][iii]; 34 CFR 300.148[d]; see S.W. v. New York City Dep't of Educ., 646 F. Supp. 2d 346, 362-64 [S.D.N.Y. 2009]; Thies v. New York City Bd. of Educ., 2008 WL 344728 [S.D.N.Y. Feb. 4, 2008]; M.V. v. Shenendehowa Cent. Sch. Dist., 2008 WL 53181, at *5 [N.D.N.Y. Jan. 2, 2008]; Bettinger v. New York City Bd. of Educ., 2007 WL 4208560, at *4 [S.D.N.Y. Nov. 20, 2007]; Carmel Cent. Sch. Dist. v. V.P., 373 F. Supp. 2d 402, 417-18 [S.D.N.Y. 2005], aff'd, 192 Fed. App'x 62, 2006 WL 2335140 [2d Cir. Aug. 9, 2006]; Werner v. Clarkstown Cent. Sch. Dist., 363 F. Supp. 2d 656, 660-61 [S.D.N.Y. 2005]; see also Voluntown, 226 F.3d at 69 n.9; Wolfe v. Taconic Hills Cent. Sch. Dist., 167 F. Supp. 2d 530, 533 [N.D.N.Y. 2001]).

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

In this case, a review of the evidence in the hearing record shows that—consistent with the district's arguments—the IHO erred in finding that the 15:1 special class placement at a community school—together with SETSS to address the student's significant mathematics needs, related services, and the services of a 1:1 paraprofessional—failed to offer the student a FAPE for the 2012-13 school year.

In particular, the evidence in the hearing record established that similar to the April 2011 CSE, the March 2012 CSE reviewed an April 2009 psychoeducational evaluation, a November 2011 classroom observation report, and a March 2012 Cooke progress report to develop the student's 2012-13 IEP (compare Application of the Dep't of Educ., Appeal No. 12-145, with Dist. Exs. 5-6; 10; see also Tr. pp. 82-83, 146-47). In addition, the district school psychologist testified that the Cooke participants at the March 2012 CSE meeting reported the results of the student's most recent testing, which included the administration of the Group Math Assessment and Diagnostic Evaluation (GMADE), the Group Reading Assessment and Diagnostic Evaluation (GRADE), and the Social Language Development Test (SDLT) (see Tr. p. 82; Dist. Ex. 4 at p. 1; see also Dist. Ex. 3 at pp. 1-5). A review of the student's March 2012 IEP demonstrates that the present levels of performance and individual needs sections of the IEP—including the student's current academic, social/emotional, and health and physical development—were consistent with evaluative information available to the March 2012 CSE (Tr. pp. 82-84, compare Dist. Ex. 4 at pp. 1-3, with Dist. Ex. 5, and Dist. Ex. 6, and Dist. Ex. 10). According to the March 2012 IEP and per teacher report, the student functioned at a third grade level in mathematics and at a sixth to seventh grade level in reading (see Dist. Ex. 4 at pp. 1, 15; see also Dist. Ex. 3 at pp. 1-4).[7]

In reaching the decision to recommend a 15:1 special class placement at a community school—together with SETSS for additional support in mathematics, related services, and a 1:1 health paraprofessional—the district school psychologist testified that the March 2012 CSE considered the student's current levels of functioning, the parents' concern that the student take Regents courses, and the student's LRE (see Tr. pp. 101-04). In particular, the district school psychologist testified that the March 2012 CSE specifically recommended SETSS to address the student's delays in mathematics and to further support the parents' request for the student to participate in Regents assessments (see Tr. p. 101).[8] A review of the March 2012 IEP further indicates that the CSE recommended adapted physical education, special transportation, and a variety of strategies to address the student's management needs, such as the assistance of a 1:1 paraprofessional for her physical needs; the use of checklists and graphic organizers; the use of scaffolding, repetition, and review when presented with new materials; small groups for the purposes of discussions; a scribe for writing; a small class environment; individual attention from the teacher; the use of a calculator, pencil, and paper for working; opportunities for generalization;

[7] At that time of the April 2011 CSE meeting for the 2011-12 school year, the student functioned at a beginning fourth grade level in reading and a mid-third grade level in mathematics (see Application of the Dep't of Educ., Appeal No. 12-145).

[8] The school psychologist noted on cross-examination that the IEP itself did not identify a diploma objective.

breaks for self-care; verbal reminders and visual cues; assistive technology; large print; and direct teacher modeling (see Dist. Ex. 4 at pp. 1-3, 14-15). Additionally, the March 2012 CSE recommended two sessions per week of SETSS to further meet the student's mathematics needs, as well as a group computer service for assistive technology and testing accommodations (id. at pp. 9, 11-12). Based on the forgoing and in light of the student's progress during the 2011-12 school year and the additional support of SETSS, the special education and related services recommended in the March 2012 IEP aligned with the student's performance profile and were reasonably calculated to enable the student to receive educational benefits, and thus, offered the student a FAPE in the LRE for the 2012-13 school year (see Tr. pp. 101-04; Dist. Exs. 3; 4 at pp. 1-4, 9-12, 14-15).[9]

With respect to the parents' claims relating to the assigned public school site, which the IHO did not address in any detail and which the parties continue to argue on appeal, in this instance, similar to the reasons set forth in other decisions issued by the Office of State Review (e.g., Application of the Dep't of Educ., Appeal No. 14-025; Application of the Dep't of Educ., Appeal No. 12-090; Application of a Student with a Disability, Appeal No. 13-237), the parents' assertions are without merit. The parents' claims regarding the class size at the assigned public school site and the functional grouping of the students in the proposed classroom (see Dist. Ex. 1 at p. 3), turn on how the March 2012 IEP would or would not have been implemented and, as it is undisputed that the student did not attend the district's assigned public school site (see Parent Ex. A), 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, contrary to the IHO's determination, the evidence in the hearing record demonstrates that the district sustained its burden to establish that it offered the student a FAPE in the LRE for the 2012-13 school year, the necessary inquiry is at an end and there is no need to reach the issue of whether equitable considerations weighed in favor of the parents' requested relief (Burlington, 471 U.S. at 370; M.C. v. Voluntown, 226 F.3d 60, 66 [2d Cir. 2000]).

[9] A factor that appears to have weighed heavily in the IHO's analysis is a failure of the district to conduct its own updated assessments independent from those used by Cooke, but it is unclear how the IHO concluded that such a procedural violation in this case resulted in a denial of a FAPE especially where, as here, there was little or no objections during the CSE meeting to the accuracy of the various descriptions of the student or a lack of sufficient information with which to proceed with developing the IEP (see R.B. v. New York City Dep't of Educ., 2014 WL 5463084, at *3 [2d Cir. Oct. 29, 2014]; 20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; Winkelman, 550 U.S. at 525-26).

THE APPEAL IS SUSTAINED

IT IS ORDERED that the IHO's decision, dated April 18, 2013, is modified by reversing those portions which found that the district failed to offer the student a FAPE in the LRE for the 2012-13 school year and directed the district to pay the costs of the student's tuition and paraprofessional services at Cooke for the 2012-13 school year.

Dated: **Albany, New York**
November 17, 2014

JUSTYN P. BATES
STATE REVIEW OFFICER