The University of the State of New York

The State Education Department
State Review Officer
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No. 13-108

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

Appearances:
Kule-Korgood, Roff and Associates, PLLC, attorneys for petitioners, Tuneria Taylor, Esq., of counsel

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for respondent, Ilana A. Eck, Esq., of counsel

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400–1482) and Article 89 of the New York State Education Law. Petitioners (the parents) appeal from a decision of an impartial hearing officer (IHO) that determined that the educational program respondent's (the district's) Committee on Special Education (CSE) had recommended for their son for the 2012–13 school year was appropriate. The district cross-appeals from that portion of the IHO's decision that found that there were no equitable considerations that would have precluded tuition reimbursement had the district failed to offer the student an appropriate educational program. The appeal must be dismissed. The cross-appeal must be dismissed.

II. Overview—Administrative Procedures

A party aggrieved by the decision of an IHO may appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR

279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.515[b], [c]; 8 NYCRR 200.5[k][2]).[1]

III. Facts and Procedural History

On October 29, 2014, the undersigned was designated to conduct the review of this case. The parties' familiarity with the extensive factual and procedural history of the case, the IHO's decision, and the specification of issues for review on appeal is presumed and will not be recited here in detail.[2] The student in this case has received diagnoses of attention deficit hyperactivity disorder (ADHD) and pervasive developmental disorder—not otherwise specified (PDD-NOS) (Dist. Ex. 8). The student presents with significant expressive and pragmatic language delays (see Dist. Ex. 8; Parent Ex. Q; W; see also Tr. pp. 240, 274, 299).

On May 7, 2012, the CSE convened to conduct the student's annual review and to develop an IEP for the 2012–13 school year (Dist. Ex. 3 at p. 9; see also Dist. Ex. 2). The CSE found the student eligible for special education and services as a student with autism for the 2012–13 school year (Dist. Ex. 3 at p. 1).[3] The CSE recommended a 12-month school-year program consisting of a placement in a 6:1+1 special class in a specialized school (id. at p. 6). The CSE also recommended that the student receive related services consisting of speech-language therapy, physical therapy, occupational therapy, and counseling (id.).

By final notice of recommendation (FNR) dated June 14, 2012, the district summarized the special education and related services recommended in the June 2012 IEP and identified the particular public school site to which the district assigned the student to attend for the 2012–13 school year (Dist. Ex.10).

On June 26, 2012, the CSE reconvened, at the parents' request, to include in the student's IEP the CSE's recommendation that the student was eligible to receive special education and

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

[3] The student's eligibility for special education program and related services as a student with autism is not in dispute in this appeal (Tr. p. 11; see 34 CFR 300.8[c][1]; 8 NYCRR 200.1[zz][1]).

related services on an extended school year basis (July and August 2012) (see Dist. Ex. 2 at pp. 7-8; see also Tr. pp. 208–11, 239, 255–56).[4] Specifically, the CSE amended the IEP to reflect its recommendation that the student attend, at public expense, a State-approved nonpublic summer camp program during July and August 2012 (Dist. Ex. 2 at p. 8; see also Dist. Ex. 4 at pp. 1–3).[5]

By letter dated August 22, 2013, the parents notified the district of their intention to unilaterally place the student at the Jewish Center for Special Education (JCSE) for the 2012–13 school year, to seek reimbursement for the costs of the student's tuition from the district, and to seek the provision of transportation services for the student (see Parent Ex. L at pp. 1–2). In their letter, the parents rejected as inappropriate the June 2012 IEP, noting several of their concerns with the proposed IEP, including the IEP's present levels of performance, annual goals, lack of parent counseling and training, and transition services (id.). The parents also indicated that the public school to which the student was assigned was inappropriate to meet the student's needs (id. at p. 1).[6]

On August 29, 2012, the parents executed an enrollment contract with the JCSE for the student's attendance during the 2012–13 school year beginning in September 2012 (see Parent Ex. O at pp. 1–2).[7] The parents also executed an addendum to the enrollment contract for the cost of the mandated related services, which were not included in the cost of the tuition for the 2012–13 school year (id. at p. 3).

A. Due Process Complaint Notice

By amended due process complaint notice dated October 19, 2012, the parents alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2012–13 school year (see Parent Ex. C at pp. 1–3).[8] With regard to the development of the June 2012 IEP and the substance of the IEP, the parents alleged that the evaluations that the district used to develop the student's IEP were insufficient; that the present levels of performance and management needs sections in the IEP were inadequate; that the IEP's annual goals and short-term objectives were inappropriate for the student; that the district failed to develop an adequate transition plan for the student and failed to conduct a vocational assessment to determine the student's vocational skills, aptitudes, and interests; and that the district failed to recommend parent counseling and training in the IEP (id. at pp. 2–3). The parents also alleged that the public school to which the

[4] Relative to the 2012–13 school year, the June 26, 2012, IEP is the operative and challenged IEP in this matter (Dist. Ex. 2).

[5] The 2012 summer camp program informed the parents that it would provide the student with the related services recommended by the CSE and set forth in the student's 2012–13 IEP (Dist. Ex. 4 at p. 1).

[6] By letters dated June 19 and July 9, 2012, the parents had previously informed the district of their concerns with the assigned public school site and with the program recommendations made by the CSE for the 2012–13 school year (see Parent Exs. J; K at pp. 1–2).

[7] The Commissioner of Education has not approved the Jewish Center for Special Education as a school that school districts may contract with to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

[8] The parents initially filed a due process complaint notice dated September 6, 2013 (Parent Ex. A), which was superseded by the amended due process complaint notice dated October 19, 2012 (Parent Ex. C).

student was assigned was inappropriate for the student because, among other reasons, the school was too large, the student would not have received instruction with an appropriate peer group at the school, and the level of vocational training provided at the school was insufficient for the student to prepare the student for post-school activities, including postsecondary education, employment, and independent living (id. at p. 3). As to relief, the parents requested a determination that the educational program recommended by the CSE was inappropriate for the student and requested reimbursement for the cost of the student's tuition at the JCSE for the 2012–13 school year (id.).

B. Impartial Hearing Officer Decision

On September 24, 2012, an impartial hearing convened in this matter and concluded on April 5, 2013, after eight nonconsecutive days of proceedings (see Tr. pp. 1–481). By interim order dated October 3, 2012, the IHO found, and the parties did not dispute, that the JCSE constituted the student's pendency placement during the pendency of the proceedings in this matter (see IHO Interim Decision at p. 2; Tr. pp. 1–6). Following the impartial hearing and closing of the hearing record, by decision dated May 16, 2013, the IHO found that the district offered the student a FAPE for the 2012–13 school year (see IHO Decision at pp. 9–14).

Finding that there were no procedural violations that amounted to a denial of a FAPE, the IHO determined that the absence of an additional parent member at the May 2012 CSE meeting was of no consequence because the parents were familiar with the CSE process, had a meaningful opportunity during the CSE meeting to ask and answer questions, to provide input, and to express their concerns and requests to the CSE (see IHO Decision at pp. 10–11).[9] The IHO also found that the failure of the CSE to recommend parent counseling and training in the student's IEP did not constitute a denial of a FAPE because the omission of parent counseling and training did not affect the substantive adequacy of the IEP (id. at p. 11). The IHO further found that, although the CSE did not conduct a formal vocational assessment of the student, the CSE discussed with the parent transition activities to assist the student with his transition to post-secondary activities and also discussed with the parent the student's vocational training, abilities, and interests—all of which were indicated in the IEP (id. at pp. 11–12 [citing Dist. Ex. 2 at pp. 3–4, 8]). In addition, to address the student's need to begin his to transition to adulthood, the IHO noted that the IEP included goals and objectives for obtaining employment and for developing proper independent living skills (id. at p. 12).

With regard to the parents' substantive challenges to the IEP, the IHO found that the IEP was appropriate and reasonably calculated to enable the student to receive educational benefits (see IHO Decision at p. 12). Relative to the present levels of performance section of the IEP,

[9] The district correctly notes (see Answer ¶ 29 n.4) that the IHO's finding regarding the composition of the CSE was beyond the scope of the impartial hearing because the parents failed to raise such a claim in their amended due process complaint notice (see 20 U.S.C. § 1415[f][3][B]; 34 CFR 300.511[d]; 8 NYCRR 200.5[j][1][ii]; R.E. v. New York City Dep't of Educ., 694 F.3d 167, 187–88 n.4 [2d Cir. 2012]). Accordingly, to the extent that the parents challenge the extent of participation of the student's speech language therapist at the CSE meeting (Pet. ¶ 36), this allegation was not raised in the parents' amended due process complaint notice and therefore may not be raised in this appeal. Moreover, as the parents have failed to raise any argument relative to the IHO's determination regarding the composition of the CSE, the IHO's determination is therefore final and binding on the parties and will not be further addressed (see 34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]).

which the IHO found to be an accurate statement of the student's academic achievement and functional performance, the IHO found that, although the IEP did not have a specific recitation of the student's language skills, the IEP indicated that the student was working on decoding and included a speech language annual goal with corresponding short-term objectives (id. [citing Dist. Ex. 2 at pp. 1, 5–6]). The IHO also rejected the parents' challenge to the annual goals and short-term objectives in the IEP, the IHO having found that the goals included in the IEP were appropriate and were designed to meet the student's needs in reading, writing, math, counseling, occupational therapy, and speech language (id.). The IHO also found that the CSE's 6:1+1 special class recommendation was appropriate for the student and that the recommended related services consisting of speech-language therapy, occupational therapy, physical therapy, and counseling were all appropriate for the student and addressed the student's deficits in those areas of need (id.).[10]

Relative to the parents' challenge to the public school site to which the student was assigned for the 2012–13 school year, the IHO principally found that the recommended public school site was appropriate for the student because the school had a class and seat available for the student; properly grouped the students according to age or academic and emotional abilities; provided various related services that were performed through push-in and pull-out services; and offered an appropriate transition program that focused on transitioning the students to independent living and that provided the student with vocational opportunities (see IHO Decision at p. 13). The IHO also found that certain aspects of the parents' challenge to the assigned public school site—such as their concern the student might have interacted with other students whose language deficits were more severe—were speculative as a matter of law (id. at pp. 13–14). Having found that the district offered the student a FAPE for the 2012–13 school year, the IHO denied the parents' request for reimbursement of the cost of the student's tuition JCSE (id. at p. 16).

Despite concluding that the district offered the student a FAPE for the 2012–13 school year, the IHO next addressed the question of whether the parents' unilateral placement of the student at JCSE for the 2012–13 school year was appropriate and whether equitable considerations would have favored tuition reimbursement had the district failed to offer the student a FAPE (see IHO Decision at pp. 14–16). The IHO opined that the unilateral placement of the student at JCSE was appropriate because it met the student's special education and related services needs and because the student made progress academically and socially at JCSE (id. at p. 15–16). Although the IHO found that there were no equitable considerations that would have precluded tuition reimbursement had the district failed to offer the student a FAPE, the IHO noted that to the extent that the student received religious instruction at JCSE, that portion of the student's instruction would not be eligible for public funding (id. at p. 16).

IV. Appeal for State-Level Review

The parents appeal, seeking to overturn the IHO's determination that the district offered the student a FAPE for the 2012–13 school year. The parents also assert that the JCSE was an appropriate unilateral placement for the student for the 2012–13 school year and that equitable

[10] Although the IHO's finding that the June 2012 CSE's 6:1+1 special class placement recommendation was appropriate for the student is not challenged in this appeal, the evidence in the hearing record demonstrates that the student's unilateral placement at JCSE was substantially similar to the educational program and related services recommended by the CSE (compare Tr. pp. 283–84, 289–90, with Dist. Ex. 2 at pp. 6–7).

considerations favored tuition reimbursement. Specifically, the parents argue that because the "district failed to conduct an updated speech/language evaluation," the CSE did not have adequate evaluative information to develop an IEP that addressed the student's language needs (Pet. ¶ 35). The parents aver that the IHO erred in finding that the IEP's present levels of performance were an accurate statement of the student's academic achievement and functional performance and that the IEP addressed the student's specific needs. Relative to the IEP's annual goals and short-term objectives recommended by the CSE, the parents argue that the IHO erred in finding the annual goals appropriate because the CSE utilized the annual goals that were developed by JCSE several months prior to the CSE meeting and that were in large part already mastered by the student at the time that the May 2012 CSE convened. The parents argue that the IHO also erred in finding that the CSE's failure to conduct a formal vocational assessment did not rise to the level of a denial of a FAPE because, according to the parents, the IEP failed to include the student's vocational needs, skills, aptitudes, and interests. With regard to the IHO's finding that the assigned public school site was appropriate for the student and would have met the student's educational needs, the parents posit that the student would have been inappropriately grouped with students of significantly lower functioning levels and that appropriate vocational opportunities would not have been made available to the student at the school. Finally, the parents contend that the IHO's conclusion that there were no procedural violations tantamount to a denial of a FAPE must be annulled because the CSE failed to recommend parent counseling and training in the IEP.[11]

In an answer and cross-appeal, the district responds to the parents' petition by admitting and denying the allegations raised and asserting that the IHO correctly determined that the district offered the student a FAPE for the 2012–13 school year. As an initial matter, the district argues that the issue of whether the student's language needs were properly stated and addressed in the IEP was not raised in the parents' due process complaint notice and, therefore, may not be considered in this appeal.[12] The district argues in the alternative that the IHO correctly found that the IEP stated that the student was working on his decoding skills and that the IEP included an annual goal to address the student's speech-language needs. With regard to the IHO's finding that the annual goals were appropriate for the student, the district argues that the goals targeted the needs of the student and skills that the student had been continuing to work on. Next, the district argues that the lack of parent counseling and training in the IEP did not rise to the level of a denial of a FAPE because the parents' opportunity to participate in the development of the IEP was not

[11] According to the parents, the district failed to provide appropriate notice to the parents of the May 7, 2012, CSE meeting (Pet. ¶ 9). While the parents' claim that the district provided them with improper notice of the May 2012 CSE meeting is beyond the scope of review because the parents failed to raise this claim in their due process complaint notice (see Parent Ex. C at pp. 1–4; R.E., 694 F.3d at 187–88 n.4), the district is reminded that under State regulations "the parent must receive notification in writing at least five days prior to the [CSE] meeting" (8 NYCRR 200.5[c][1]). Furthermore, under State regulations "the membership of each committee shall include . . . the parents"; "[r]equests for excusals [from attendance of the CSE meeting] do not apply to the parents of the student"; and the district "shall take steps to ensure that one or both of the student's parents are present at each [CSE] meeting or are afforded the opportunity to participate," which may be effectuated by telephone conference if the parties agree to do so (8 NYCRR 200.3[a][1], [f][4]; 200.5[d][1], [d][7]).

[12] While the parents failed to articulate a specific claim relative to the "language needs" of the student in their amended due process complaint notice, they sufficiently raised allegations regarding the sufficiency of the evaluative information used to develop the June 2012 IEP and sufficiently alleged that the present levels of academic achievement and functional performance in the June 2012 IEP were deficient (see Parent Ex. C at pp. 1–2; R.E., 694 F.3d at 187–88 n.4). Accordingly, the merits of these allegations are addressed below.

impeded and because the student was not deprived of educational benefits. Finally, the district argues that the parents' claim that the public school to which the student was assigned could not have appropriately implemented the student's IEP is speculative as a matter of law and, moreover, that there is no evidence in the hearing record to substantiate the parents' claims that the student would not be appropriately grouped, that the student would not have adequate access to verbal students, and that the vocational training program would not be appropriate for the student.

In its cross-appeal, the district argues that the IHO erred in finding that equitable considerations would have favored tuition reimbursement had the district failed to offer the student a FAPE.[13] Specifically, the district argues that the parents lacked good faith because they never intended to enroll the student in the district and that the parents filed a due process complaint notice in order to "manufacture a claim" for tuition reimbursement and to obtain tuition funding by operation of pendency during these proceedings. The district also argues that the parents would not be entitled to tuition reimbursement for that portion of the student's tuition that relates to non-secular studies.

V. Applicable Standards

Two purposes of the IDEA (20 U.S.C. §§ 1400–1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]–[B]; see generally Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 239 [2009]; Bd. of Educ. v. Rowley, 458 U.S. 176, 206–07 [1982]).

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206–07; R.E. v. New York City Dep't of Educ., 694 F.3d 167, 189–90 [2d Cir. 2012]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 [2d Cir. 2012]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). "'[A]dequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP'" (Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998] [quoting Rowley, 458 U.S. at 206]; see T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 253 [2d Cir. 2009]). While the Second Circuit has emphasized that school districts must comply with the checklist of procedures for developing a student's IEP and indicated that "[m]ultiple procedural violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not" (R.E., 694 F.3d at 190–91), the Court has also explained that not all procedural errors render an IEP legally inadequate under the IDEA (M.H., 685 F.3d at 245; A.C. v. Bd. of Educ., 553 F.3d 165, 172 [2d Cir. 2009]; Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]; Perricelli v. Carmel Cent. Sch. Dist., 2007 WL 465211, at *10 [S.D.N.Y. Feb. 9, 2007]). Under the IDEA, if procedural violations are alleged, an administrative officer may find that a student did not receive a FAPE only if the procedural inadequacies (a) impeded the student's right to a FAPE, (b) significantly impeded the parents' opportunity to

[13] In its answer, the district represents that it does not cross-appeal the IHO's finding that JCSE was an appropriate unilateral placement for the student for the 2012–13 school year (Pet. ¶ 8 n.3).

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 [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 [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 [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 [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][A]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (see 34 CFR 300.320[a][4]; 8 NYCRR 200.4[d][2][v]; see also Application of the Dep't of Educ., Appeal No. 07-018; Application of a Child with a Disability, Appeal No. 06-059; Application of the Dep't of Educ., Appeal No. 06-029; Application of a Child with a Disability, Appeal No. 04-046; Application of a Child with a Disability, Appeal No. 02-014; Application of a Child with a Disability, Appeal No. 01-095; Application of a Child Suspected of Having a Disability, Appeal No. 93-9).

A board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents, if the services offered by the board of education were inadequate or inappropriate, the services selected by the parents were appropriate, and equitable considerations support the parents' claim (Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 [1993]; Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369–70 [1985]; R.E., 694 F.3d at 184–85; T.P., 554 F.3d at 252). In Burlington, the Court found that Congress intended retroactive reimbursement to parents by school officials as an available remedy in a proper case under the IDEA (471 U.S. at 370–71; see Gagliardo, 489 F.3d at 111; Cerra, 427 F.3d at 192). "Reimbursement merely requires [a district] to belatedly pay expenses that it should have paid all along and would have borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370–71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148).

The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see R.E., 694 F.3d at 184-85; M.P.G. v. New York City Dep't of Educ., 2010 WL 3398256, at *7 [S.D.N.Y. Aug. 27, 2010]).

VI. Discussion

A. June 2012 IEP

1. Sufficiency of Evaluative Information

With regard to the parents' argument that the CSE did not have sufficient evaluative information—and, in particular, an updated speech-language evaluation—to develop an IEP for the 2012–13 school year that addressed the student's language needs, the evidence in the hearing record belies their contention. Generally, a district must conduct an evaluation of a student where the educational or related services needs of a student warrant a reevaluation or if the student's parent or teacher requests a reevaluation (34 CFR 300.303[a][2]; 8 NYCRR 200.4[b][4]); however, a district need not conduct a reevaluation more frequently than once per year unless the parent and the district otherwise agree and the district must conduct one at least once every three years unless the district and the parent agree in writing that such a reevaluation is unnecessary (8 NYCRR 200.4[b][4]; see 34 CFR 300.303[b][1]–[b][2]). A CSE may direct that additional evaluations or assessments be conducted in order to appropriately assess the student in all areas related to the suspected disabilities (8 NYCRR 200.4[b][3]). Any evaluation of a student with a disability must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining, among other things the content of the student's IEP (20 U.S.C. § 1414[b][2][A]; 34 CFR 300.304[b][1][ii]; see Letter to Clarke, 48 IDELR 77 [OSEP 2007]). In particular, a district must rely on technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors (20 U.S.C. § 1414[b][2][C]; 34 CFR 300.304[b][3]; 8 NYCRR 200.4[b][6][x]). A district must ensure that a student is appropriately assessed in all areas related to the suspected disability, including, where appropriate, social and emotional status (20 U.S.C. § 1414[b][3][B]; 34 CFR 300.304[c][4]; 8 NYCRR 200.4[b][6][vii]). An evaluation of a student must be sufficiently comprehensive to identify all of the student's special education and related-service needs, whether

or not commonly linked to the disability category in which the student has been classified (34 CFR 300.304[c][6]; 8 NYCRR 200.4[b][6][ix]; see Application of the Dep't of Educ., Appeal No. 07-018).

In developing the recommendations for a student's IEP, the CSE must consider the results of the initial or most recent evaluation; the student's strengths; the concerns of the parents for enhancing the education of their child; the academic, developmental, and functional needs of the student, including, as appropriate, the student's performance on any general State or district-wide assessments as well as any special factors as set forth in federal and State regulations (34 CFR 300.324[a]; 8 NYCRR 200.4[d][2]). Subject to certain exceptions, a school district must obtain informed parental consent prior to conducting an initial evaluation or a reevaluation (34 CFR 300.300[c]; 8 NYCRR 200.5[b][1][i]; see Letter to Sarzynski, 51 IDELR 193 [OSEP 2008]) and provide adequate notice to the parent of the proposed evaluation (8 NYCRR 200.5[a][5]).

A CSE is not required to use its own evaluations in the preparation of an IEP and in the recommendation of an appropriate program for a student and is not precluded from relying upon privately obtained evaluative information in lieu of conducting its own evaluation (M.H. v. New York City Dept. of Educ., 2011 WL 609880, at *9 [S.D.N.Y. Feb. 16, 2011]; Mackey v. Board of Educ., 373 F. Supp. 2d 292, 299 [S.D.N.Y. 2005]). In addition, as part of a CSE's review of a student, a CSE must consider any private evaluation report submitted to it by a parent provided the private evaluation meets the school district's criteria (34 C.F.R. § 300.502[c][1]; 8 NYCRR 200.5[g][1][vi][a]). Although a CSE is required to consider reports from privately retained experts, it is not required to follow their recommendations (see, e.g., G.W. v. Rye City Sch. Dist., 2013 WL 1286154, at *19 [S.D.N.Y. Mar. 29, 2013]; C.H. v. Goshen Cent. Sch. Dist., 2013 WL 1285387, at *15 [S.D.N.Y. Mar. 28, 2013]; T.B. v. Haverstraw-Stony Point Cent. Sch. Dist., 933 F. Supp. 2d 554, 571–72 [S.D.N.Y. 2013]; Watson v. Kingston City Sch. Dist., 325 F. Supp. 2d 141, 145 [N.D.N.Y. 2004]; see also Pascoe v. Washingtonville Cent. Sch. Dist., 1998 WL 684583 at *6 [S.D.N.Y. Sept. 29, 1998]; Tucker, 873 F.2d at 567).

In this instance, the May 2012 CSE had sufficient evaluative information available to identify the student's needs, which were reflected in the June 26, 2012 IEP (see Dist. Ex. 2 at pp. 1–3). Specifically, evaluative information available to the May 2012 CSE included a March 14, 2012, classroom observation report; a February 1, 2011, psychoeducational evaluation; and a February 1, 2011, social history update (see Dist. Exs. 6; 7; 8; see also Tr. pp. 189–90, 218–19).[14] The CSE also obtained information from the student's private school personnel at JCSE, including a February 2012 speech progress report and a February 2012 teacher progress report (see Parent Exs. P; Q).[15] In addition, the evidence in the hearing record, including the minutes of the May 2012 CSE meeting, reflects that the CSE discussed and considered the foregoing evaluative information that described the student's needs in cognition, attention, academics, language, social

[14] Because the evaluation reports were less than three years' old at the time of the May 2012 CSE meeting, the district was in compliance with State regulations that mandate triennial reevaluation of students with disabilities (Dist. Ex. 2 at p. 1; see 8 NYCRR 200.4[b][4]; 34 CFR 300.303[b][1]–[b][2]).

[15] A district may rely on information obtained from the student's private school personnel, including sufficiently comprehensive progress reports, in formulating the IEP (see D.B. v. New York City Dep't of Educ., 966 F. Supp. 2d 315, 329–31 [S.D.N.Y. 2013]; G.W. v. Rye City Sch. Dist., 2013 WL 1286154, at *23–*24 [S.D.N.Y. Mar. 29, 2013]; S.F. v. New York City Dep't of Educ., 2011 WL 5419847, at *10 [S.D.N.Y. Nov. 9, 2011]).

skills, graphomotor skills, and visual perceptual skills (see 20 U.S.C. § 1414[c][1][A]; Tr. pp. 187–92, 218–19; Dist. Ex. 5 at p. 1). As discussed in more detail later in this decision, the evidence in the hearing record further shows that the May 2012 CSE incorporated this information into the recommended IEP (compare Dist. Ex. 2 at 1–6, with Dist. Ex. 2; 6; 7; 8; Parent Exs. P; Q).

Furthermore, there is no merit to the parents' argument that the February 2012 speech progress report that the CSE reviewed was outdated or that the report did not accurately reflect the student's speech-language abilities at the time of the CSE meeting. The February 2012 speech language progress report, conducted only three months prior to the May 2012 CSE meeting, described the student's language delays in "the areas of comprehension, expression, use of age-appropriate vocabulary, auditory processing of complex directions and sentence structure, and social pragmatic skills" (Parent Ex. Q). The report noted that the student's delays affected the student's ability to comprehend auditory and written material and summarized strategies that had been employed to address the student's need to improve reading comprehension (id.). Citing objective data, the report also noted that the student had made progress responding to a "wh-" or an inference-based question and that he had also demonstrated progress with reading comprehension by identifying the main ideas in pictures and word groups with greater accuracy (id.). With regard to the student's difficulty with social interaction, the report reflected that the student continued to demonstrate an ability to initiate and maintain a conversation with adults but not with peers and that, with prompting, the student continued to use an adult for mediation to resolve conflict (id.). The report also indicated that the student was able to demonstrate aural comprehension skills by asking for clarification using vague, non-specific inquisitory language and that with moderate prompting, the student could rephrase his question so that the listener could demonstrate a comprehension of the student's question (id.).

In their petition, the parents have not cited any evidence in the hearing record demonstrating that the speech-language needs and abilities of the student differ from the description reported in the February 2012 speech progress report or that the needs and abilities of the student substantially changed from February 2012 to May 2012 such that the district was required to conduct an updated speech-language evaluation (20 U.S.C. § 1414[b][2][A]; 34 CFR 300.304[b][1][ii]; see P.G. v. New York City Dep't of Educ., 959 F. Supp. 2d 499, 513 [S.D.N.Y. 2013] [rejecting the parents' claim that the CSE erred in relying on an "11-month-old report" where the parents failed to indicate what "changes may have occurred since the time of the report"]).[16] Indeed, the IDEA "does not require that a [CSE] review every single item of data available, nor

[16] The evidence in the hearing record also establishes that no one at the CSE meeting objected to the evaluations and progress reports that were being considered by the CSE and that no one, including the parents, requested that new evaluations be conducted before the CSE meeting could proceed (see Tr. pp. 192–93; Dist. Ex. 5 at p. 1). Moreover, "the CSE meeting could have been rescheduled if either the [parents] or the CSE team thought an evaluation was required" (R.B. v. New York City Dep't of Educ., 2014 WL 5463084, at *3 [2d Cir. Oct. 29, 2014]). Furthermore, if an IHO is presented with a concern over whether a student's special education needs have been appropriately identified, and there is a lack of evidence on the issue, the IHO is vested under federal and state law with the discretionary authority to order an independent educational evaluation of the student at district expense (see 34 CFR 300.502[d]; 8 NYCRR 200.5[g][2]; [j][3][viii]; Application of the Bd. of Educ., Appeal No. 12-033). Parents also have the right to have an independent educational evaluation (IEE) conducted at public expense if the parent disagrees with an existing evaluation conducted by the district and requests that the IEE be conducted at public expense (34 CFR 300.502[b]; 8 NYCRR 200.5[g][1]). The evidence in the hearing record does not reflect that any such request was made in this case.

has case law interpreted it to mean such" (F.B. v. New York City Dep't of Educ., 923 F. Supp. 2d 570, 582 [S.D.N.Y. 2013]; see J.F. v. New York City Dep't of Educ., 2012 WL 5984915, at *7 [S.D.N.Y. Nov. 27, 2012] [finding the evaluative information sufficient where the CSE had before it multiple school reports; speech, language, occupational therapy and social history reports; and classroom observations]); Mackey, 373 F. Supp. 2d at 299 [The "IDEA does not compel a school district to perform every sort of test that would arguably be helpful before devising an IEP for a student."]); Connor v. N.Y.C. Dep't of Educ., 2009 WL 3335760, at *5 [S.D.N.Y. Oct. 13, 2009] [finding the evaluative information sufficient where the CSE used "multiple tools and various observations to conduct an up to date analysis of the child's behavior and psychological needs"]). Accordingly, based on the information available to the May 2012 CSE, the evidence in the hearing record demonstrates that the CSE assessed the student in all areas of need and had sufficient information relative to the student's present levels of academic achievement and functional performance to develop an IEP that accurately reflected the student's special education needs for the 2012–13 school year.

2. Present Levels of Performance and Management Needs

Regarding the parties' dispute over whether the June 2012 IEP provided an accurate statement of a student's academic achievement and functional performance and sufficient management supports, an independent review of the June 2012 IEP in conjunction with the evaluative information available to the CSE demonstrates that the CSE adequately described the student's present levels of academic achievement, social development, physical development, and management needs, including the student's language needs, and that the description of the student's needs was consistent with the evaluative information before the CSE at the time of the meeting (see F.B., 923 F. Supp. 2d at 581–82).

Among the elements of an IEP is a statement of a student's academic achievement and functional performance and how the student's disability affects his or her progress in relation to the general education curriculum (20 U.S.C. § 1414[d][1][A][i][I]; 34 CFR 300.320[a][1];8 NYCRR 200.4[d][2][i]; see 8 NYCRR 200.1[ww][3][i]). In developing the recommendations for a student's IEP, the CSE must consider the results of the initial or most recent evaluation; the student's strengths; the concerns of the parents for enhancing the education of their child; the academic, developmental and functional needs of the student, including, as appropriate, the student's performance on any general State or district-wide assessments as well as any special factors as set forth in federal and State regulations (34 CFR 300.324[a]; 8 NYCRR 200.4[d][2]). On the basis of its review, a CSE must "identify what additional data, if any, are needed to determine," among other things, "the present levels of academic achievement" of a student (20 U.S.C. § 1414[c][1][B]). Any additional assessments need only be conducted if found necessary to fill in gaps in the initial review of existing evaluation data (20 U.S.C. § 1414[c][2]; see also D.B. v. New York City Dep't of Educ., 966 F. Supp. 2d 315, 329–30 [S.D.N.Y. 2013]). Management needs for students with disabilities are defined as "the nature of and degree to which environmental modifications and human or material resources are required to enable the student to benefit from instruction" (8 NYCRR 200.1[ww][3][i][d]). A student's management needs shall be determined by factors which relate to the student's (a) academic achievement, functional performance and learning characteristics; (b) social development; and (c) physical development (8 NYCRR 200.1[ww][3][i][d]).

The parents argue in their petition that IHO erred in finding that the IEP contained an adequate statement of the student's academic achievement and functional performance levels because the IEP failed to contain any information regarding the student's expressive, receptive, or pragmatic language needs and abilities (see IHO Decision at p. 12). Specifically, the parents contend that despite having access to the student's February 2012 speech progress report, discussed in more detail above, the district failed to utilize this information to develop an IEP that reflected the student's language needs. Further, the parents do not argue that the present levels of performance in the IEP are inaccurate; rather, the gravamen of the parents' argument is that the IEP failed to sufficiently articulate the student's current functioning level in the areas of reading fluency and comprehension, writing, and mathematics. While the importance of the present levels of performance section in an IEP cannot be understated as it serves as the "foundation" on which the CSE "builds to identify goals and services to address the student's individual needs," the purpose of the present levels of performance section of an IEP is not to provide an exhaustive recitation of the evaluative information considered by the CSE but to "summarize" that evaluative information from a variety of evaluative sources; "translate information from technical evaluations and reports to clear, concise statements"; "identify the instructional implications of [the] evaluations"; and to "describe, in language the parents and professionals can understand, the unique needs of the student that the IEP will address and identify the student's levels of performance" in those unique areas of need (see "Guide to Quality Individualized Education Program [IEP] Development and Implementation," at p. 18, Office of Special Educ. [Dec. 2010], available at http://www.p12.nysed.gov/specialed/publications/iepguidance/IEPguideDec2010.pdf). Here, a review of the present levels of performance in the June 2012 IEP along with the evidence in the hearing record demonstrates that the CSE satisfied these objectives.

As indicated above, the May 2012 CSE considered the following evaluative information in the development of the student's IEP: a March 14, 2012, classroom observation report; a February 1, 2011, psychoeducational evaluation; and a February 1, 2011, social history update; and information obtained from the student's private school personnel at JCSE, including a February 2012 speech progress report and a February 2012 teacher progress report (see Dist. Exs. 6; 7; 8; Parent Exs. P; Q). In addition to consideration of the foregoing evaluative sources, the district school psychologist testified that at the CSE meeting the CSE obtained information from the student's parent and then-current teacher regarding the student's functional levels and present levels of academic performance (Tr. p. 193–94; Dist. Ex. 5 at p. 1). Confirmed by the testimony of the district school psychologist (Tr. p. 194), the June 2012 IEP indicated that the student was functioning at a third-grade level in both reading and mathematics (Dist. Ex. 2 at pp. 1, 10). Consistent with the February 2012 teacher progress report provided to the CSE (Parent Ex. P), as well as the May 2012 CSE meeting minutes (Dist. Ex. 5 at p. 1), the IEP also indicated that in addition to working on reading fluency and comprehension skills, the student had been working on functional academic skills in reading, writing, and math, which included phone-book skills; reading and writing recipes, reading newspaper articles for pertinent information; use of money; shopping; budgeting; "menu math"; "sale prices"; reading circulars for prices; and reading menus and schedules (compare Parent Ex. P at pp. 1–2, with Dist. Ex. 2 at p. 1). The IEP further noted that the student was working on taking orders from staff members and shopping for items of interest (id.).

Consistent with the February 1, 2011, psychoeducational evaluation, which noted that writing was the domain that was most challenging for the student (see Dist. Ex. 8 at p. 6), and with the classroom observation of March 14, 2012, which indicated the student's difficulty with writing his own name legibly (Dist. Ex. 6 at p. 1), the IEP indicated that the student had difficulty with writing and did not "like writing" because he "presents with issues in graphomotor and visual perceptual skills" (Dist. Ex. 2 at p. 1). With regard to the student's reading needs, the IEP specifically noted that the student needed to "increase fluency in decoding" and that he had "difficulty decoding new and unfamiliar words" (compare id., with Dist. Exs. 6 at p. 1; 8 at pp. 3–4). The IEP also noted the parents' concerns that the student needed to use a calculator because his accuracy in mathematics was poor and that, consistent with the February 2012 teacher progress report (see Parent Ex. P at p. 1), the student did not enjoy reading for pleasure but that the student should begin reading for leisure and enjoyment (id.; see also Dist. Ex. 5 at p. 1).

In the area of social/emotional development, the IEP noted—as set forth in the February 1, 2011, psychoeducational evaluation; the March 14, 2012, classroom observation; and the February 2012 teacher progress report—that the student displayed a friendly and cooperative demeanor and that the student preferred socializing with staff and adults rather than with peers (compare Dist. Ex. 2 at p. 1, with Dist. Exs. 8 at p. 6; 6 at p. 1; and Parent Ex. P at p. 1). Relying on the evaluative information before the CSE, the IEP also noted that the student interacted with peers in athletic activities, which the student enjoyed participating in, and that the student was caring towards his peers (compare Dist. Ex. 2 at p. 1, with Dist. Ex. 8 at pp. 3, 6). Noting the parents' area of concern with regard to social and emotional development, the IEP reported that the student had poor self-esteem, that he did not always assert himself appropriately, and that the student at times remained passive (Dist. Ex. 2 at p. 1). Regarding the student's health and physical development, the IEP indicated, as noted in the psychoeducational evaluation and CSE meeting minutes, that while the student was in overall good health and engaged in physical activities with his peers, the student presented with issues in graphomotor and visual perceptual skills (compare id., with Dist. Exs. 5 at p. 1; 8 at p. 5).

A review of the management needs articulated in the student's June 2012 IEP demonstrates that, based on the student's academic achievement functional performance as well as the student's social/emotional and physical development, the CSE identified the instructional implications of the evaluative information and the environmental modifications and human or material resources that were reasonably calculated to enable the student to benefit from instruction (see 8 NYCRR 200.1[ww][3][i][d]; see also Tr. pp. 195–99).[17] To address the unique needs of the student, including the student's functional language needs, attention needs, frustration tolerance, and academic deficits in reading, writing and mathematics, the CSE recommended in the management needs section of the IEP that the student receive a full-time small-group placement that "could afford him more individualized support and attention to address [his] academic, cognitive, attentional[,] and language delays" (Dist. Ex. 2 at p. 2; see Tr. pp. 195–99). Suggestions for modified learning that the CSE recommended that were reasonably calculated to enable the student to benefit from instruction included: the use of outlines and graphic organizers; a multi-sensory approach to reading; structuring and breaking down the student's school work into manageable

[17] The district school psychologist testified at the impartial hearing that, following a discussion of the management needs that the CSE felt the student required, no one at the May 2012 CSE meeting voiced any objection to the management needs recommended by the CSE (Tr. p. 196).

units and rewards for small gains; redirection and refocussing when needed; preferential seating; frequent opportunities for task analysis, repetition, and review; the use of a daily, weekly, and monthly planner to help the student organize and keep on track; highlighted work and study sheets; verbal cueing; key-word prompts; semantic mapping; and rephrasing, explanation, elaboration of verbal directions and instructions (id.).

To further address the student's expressive, receptive, and pragmatic language needs, the June 2012 IEP provided an annual goal with six corresponding short-term objectives. The annual goal addressed the student's language needs to "improve receptive and expressive language skills, including pragmatics, for more productive conversations socially and within an educational forum" (Dist. Ex. 2 at p. 5). The six corresponding short-term objectives targeted the student's need to "identify and label emotions relevant to statements and social contexts"; to "expand functional communication skills by identifying and sending nonverbal messages through posture, gesture, and facial expressions"; to "follow 2–3 step complex verbal directions with no prompts"; to "infer facts and answer wh questions about a short story"; to "retell a story, with main idea and at least 3 supporting details, with appropriate sequencing"; and to "rephrase a question or response when [a] listener asks for clarification[,] and [the student] . . . himself [will] ask for clarification when he does not understand what is being said to him" (id. at p. 6). In addition, the IEP included two additional annual goals with corresponding short-term objectives that could also address the student's language needs (id. at p. 5). Specifically, two additional annual goals, which also addressed the student's social/emotional needs, focused on the student's need to demonstrate on a daily basis "the ability to initiate interpersonal interactions by rehearsing and modeling appropriate overtures for dialogue" and targeted the student's need to "expand" his "ability to express feelings appropriately" (id.). The IEP also mandated individual and group speech language therapy services each week to implement the goals that addressed the student's language needs (see id. at pp. 5, 7).

Based on the foregoing, and consistent with the findings of the IHO (see IHO Decision at p. 12), a review of the information considered by the CSE and discussed at the CSE meeting demonstrates that the present levels of performance and management needs sections of the June 2012 IEP, together with its corresponding annual goals and related services, adequately reflected the student's present levels of academic achievement and functional performance in an IEP that appropriately indicated and addressed the student's special education needs arising from his disability (34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]). Even though, as the parents assert, every one of the student's language-based deficits was not described in minute detail in the IEP, in light of the information that was included any such omission did not constitute a violation in this instance (see P.G., 959 F. Supp. 2d at 512 [holding that an IEP need not specify in detail every deficit arising from a student's disability so long as the CSE develops a program that "addresses those issues"]).

3. Vocational Assessment and Transition Services

The parents further allege that the district failed to conduct a formal vocational assessment and therefore did not adequately assess the student's vocational and transition needs. For the reasons that follow, in addition to the reasons provided in the IHO's decision, the evidence in the hearing record demonstrates that the CSE obtained sufficient information about the student's adaptive living skills and overall vocational abilities such that the lack of a formal vocational

assessment in this instance did not compromise the appropriateness of the student's postsecondary goal or coordinated set of transition activities in the June 2012 IEP so as to result in a denial of a FAPE (see IHO Decision at p. 11–12; Dist. Ex. 2 at pp. 2–3, 8).

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]). 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]).

An IEP must also include the transition services needed to assist the student in reaching those goals (20 U.S.C. § 1414[d][1][A][i][VIII]; 34 CFR 300.320[b]). In this regard, State regulations require that an IEP include a statement of a student's needs as they relate to transition from school to post-school activities (8 NYCRR 200.4[d][2][ix][a]),[18] as well as the transition service needs of the student that focuses on the student's course of study, such as participation in advanced placement courses or a vocational education program (8 NYCRR 200.4[d][2][ix][c]). The regulations also require that the student's IEP include needed activities to facilitate the student's movement from school to post-school activities, including instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, when appropriate, acquisition of daily living skills and a functional vocational evaluation (8 NYCRR 200.4[d][2][ix][d]), as well as a statement of responsibilities of the school district (or participating agencies) for the provision of services and activities that "promote movement" from school to post-school. Courts have held that deficiencies in a transition plan may not amount to a denial of FAPE where an IEP otherwise addresses a student's post-secondary needs (see, e.g., M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *9 [S.D.N.Y. Mar. 21, 2013]; A.D. v. New York City Dep't of Educ., 2013 WL 1155570, at *11 [S.D.N.Y. Mar. 19, 2013]).

Here, the parents are correct that there is no evidence in the hearing record demonstrating that the CSE had previously conducted a formal vocational assessment of the student when he turned 12 years of age or that the CSE considered such a vocational assessment in developing the student's IEP and transition plan for the 2012–13 school year (see 8 NYCRR 200.4[b][6][viii] ["[S]tudents age 12 . . . shall receive an assessment that includes a review of school records and teacher assessments, and parent and student interviews to determine vocational skills, aptitudes and interests."]). Notwithstanding this procedural violation of State regulations, for substantially the same reasons cited in the IHO's decision (see IHO Decision at pp. 11–12), the CSE's failure to consider a formal vocational assessment of the student did not render the IEP procedurally

[18] These are supposed to be listed in the present levels of performance section of a student's IEP (see 8 NYCRR 200.4[d][2][ix][a]).

inadequate and did not result in a denial of a FAPE for the 2012–13 school year (see R.B. v. New York City Dep't of Educ., 15 F. Supp. 3d 421, 431 [S.D.N.Y. 2014] [holding that the district's failure to conduct a vocational assessment, although a procedural violation, does not necessarily render an IEP inadequate where the CSE relied on sufficient information]). As the IHO found, although the CSE did not consider a formal vocational assessment of the student, the CSE considered various sources of evaluative data, already discussed above; obtained vocational information from the parent and teacher during the CSE meeting; discussed with the parent and teacher transition activities to assist the student with his transition to post-secondary activities; and discussed with the parent the student's vocational needs, hobbies, abilities, and interests, which were also indicated on the student's IEP (Tr. pp. 205–08, 224, 233–39, 398; Dist. Exs. 2 at pp. 3–4, 8; 5 at p. 1). For example, the district school psychologist testified that at the CSE meeting the CSE discussed with the student's parent her concerns about daily living skills, personal hygiene, proper diet and nutrition, shopping skills, menu math, sales prices, newspaper articles, and functioning in the community at large (Tr. p. 205). The psychologist also testified that the CSE discussed at the meeting with the student's then-current teacher travel training and basic information skills that would assist the student with his interactions with the community (Tr. p. 207). The psychologist's testimony also indicates that during the CSE meeting, the CSE obtained information relative to the student's hobbies, interests, and future aspirations from the parent and teacher (Tr. pp. 234–35).

Based the vocational information obtained from the evaluative information that was before the CSE and obtained from the parent and the student's teacher attending the CSE meeting, the CSE recommended in the IEP a coordinated set of transition activities for the student (see Dist. Ex. 2 at p. 8). With respect to activities or services to facilitate the student's movement from school to post-school activities, the June 2012 IEP set forth transition services, which included relative to instruction that the student would improve his instruction by "maintaining attention span and independent study skill to complete assignments" (id.). Relative to related services, the transition plan stated that the student would participate in occupational therapy, speech language therapy, and counseling (id.). For community experiences, the IEP indicated that the student would "explore community opportunities for volunteer work activities and social functions" (id.). Relative to employment or post-school adult living objectives, the transition plan recommended that the student "develop career plans according to his interest and skills level" (id.). Finally, the transition plan indicated that the student would explore career choices "based on skills level and interest" (id.). Consistent with State regulations, the transition plan also designated school staff as being responsible for implementing each transition service (id.; see 8 NYCRR 200.4[d][2][ix][e]).

In addition, to address the student's need to begin his to transition to adulthood, the June 2012 IEP included a postsecondary goal that identified, albeit generally, long-term adult outcomes, instructional activities, community integration, post-high school career exploration, and independent living expectations (see Dist. Ex. 2 at pp. 2–3; Tr. p. 236). Specifically, to address the student's need for living, working, and learning as an adult, the CSE indicated the student's need to "become proficient in travel safety," possess "knowledge of personal information," acquire "basic money management," and develop "clerical skills and other relevant vocational skills" (Dist. Ex. 2 at pp. 2–3). With regard to the student's need to be employed as an adult, the CSE addressed the student's need to "network with family, friends[,] and school [staff] to access employment opportunities within the community" (id. at p. 3). As to independent living skills, the CSE indicated the student's need to "identify personal strengths and weaknesses for living

independently" and recommended that the student continue to "attend educational and vocational training programs" (id.).

Under the circumstances of this case, the district had sufficient information to determine the student's vocational skills, aptitudes, and interests, and the failure to consider a vocational assessment did not impede the student's right to a FAPE, significantly impede the parents' opportunity to participate in the decision making process, or cause a deprivation of educational benefits (see, e.g., R.B., 15 F. Supp. 3d at 431; Scott v. New York City Dep't of Educ., 6 F. Supp. 3d 424, 438 [S.D.N.Y. 2014]). Furthermore, the coordinated set of transition activities included in the June 2012 IEP was based on current information provided by the parents and the student's teacher and provided sufficient details regarding the student's postsecondary goals and transition services (see A.D., 2013 WL 1155570, at *11; D.B. v. New York City Dep't of Educ., 2011 WL 4916435, at *9 [S.D.N.Y. Oct. 12, 2011]).

4. Annual Goals

Next, the parents argue that the IHO erred in finding that the June 2012 IEP included appropriate goals in all areas of need and, in particular, that several of the annual goals recommended by the CSE were already mastered by the student at the time of the May 2012 CSE meeting. Under the IDEA and State regulations, an IEP must include a written statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and meet each of the student's other educational needs that result from the student's disability (see 20 U.S.C. § 1414[d][1][A][i][II]; 34 CFR 300.320[a][2][i]; 8 NYCRR 200.4[d][2][iii]). Each annual goal shall include the evaluative criteria, evaluation procedures and schedules to be used to measure progress toward meeting the annual goal during the period beginning with placement and ending with the next scheduled review by the committee (8 NYCRR 200.4[d][2][iii][b]; see 20 U.S.C. § 1414[d][1][A][i][III]; 34 CFR 300.320[a][3]).

In this instance, the June 2012 IEP contains eight annual goals and, consistent with the CSE's determination that the student participate in the alternate assessment, approximately 40 corresponding short-term objectives to address the student's: reading comprehension and reading fluency skills; written expression and computer skills; functional math skills; fine motor skills, dexterity, endurance, and coordination; gross motor skills and overall strength for overall endurance, balance, and coordination; need to increase his self-esteem and to demonstrate the ability to initiate interpersonal interactions and model appropriate overtures for dialogue; need to expand his ability to express feelings appropriate; need to improve receptive and expressive language skills, including pragmatics, for more productive conversations socially and within an educational forum (Dist. Ex. 2 at pp. 3–6). The IEP also included a post-secondary goal to address the student's need to become proficient in travel safety, knowledge of personal information, basic money management, clerical skills, and other relevant vocational skills (id. at pp. 2–3).

To the extent that the parents contend that the student had mastered several of the short-term objectives at the time that the CSE convened to develop the student's IEP for the 2012–13 school year, the evidence in the hearing record, as discussed by the IHO, does not support this claim (see IHO Decision at p. 12; Tr. pp. 212–14, 225–28, 374–78). The evidence in the hearing

record suggests that during the May 2012 CSE meeting the CSE was provided with instructional goals in reading, writing, and mathematics, which were developed by the JCSE in November 2011 and which the student's then-current teacher at JCSE had been working on with the student during the 2011–12 school year (see Tr. p. 220; Parent Exs. R; S; T). The evidence in the hearing record demonstrates that during the CSE meeting, the CSE discussed the annual goals and read the goals out loud with no objection from anyone present at the May 2012 CSE meeting (see Tr. p. 213–14; Dist. Ex. 5 at p. 1 [noting that the "goals" were "discussed" with the parent and that the parent in attendance was "in agreement"]). Contrary to the parents' argument regarding the student's mastery of the instructional goals developed by the JCSE in November 2011, the district school psychologist testified that the CSE carried over those annual goals because those annual goals remained appropriate for the student based upon the evaluative information and input from the student's then-current teacher at JCSE who had discussed with the CSE what the student had been "working on in the classroom and what they anticipated he would be able to accomplish" during the then-forthcoming 2012–13 school year (see Tr. p. 212–13, 225–27). The school psychologist testified that the annual goals in the June 2012 IEP were also developed based on the progress that the student had made towards the November 2011 instructional goals and developed to assist the student with making progress in existing areas of need identified by the CSE (see Tr. pp. 227–28). Consistent with the findings of the IHO, the student's needs in the areas of academics, language, social/emotional, behavior, attention, written expression, as well as fine and gross motor skills, were addressed by the annual goals and short-term objectives. In addition, based on the information in the present levels of performance of the June 2012 IEP, the CSE developed annual goals that were aligned with the student's current functional and instructional levels (see Dist. Exs. 6; 7; 8; Parent Exs. P; Q; R; S; T). Further, as set forth above, the district school psychologist's testimony provided a reasonable explanation of why the CSE carried over many of the annual goals from the November 2011 instructional goals developed by the JCSE. Moreover, assuming for the sake of argument that the student had already achieved some of the short-term objectives included in the June 2012 IEP, such level of achievement "does not render the goals in the IEP per se inappropriate" (R.B. v. New York City Dep't of Educ., 2013 WL 5438605, at *13 [S.D.N.Y. Sept. 27, 2013] [emphasis in the original] [citing A.M. v. New York City Dep't of Educ., 964 F. Supp. 2d 270, 284 (S.D.N.Y. Aug. 9, 2013)]; see also C.L.K. v. Arlington Sch. Dist., 2013 WL 6818376, at *13 [S.D.N.Y. Dec. 23, 2013]). Furthermore, under a similar set of facts, it has been recognized, that "the IEP would be repetitive or redundant only if it repeated goals from [the student's] prior IEP, not a progress report prepared by her teachers" (A.M., 964 F. Supp. 2d at 284).

Overall, a review of the evidence in the hearing record reveals that the June 2012 IEP's annual goals and management need strategies appropriately addressed the student's needs—as presented in the present levels of performance in the IEP and identified in the evaluation reports, assessments, and other information considered by the CSE—and were sufficiently specific and measurable to guide instruction and to evaluate the student's progress over the course of the school year (see D.A.B. v. New York City Dep't of Educ., 973 F. Supp. 2d 344, 359–61 [S.D.N.Y. 2013]; E.F. v. New York City Dept. of Educ., 2013 WL 4495676, at *18–*19 [E.D.N.Y. Aug. 19, 2013]; D.B., 966 F. Supp. at 334–35; S.H. v. Eastchester Union Free Sch. Dist., 2011 WL 6108523, at *8 [S.D.N.Y. Dec. 8, 2011]; W.T. v. Bd. of Educ., 716 F. Supp. 2d 270, 288–89 [S.D.N.Y. 2010]; Tarlowe, 2008 WL 2736027, at *9; M.C. v. Rye Neck Union Free Sch. Dist., 2008 WL 4449338, at *11 [S.D.N.Y. Sept. 29, 2008]; W.S. v. Rye City Sch. Dist., 454 F. Supp. 2d 134, 146–47 [S.D.N.Y. 2006]; Application of the Dep't of Educ., Appeal No. 12-108 [finding annual goals

appropriate where the goals addressed the student's areas of need reflected in the present levels of performance]).

5. Related Services—Parent Counseling and Training

The parents assert that the CSE failed to recommend parent counseling and training in the student's June 2012 IEP. The district asserts that the failure to include parent counseling and training in the June 2012 IEP, alone, would not result in a failure to offer the student a FAPE. It is undisputed that the June 2012 IEP did not include a recommendation for parent counseling and training; however, under the circumstances of this case, the district correctly argues the failure to recommend such service did not, by itself, result in a failure to offer the student a FAPE for the 2012–13 school year.

State regulations require that an IEP indicate the extent to which parent training will be provided to parents, when appropriate (8 NYCRR 200.4[d][2][v][b][5]). State regulations further provide for the provision of parent counseling and training for the purpose of enabling parents of students with autism to perform appropriate follow-up intervention activities at home (8 NYCRR 200.13[d]). Parent counseling and training is defined as: "assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's individualized education program" (8 NYCRR 200.1[kk]; see 34 CFR 300.34[c][8]).

Court have held, however, that a failure to include parent counseling and training on an IEP does not inherently constitute a denial of a FAPE where a district provided "comprehensive parent training component" that satisfied the requirements of the State regulation (see R.E., 694 F.3d at 191 [stating that the "presence or absence of a parent-counseling provision does not necessarily have a direct effect on the substantive adequacy of the plan"]; M.M. v. New York City Dep't of Educ., 583 F. Supp. 2d 498, 509 [S.D.N.Y. 2008]). The Second Circuit has explained that "because school districts are required by [8 NYCRR] 200.13(d) to provide parent counseling, they remain accountable for their failure to do so no matter the contents of the IEP. Parents can file a complaint at any time if they feel they are not receiving this service" (R.E., 694 F.3d at 191; see M.W. v. New York City Dep't of Educ., 725 F.3d 131, 141–42 [2d Cir. 2013]). The Second Circuit further explained that "[t]hough the failure to include parent counseling in the IEP may, in some cases (particularly when aggregated with other violations), result in a denial of a FAPE, in the ordinary case that failure, standing alone, is not sufficient to warrant reimbursement" (R.E., 694 F.3d at 191; see also F.B., 923 F. Supp. 2d at 585; K.L. v. N.Y.C. Dep't of Educ., 2012 WL 4017822, at *14 [S.D.N.Y. Aug. 23, 2012] ["Even if when included in the program itself, parent counseling must still be explicitly listed in the IEP, such a procedural error is insufficient to amount to a denial of a FAPE."]; M.N. v. N.Y.C. Dep't of Educ., 700 F. Supp. 2d 356, 367–68 [S.D.N.Y. 2010] [provision for parent training was unnecessary to satisfy the IDEA where such training was integrated at the placement]; C.F. v. N.Y.C. Dep't of Educ., 2011 WL 5130101, at *10 [S.D.N.Y. Oct. 28, 2011]. Thus, while a failure to provide parent counseling and training may—in combination with other deficiencies—contribute to denial of a FAPE (see K.L., 2012 WL 4017822, at *14), it alone is insufficient to rise to the level of denial thereof.

In this case, while it is undisputed that the June 2012 CSE did not recommend parent counseling and training as a related service in the student's June 2012 IEP, the hearing record in this case does not contain sufficient evidence upon which to conclude that the failure to recommend parent counseling and training in the June 2012 IEP resulted in the district's failure to offer the student a FAPE for the 2012–13 school year (see R.B., 15 F. Supp. 3d at 432 [finding that the absence of a parent-counseling provision did not have a direct effect on the substantive adequacy of the IEP because there was no evidence of any impact on the educational recommendations of the IEP]). In addition, although the June 2012 CSE's failure to recommend parent counseling and training in the student's IEP constituted a violation of State regulation, this violation alone does not support a finding that the district failed to offer the student a FAPE (R.E., 694 F.3d at 191; see also F.L. v. New York City Dep't of Educ., 553 Fed. App'x 2, 7 [2d Cir. Jan. 8, 2014]; see also M.W., 725 F.3d at 141–42).[19]

6. Cumulative Effect of Procedural Violations

Having determined that none of the procedural violations identified—to wit, the district's failure to consider a formal vocational assessment and failure to recommend parent counseling and training in the June 2012 IEP—resulted in the denial of a FAPE when considered individually, the aggregate effect of procedural violations should be considered (see R.E., 694 F.3d at 191; R.B., 15 F. Supp. 3d at 434). Even multiple procedural violations may not result in the denial of a FAPE when the "'deficiencies . . . are more formal than substantive'" (id. [quoting F.B., 923 F. Supp. 2d at 586] [omission in original]). Here, the procedural violations identified were formal rather than substantive and did not result in the denial of a FAPE, whether considered individually or cumulatively, and the June 2012 IEP was procedurally adequate and substantively appropriate.

B. Assigned Public School Site

With respect to the parents' claims relating to the assigned public school site, which the IHO found to be appropriate for the student and which the parties continue to dispute on appeal (see IHO Decision at pp. 13–14; Pet. ¶¶ 53–68; Answer ¶¶ 37–39), the parents contend that the assigned public school site was inappropriate for the student and could not implement the June 2012 IEP. Challenges to an assigned public school site are generally relevant to whether the district properly implemented a student's IEP, which is speculative when the student never attended the recommended placement. Generally, the sufficiency of the district's offered program must be determined on the basis of the IEP itself (R.E., 694 F.3d at 186–88). The Second Circuit has explained that the parents' "[s]peculation that the school district will not adequately adhere to the IEP is not an appropriate basis for unilateral placement" (R.E., 694 F.3d at 195; see F.L., 553 Fed. App'x at 9; see also K.L. v. New York City Dep't of Educ., 530 Fed. App'x 81, 87 [2d Cir. July 24, 2013]; R.C. v. Byram Hills Sch. Dist., 906 F. Supp. 2d 256, 273 [S.D.N.Y. 2012] [explaining that

[19] The district is cautioned, however, that it cannot continue to disregard its legal obligation to include parent counseling and training in a student's IEP. Therefore, upon reconvening this student's next CSE meeting, the district shall consider whether the related service of parent counseling and training is required to enable the student to benefit from instruction and, after due consideration, provide the parent with prior written notice on the form prescribed by the Commissioner that, among other things, specifically describes whether the CSE recommended or refused to recommend parent counseling and training in the student's IEP, together with an explanation of the basis for the CSE's recommendation, in conformity with the procedural safeguards of the IDEA and State regulations (see 34 CFR 300.503[a], [b]; 8 NYCRR 200.1[oo], 200.5[a]).

"[g]iven the Second Circuit's recent pronouncement that a school district may not rely on evidence that a child would have had a specific teacher or specific aide to support an otherwise deficient IEP, it would be inconsistent to require evidence of the actual classroom a student would be placed in where the parent rejected an IEP before the student's classroom arrangements were even made"]).

The Second Circuit has also clarified that, under factual circumstances similar to those in this case, in which the parents have rejected and unilaterally placed the student prior to IEP implementation, "[p]arents are entitled to rely on the IEP for a description of the services that will be provided to their child" (P.K. v. New York City Dep't of Educ., 526 Fed. App'x 135, 141 [2d Cir. May 21, 2013]) and, even more clearly, that "'[t]he appropriate inquiry is into the nature of the program actually offered in the written plan,' not a retrospective assessment of how that plan would have been executed" (K.L., 530 Fed. App'x at 87 [quoting R.E., 694 F.3d at 187]; see C.F. v. New York City Dep't of Educ., 746 F.3d 68, 79 [2d Cir. Mar. 4, 2013]). Thus, the analysis of the adequacy of an IEP in accordance with R.E. is prospective in nature, but the analysis of the IEP's implementation is retrospective. Therefore, if it becomes clear that the student will not be educated under the proposed IEP, there can be no denial of a FAPE due to the failure to implement the IEP (R.E., 694 F.3d at 186–88; see also Grim, 346 F.3d at 381–82 [holding that the district was not liable for a denial of a FAPE where the challenged IEP was determined to be appropriate, but the parents chose not to avail themselves of the public school program]).[20] When the Second Circuit spoke recently with regard to the topic of assessing the district's offer of an IEP versus later-acquired school site information obtained and rejected by the parent as inappropriate, the Court disallowed a challenge to a recommended public school site, reasoning that "the appropriate forum for such a claim is 'a later proceeding' to show that the child was denied a free and appropriate public education 'because necessary services included in the IEP were not provided in practice'" (F.L., 553 Fed. App'x at 9 [quoting R.E., 694 F.3d at 187 n.3]).

In view of the foregoing, the parent cannot prevail on claims regarding implementation of the June 2012 IEP because a retrospective analysis of how the district would have implemented

[20] While the IDEA and State regulations provide parents with the opportunity to offer input in the development of a student's IEP, the assignment of a particular school is an administrative decision that must be made in conformance with the CSE's educational placement recommendation (T.Y. v. New York City Dep't of Educ., 584 F.3d 412, 420 [2d Cir. 2009]; see K.L.A. v. Windham Southeast Supervisory Union, 371 Fed. App'x 151, 154 [2d Cir. Mar. 30, 2010]). A school district "may have two or more equally appropriate locations that meet the child's special education and related services needs and school administrators should have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group determining placement" (Placements, 71 Fed. Reg. 46588 [Aug. 14, 2006]). Once 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). The Second Circuit recently reiterated that while parents are entitled to participate in the determination of the type of placement their child will attend, 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. 2013]). However, the Second Circuit has also made clear that just because a district is not required to place implementation details such as the particular public school site or classroom location on a student's IEP, the district is not permitted to choose any school and provide services that deviate from the provisions set forth in the IEP (see R.E., 694 F.3d at 191–92; T.Y., 584 F.3d at 420 [the district does not have carte blanche to provide services to a child at a school that cannot satisfy the IEP's requirements]). The district has no option but to implement the written IEP and parents are well within their rights to compel a non-compliant district to adhere to the terms of the written plan.

the student's June 2012 IEP at the assigned public school site is not an appropriate inquiry under the circumstances of this case (K.L., 530 Fed. App'x at 87; R.E., 694 F.3d at 186; R.C., 906 F. Supp. 2d at 273). Here, it is undisputed that the parents rejected the assigned public school site that the student would have attended and instead chose to enroll the student in a nonpublic school of their choosing prior to the time the district became obligated to implement the June 2012 IEP (see Parent Ex. L at pp. 1–2). Therefore, the district is correct that the issues raised and the arguments asserted by the parent with respect to the assigned public school site are speculative. Furthermore, in a case in which a student has been unilaterally placed prior to the implementation of an IEP, it would be inequitable to allow a parent to acquire and rely on information that post-dates the relevant CSE meeting and IEP and then use such information against a district in an impartial hearing while at the same time confining a school district's case to describing a snapshot of the special education services set forth in an IEP (C.L.K., 2013 WL 6818376, at *13 [stating that in addition to districts not being permitted to rehabilitate a defective IEP through retrospective testimony, "[t]he converse is also true; 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"]). Based on the foregoing, the district was not obligated to present retrospective evidence at the impartial hearing regarding the execution of the student's program or to refute the parent's claims (K.L., 530 Fed. App'x at 87; R.E., 694 F.3d at 186; R.C., 906 F. Supp. 2d at 273). Accordingly, the parents cannot prevail on their claims that the assigned public school site would not have properly implemented the June 2012 IEP.[21]

For substantially the same reasons provided by the IHO (see IHO Decision at pp. 13–14), and even assuming for the sake of argument that the parents could make such speculative claims or that the student had attended the district's recommended program at the assigned public school site, the evidence in the hearing record does not support the conclusion that the district would have violated the FAPE legal standard related to IEP implementation; that is, that the district would

[21] While some district courts have found that parents have a right to assess the adequacy of a particular school site to meet their children's needs, the weight of the relevant authority supports the approach taken here (see B.K. v. New York City Dep't of Educ., 12 F. Supp. 3d 343, 370–72 [E.D.N.Y. 2014]; M.L. v. New York City Dep't of Educ., 2014 WL 1301957 [S.D.N.Y. Mar. 31, 2014]; M.O. v. New York City Dept. of Educ., 996 F. Supp. 2d 269, 271–72 [S.D.N.Y. 2014]; E.H. v. New York City Dep't of Educ., 2014 WL 1224417, at *7 [S.D.N.Y. Mar. 21, 2014]; R.B. v. New York City Dep't of Educ., 2013 WL 5438605, at *17 [S.D.N.Y. Sept. 27, 2013], aff'd, 2014 WL 5463084 [2d Cir. Oct. 29, 2014]; E.F. v. New York City Dep't of Educ., 2013 WL 4495676, at *26 [E.D.N.Y. Aug. 19, 2013]; M.R. v New York City Bd. of Educ., 2013 WL 4834856, at *5 [S.D.N.Y. Aug. 14, 2013]; A.M. v. New York City Dep't of Educ., 964 F. Supp. 2d 270, 286 [S.D.N.Y. 2013]; N.K. v. New York City Dep't of Educ., 961 F. Supp. 2d 577, 588–90 [S.D.N.Y. 2013]; 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]; A.D. v. New York City Dep't of Educ., 2013 WL 1155570, at *13 [S.D.N.Y. Mar. 19, 2013]; J.L. v. City Sch. Dist. of New York, 2013 WL 625064, at *10 [S.D.N.Y. Feb. 20, 2013]; Ganje v. Depew Union Free Sch. Dist., 2012 WL 5473491, at *15 [W.D.N.Y. Sept. 26, 2012], adopted, 2012 WL 5473485 [W.D.N.Y. Nov. 9, 2012]; see also N.S. v. New York City Dep't of Educ., 2014 WL 2722967, at *12–*14 [S.D.N.Y. June 16, 2014] [holding that "[a]bsent non-speculative evidence to the contrary, it is presumed that the placement school will fulfill its obligations under the IEP"]; but see V.S. v. New York City Dep't of Educ., 2014 WL 2600313, at *4 [E.D.N.Y. June 10, 2014]; C.U. v. New York City Dep't of Educ., 2014 WL 2207997, at *14–*16 [S.D.N.Y. May 27, 2014]; Scott v. New York City Dep't of Educ., 6 F. Supp. 3d 424, 444–45 [S.D.N.Y. 2014]; D.C. v. New York City Dep't of Educ., 950 F. Supp. 2d 494, 508–13 [S.D.N.Y. 2013]; B.R. v. New York City Dep't of Educ., 910 F.Supp.2d 670, 676–78 [S.D.N.Y. 2012]; E.A.M. v. New York City Dep't. of Educ., 2012 WL 4571794, at *11 [S.D.N.Y. Sept. 29, 2012]).

have deviated from the student's IEP in a material or substantial way (A.P. v. Woodstock Bd. of Educ., 370 Fed. App'x 202, 205 [2d Cir. Mar. 23, 2010]; Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 [9th Cir. 2007]; Houston Indep. Sch. Dist. v. Bobby R., 200 F.3d 341, 349 [5th Cir. 2000]; see D.D-S. v. Southold Union Free Sch. Dist., 2011 WL 3919040, at *13 [E.D.N.Y. Sept. 2, 2011]; A.L. v. New York City Dep't of Educ., 812 F. Supp. 2d 495, 502–03 [S.D.N.Y. 2011]).

VII. Conclusion

In sum, the evidence in the hearing record supports the IHO's final determination that the district offered the student a FAPE for the 2012–13 school year. On the basis of this determination, it is not necessary to examine the issues of whether the Jewish Center for Special Education was an appropriate unilateral placement for the student and, as raised in the district's cross-appeal, whether equitable considerations support the parents' request for tuition costs, and the necessary inquiry is at an end (see M.C. v. Voluntown, 226 F.3d 60, 66 [2d Cir. 2000]; Walczak, 142 F.3d at 134). The parties' remaining contentions have been considered and need not be examined in light of the determinations herein.

THE APPEAL IS DISMISSED.

THE CROSS-APPEAL IS DISMISSED.

Dated: **Albany, New York**
November 28, 2014

MATTHEW J. ZAPPEN
STATE REVIEW OFFICER