



The University of the State of New York

The State Education Department

State Review Officer

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No. 13-127

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

Appearances:

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for petitioner, Cynthia Sheps, Esq., of counsel

Law Offices of Regina Skyer & Associates, attorneys for respondents, Sonia Mendez-Castro, Esq., of counsel

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the district) appeals from the decision of an impartial hearing officer (IHO) which found that it failed to offer an appropriate educational program to respondents' (the parents') daughter and ordered it to reimburse the parents for their daughter's tuition costs at the Winston Preparatory School (Winston Prep) for the 2012-13 school year. The appeal must be sustained.

II. Overview—Administrative Procedures

The decision of an IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]). A party aggrieved by the decision of an IHO may appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional

evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]).

III. Facts and Procedural History

The parties' familiarity with the detailed facts and procedural history of the case and the IHO's decision is presumed and they will not be recited here at length. Briefly, the CSE met on May 22, 2012 in order to review and consider evaluative information subsequent to the student's initial referral for special education services (Tr. p. 43; Dist. Exs. 27 at p. 1; 30 at p. 1). However, following the May 2012 meeting, the parent indicated she had misunderstood the purpose and role of an additional parent member, and a second meeting was scheduled. (Tr. pp. 22-24, 35-36, 68, 74; Dist. Ex. 30 at p. 1). The CSE reconvened on June 11, 2012, to formulate the student's IEP for the 2012-13 school year (see generally Dist. Ex. 28). Based upon their review of a number of evaluative documents and with parent and teacher input, the CSE recommended special education teacher support services (SETSS) for five periods per week in a location outside the student's [general education] classroom, and a variety of testing accommodations, including extended time, separate location, preferential seating, on-task focusing prompts, directions and questions read aloud and re-read, and use of a calculator (Dist. Ex. 28 at pp. 4-5). The parents disagreed with the recommendations contained in the June 2012 IEP, as well as with the particular public school site to which the district assigned the student to attend for the 2012-13 school year and, as a result, notified the district of their intent to unilaterally place the student at Winston Prep (see Parent Ex. A). In a due process complaint notice, dated December 20, 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. B).

An impartial hearing was held on May 6, 2013 (Tr. pp. 1-218). In a decision dated May 23, 2013, the IHO determined that the district failed to offer the student a free appropriate public education (FAPE) for the 2012-13 school year, that Winston Prep was an appropriate unilateral placement, and that equitable considerations weighed in favor of the parents' request for an award of tuition reimbursement (IHO Decision at pp. 9-11). As relief, the IHO ordered the district to reimburse the parents for the cost of the student's tuition at Winston Prep for the 2012-13 school year (IHO Decision at p. 11).¹

IV. Appeal for State-Level Review

The parties' familiarity with the particular issues for review on appeal in the district's petition for review and the parents' answer thereto is presumed. The following issues presented on appeal must be resolved in order to render a decision in this case:

1. Whether the May 2012 and June 2012 CSEs were properly constituted;
2. Whether the parents were significantly impeded from participating in the development of the June 2012 IEP;

¹ Winston Prep has not been approved by the Commissioner of Education as a school with which school districts may contract for the instruction of students with disabilities (see 8 NYCRR 200.1[d], 200.7).

3. Whether the student's needs were accurately represented on the June 2012 IEP;
4. Whether the annual goals appropriately addressed the student's unique educational needs;
5. Whether placement in a general education setting with special education teacher support services (SETSS) was appropriate.

V. Applicable Standards

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

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; R.E. v. New York City Dep't of Educ., 694 F.3d 167, 189-90 [2d Cir. 2012]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 [2d Cir. 2012]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). "[A]dequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP" (Walczak v. Florida Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998], quoting Rowley, 458 U.S. at 206; see T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 253 [2d Cir. 2009]). While the Second Circuit has emphasized that school districts must comply with the checklist of procedures for developing a student's IEP and indicated that "[m]ultiple procedural violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not" (R.E., 694 F.3d at 190-91), the Court has also explained that not all procedural errors render an IEP legally inadequate under the IDEA (M.H., 685 F.3d at 245; A.C. v. Bd. of Educ., 553 F.3d 165, 172 [2d Cir. 2009]; Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]; Perricelli v. Carmel Cent. Sch. Dist., 2007 WL 465211, at *10 [S.D.N.Y. Feb. 9, 2007]). Under the IDEA, if procedural violations are alleged, an administrative officer may find that a student did not receive a FAPE only if the procedural inadequacies (a) impeded the student's right to a FAPE, (b) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 [2007]; R.E., 694 F.3d at 190; M.H., 685 F.3d at 245; A.H. v. Dep't of Educ., 394 Fed. App'x 718, 720, 2010 WL 3242234 [2d Cir. Aug. 16, 2010]; E.H. v. Bd. of Educ., 2008 WL 3930028, at *7 [N.D.N.Y. Aug. 21, 2008], aff'd, 361 Fed. App'x 156, 2009 WL 3326627 [2d Cir. Oct. 16, 2009]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415, 419 [S.D.N.Y. 2007], aff'd, 293 Fed. App'x 20, 2008 WL 3852180 [2d Cir. Aug. 19, 2008]).

The IDEA directs that, in general, an IHO's decision must be made on substantive grounds based on a determination of whether the student received a FAPE (20 U.S.C. § 1415[f][3][E][i]). A school district offers a FAPE "by providing personalized instruction with sufficient support

services to permit the child to benefit educationally from that instruction" (Rowley, 458 U.S. at 203). However, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP" (Walczak, 142 F.3d at 130; see Rowley, 458 U.S. at 189). The statute ensures an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents" (Walczak, 142 F.3d at 132, quoting Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 [2d Cir. 1989] [citations omitted]; see Grim, 346 F.3d at 379). Additionally, school districts are not required to "maximize" the potential of students with disabilities (Rowley, 458 U.S. at 189, 199; Grim, 346 F.3d at 379; Walczak, 142 F.3d at 132). Nonetheless, a school district must provide "an IEP that is 'likely to produce progress, not regression,' and . . . affords the student with an opportunity greater than mere 'trivial advancement'" (Cerra, 427 F.3d at 195, quoting Walczak, 142 F.3d at 130 [citations omitted]; see T.P., 554 F.3d at 254; P. v. Newington Bd. of Educ., 546 F.3d 111, 118-19 [2d Cir. 2008]; Perricelli, 2007 WL 465211, at *15). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]; see Rowley, 458 U.S. at 192). The student's recommended program must also be provided in the least restrictive environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 CFR 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see Newington, 546 F.3d at 114; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132; G.B. v. Tuxedo Union Free Sch. Dist., 751 F. Supp. 2d 552, 573-80 [S.D.N.Y. 2010], aff'd, 486 Fed. App'x 954, 2012 WL 4946429 [2d Cir. Oct. 18, 2012]; E.G. v. City Sch. Dist. of New Rochelle, 606 F. Supp. 2d 384, 388 [S.D.N.Y. 2009]; Patskin v. Bd. of Educ., 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]).

An appropriate educational program begins with an IEP that includes a statement of the student's present levels of academic achievement and functional performance (see 34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]; Tarlowe v. New York City Bd. of Educ., 2008 WL 2736027, at *6 [S.D.N.Y. July 3, 2008] [noting that a CSE must consider, among other things, the "results of the initial evaluation or most recent evaluation" of the student, as well as the "academic, developmental, and functional needs" of the student]), establishes annual goals designed to meet the student's needs resulting from the student's disability and enable him or her to make progress in the general education curriculum (see 34 CFR 300.320[a][2][i], [2][i][A]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (see 34 CFR 300.320[a][4]; 8 NYCRR 200.4[d][2][v]).

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. CSE Composition

With respect to the matter of CSE composition, the parents allege that both the May 2012 and June 2012 CSEs were not properly constituted, due to the lack of an additional parent member at the May 2012 CSE meeting, and insufficient attendance and participation in the CSE process by the student's general education teacher, who was in attendance for only part of the May 2012 CSE meeting and did not attend the June 2012 CSE meeting (Parent Ex. B at pp. 2-3). Although the IHO did not articulate specific findings regarding the parents' procedural claims, he concluded,

"[t]he procedural flaws . . . [w]hen viewed separately . . . would not negate a FAPE" (IHO Decision at p. 9). Nevertheless, the IHO went on to find that, "when viewed cumulatively they undermine the CSE's obligation to provide meaningful consideration of the child's needs" (*id.*). With regard to the impact of these alleged procedural deficiencies related to the CSE's composition and, as further discussed herein, the parents' participation in the CSE process, I find that the IHO erred in his finding that the cumulative impact of such alleged violations resulted in a denial of FAPE.

With regard to the matter of the absence of an additional parent member during the May 2012 CSE meeting, the hearing record shows that the student's mother initially misunderstood the purpose and role of an additional parent member, and therefore declined that option (Tr. pp. 174-175). When the choice was clarified, the student's mother indicated she would prefer to have an additional parent member present, and the June 2012 meeting was scheduled for that purpose (Tr. pp. 22-24, 26, 174-176). The May 2012 IEP indicates that participants in the meeting included the student's mother, a social worker, who also served as the district representative, a special education teacher, a school psychologist, and by telephone, one of the student's general education teachers from her then-current unilateral placement (Dist. Ex. 26 at p. 1). The June 2012 IEP notes the attendance of an additional parent member, as well as the student's mother, the social worker, also serving as district representative, a special education teacher, and a school psychologist (Dist. Ex. 28 at p. 9).

Although the parents allege that there was limited participation of the student's general education teacher in the development of the June 2012 IEP, the hearing record shows that the student's general education teacher participated in the May 2012 CSE meeting and notes from this meeting show that the teacher's input at the May meeting was carried over to the June IEP (Dist. Exs. 27 at pp. 1-2; 28 at pp. 1-2; Parent Ex. B at p. 3). For example, the June IEP details the student's difficulty maintaining focused attention and her poor penmanship; this information was derived from the general education teacher during the May 2012 CSE meeting and reflected in that meeting's summary notes (Dist. Exs. 27 at pp. 1-2; 28 at pp. 1-2). The June 2012 IEP also incorporates information presented in questionnaires completed by four of the student's general education teachers (Dist. Exs. 25 at pp. 1-4; 27 at p. 1-2; 28 at pp. 1-2). When queried about the participation by student's general education teachers at the June CSE meeting, the district representative stated that although teachers from the student's then-current program had been invited, they declined to participate in the June meeting, because "there simply wasn't any new evidence or any new documents presented . . . nothing had changed and their reports stood the same " (Tr. pp. 27-28, 32, 63-64, 67).

Therefore, the hearing record supports a finding that, when viewing both the May CSE meeting and the June CSE meeting in tandem, that the parent was afforded an opportunity to have a parent member present for review of the IEP at the June 2012 CSE meeting, the June meeting was scheduled for the sole purpose of a review of the IEP with an additional parent member present, since no new information concerning the student was obtained between the two meetings, and the IEP was developed with relevant input from the general education teacher, even though the teacher did not participate for the full duration of the May 2012 CSE meeting and did not attend the June 2012 CSE meeting. As a result, to the extent any procedural irregularities existed concerning the CSE's composition, they were de minimus and did not deny a FAPE to the student, result in a denial of educational benefits or otherwise impede the parents' ability to participate in the CSE process (20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]).

B. Parent Participation

Turning next to the matter of parent participation in the development of the June 2012 IEP, the hearing record shows the IHO erred in determining that the CSE significantly impeded the parent's ability to participate. The IDEA sets forth procedural safeguards that include providing parents an opportunity "to participate in meetings with respect to the identification, evaluation, and educational placement of the child" (20 U.S.C. § 1415[b][1]). Federal and State regulations governing parental participation require that school districts take steps to ensure that parents are present at their child's IEP meetings or are afforded the opportunity to participate (34 CFR 300.322; 8 NYCRR 200.5[d]). Although school districts must provide an opportunity for parents to participate in the development of their child's IEP, mere parental disagreement with a school district's proposed IEP and placement recommendation does not amount to a denial of meaningful participation (see P.K. v. Bedford Cent. Sch. Dist., 569 F. Supp. 2d 371, 383 [S.D.N.Y. 2008] ["A professional disagreement is not an IDEA violation"]; Sch. for Language & Comm'n Dev. v. New York State Dep't of Educ., 2006 WL 2792754, at *7 [E.D.N.Y. Sept. 26, 2006] ["Meaningful participation does not require deferral to parent choice"]; Paolella v. District of Columbia, 210 Fed. App'x 1, 3, 2006 WL 3697318 [D.C. Cir. Dec. 6, 2006]).

In the instant case, the parents assert they were denied meaningful participation in the CSE decision-making based upon the CSE's failure to make changes to the IEP initially drafted at the May 2012 CSE meeting, to "meaningfully incorporate the evaluative data into its recommendations," and to modify the placement recommendation.

The purpose of the June 2012 CSE meeting was to review the IEP that had been drafted at the May 2012 CSE meeting, but with an additional parent member present (Tr. pp. 22-24, 26, 174-176). As noted above, no new reports were presented at the June CSE meeting that would have informed changes to the IEP, and indeed, the student's then-current teachers declined to attend the second meeting for that reason (Tr. pp. 27-28, 191-92).

With respect to the parents' assertion that the June 2012 CSE was not responsive to certain aspects of a privately-obtained psychoeducational evaluation report, it is well settled that a CSE must consider privately-obtained evaluations, provided that such evaluations meet the district's criteria, in any decision made with respect to the provision of a FAPE to a student (34 CFR 300.502[c]; 8 NYCRR 200.5[g][1][vi]). However, "consideration" does not require substantive discussion, that every member of the CSE read the document, or that the CSE accord the private evaluation any particular weight (T.S. v. Bd. of Educ., 10 F.3d 87, 89-90 [2d Cir. 1993]; G.D. v. Westmoreland Sch. Dist., 930 F.2d 942, 947 [1st Cir. 1991]; see Michael P. v. Dep't of Educ., 656 F.3d 1057, 1066 n.9 [9th Cir. 2011]; K.E. v. Indep. Sch. Dist. No. 15, 647 F.3d 795, 805-06 [8th Cir. 2011]; Evans v. Dist. No. 17, 841 F.2d 824, 830 [8th Cir. 1988]; James D. v. Bd. of Educ., 642 F. Supp. 2d 804, 818 [N.D. Ill. 2009]). The hearing record indicates that the CSE reviewed and considered the report and incorporated significant details of the psychoeducational report in the student's June 2012 IEP (Tr. pp. 20-21, 36-37-39; compare Parent Ex. F at pp. 2-3, 7-8, with Dist. Ex. 28 at pp. 1-2). Specifically, the IEP details the student's performance on the Wechsler Intelligence Scale for Children-IV (WISC-IV), references a significant scatter in subscale scores, and includes the psychoeducational evaluation report author's conclusion that the student's "true underlying intellectual potential is estimated to be well within the average range" (Dist. Ex. 28 at pp. 1-2; Parent Ex. F at p. 9). In addition, the IEP included the private evaluator's comment that the student was "a lovely girl whose sensitivity and perceptiveness are readily apparent," and that

"no sign of significant emotional distress was reported," but that maintaining focused attention presented as a challenge for the student (Dist. Ex. 28 at pp. 1-2; Parent Ex. F at pp. 2, 4-5, 9-10).

While the parents would have preferred that the CSE recommend Winston Prep as the student's special education placement, it was unable to recommend Winston Prep for a number of reasons, including its mandate to develop an appropriate special education program that was sufficiently supportive to meet the student's unique needs in the least restrictive environment (Tr. pp. 25-26, 28-29, 83). As noted by the district representative, this was the student's initial referral and evaluation for special education services, and "given her academics, her standardized testing, . . . her report card, . . . she was an average to above-average student . . . she had a solid report card; therefore, " the CSE found that SETSS was the "least restrictive" environment in which to provide the student with supports appropriate to her needs (Tr. pp. 19-21, 28-29, 34).

The parents' dissatisfaction with the CSE's ultimate recommendation does not establish that their participation in the development of the student's IEP was significantly impeded. As noted above, the parent participated in both CSE meetings and offered input that was documented in the IEP; the CSE also reviewed and considered, among other things, the privately-obtained psychoeducational evaluation report, which is also reflected in the IEP (Dist. Ex. 28 at pp. 1-2; Parent Ex. F at pp. 2, 4-5, 9-10). Therefore, I find that parent participation in the CSE process was not impeded and the IHO's conclusion on this issue must be reversed.

C. Present Levels of Performance

Among the other elements of an IEP is a statement of a student's academic achievement and functional performance and how the student's disability affects his or her progress in relation to the general education curriculum (20 U.S.C. § 1414[d][1][A][i][I]; 34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]; see 8 NYCRR 200.1[ww][3][i]). In developing the recommendations for a student's IEP, the CSE must consider the results of the initial or most recent evaluation; the student's strengths; the concerns of the parents for enhancing the education of their child; the academic, developmental and functional needs of the student, including, as appropriate, the student's performance on any general State or district-wide assessments as well as any special factors as set forth in federal and State regulations (34 CFR 300.324[a]; 8 NYCRR 200.4[d][2]).

In the present case, the hearing record shows that in addition to information gleaned from the privately-obtained psychoeducational evaluation and parent input, the IEP also reflects consideration of a March 2012 social history, four classroom teacher reports, and the student's report card from her then-current school (Dist. Exs. 8 at pp. 1-2; 25 at pp. 1-4; 28 at pp. 1-2).² The present levels of performance identify the student's strengths as well as her challenges, and denote parental concerns, most notably the amount of effort the student and her parents expend on academic learning at home (Dist. Ex. 28 at pp. 1-2). Furthermore, the IEP details the student's tendency to work slowly and her ability to cope with frustration, and also includes a brief retelling of the student's medical history, information that was drawn from multiple sources (Dist. Exs. 25 at pp. 1-4; 28 at pp. 1-2; Parent Ex. F at pp. 1, 4). Upon review, I find the student's needs, as reflected in the evaluative information available to the CSE, were appropriately represented on the

² The student's report card from her parochial school was not admitted as evidence at the impartial hearing, but is specifically referenced in the student's June 2012 IEP (see Dist. Ex. 28 at p. 1).

June 2012 IEP. Accordingly, the IHO's conclusion that the student's present levels of performance were not adequately reflected in the June 2012 IEP must be reversed.

D. Annual Goals

Turning next to the issue of whether the annual goals appropriately addressed the student's unique educational needs, the evidence in the hearing record shows that the June 2012 annual goals were generally consistent with the student's needs as outlined in the present levels of performance (Dist. Ex. 28 at pp. 1-4).

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]. While the annual goals in the June 2012 IEP did not include benchmarks or short-term objectives, each goal was written to target a variety of subordinate skills in reading, written language, and mathematics and included an estimate of grade level instruction that was calculated to lead to roughly one year's growth, based upon the student's performance reported in the present levels of performance (Dist. Ex. 28 at pp. 3-4; Parent Ex. F at p. 15).³ For example, the annual reading goal noted specific skills to be addressed, including developing the student's comprehension, inferential, vocabulary and analytical skills (Dist. Ex. 28 at p. 3). The annual goal for written language included having the student "identifying errors in her written work, producing semantically and grammatically correct sentences, and identifying parts of speech" (Dist. Ex. 28 at p. 3). The annual math goal emphasized enhancing the student's facility with mathematical operations, specifically her understanding of the "relationships among them [in order to] understand mathematics at the 6th grade level" (Dist. Ex. 28 at p. 4). Each of the goals included criteria by which to determine successful achievement, as well as a method by which to measure progress and a schedule for progress monitoring (Dist. Ex. 28 at pp. 3-4). Accordingly, the IHO's conclusion on this issue must be reversed.

E. Placement—General Education Setting with SETSS

With regard to the matter of whether the recommendation for the student's placement in a general education setting with SETSS was appropriate, I find that the IHO erred in determining the recommended placement would not have been sufficient to meet the student's "specific needs and problems" (IHO Decision at p. 10).

³ The written language goal sets the grade level estimate at eighth grade, although the present levels of performance indicates the student earned a grade equivalent score of tenth grade during the psychoeducational evaluation (Dist. Ex. 28 at pp. 1, 3; Parent Ex. F at p. 15). However, the student's performance on various subtests assessing written language skills reflect scattered skills, with grade equivalent scores ranging from sixth grade through eleventh grade, with an overall written expression grade equivalent at seventh grade (Parent Ex. F at p. 15).

As noted above, the psychoeducational evaluation report indicated the student's intellectual potential was "estimated to be well within the average range" (Parent Ex. F at p. 3). While the student's performance on measures of academic achievement yielded "mixed" results, the student showed relative strengths in some aspects of reading and written language, while other areas such as reading fluency and math were "below average" (Parent Ex. F at p. 9). Further, as an eighth grade student in her former unilateral placement, the student's report card indicated "an 85 average, with a 77 in math . . . [and] general effort was graded 'B'" (Dist. Ex. 28 at p. 1). At the time these grades were calculated, the student was attending a general education parochial school, with no special education services, although her teachers did offer the student "accommodations such as extended time and preferential seating" (Tr. pp. 30, 164; Dist. Ex. 28 at p. 1). As noted by the district representative, the CSE considered a myriad of factors in arriving at the recommendation for a general education setting with SETSS (Tr. pp. 28-29, 56, 77).

Given the student's relative cognitive and academic strengths, the hearing record supports a finding that the June 2012 IEP's recommendation for a general education setting with SETSS, along with the other accommodations, modifications, annual goals, and counseling services contained therein, was reasonably calculated to provide the student with educational benefit in the LRE.

VII. Conclusion

Having determined that the evidence in the hearing record does not support the IHO's determinations that the district failed to offer the student a FAPE for the 2012-13 school year, the necessary inquiry is at an end and there is no need to reach the issues of whether Winston Prep was an appropriate unilateral placement or whether equitable considerations weighed in favor of the parents' request for relief.

I have considered the parties' remaining contentions and find it is unnecessary to address them in light of my determinations above.

THE APPEAL IS SUSTAINED.

IT IS ORDERED that the IHO's decision dated May 23, 2013 is modified, by reversing those portions which found that the district failed to offer the student a FAPE for the 2012-13 school year and directed the district to reimburse the parents for the costs of the student's tuition at Winston Prep.

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

CAROL H. HAUGE
STATE REVIEW OFFICER