The University of the State of New York

The State Education Department
State Review Officer
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No. 13-160

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, Jessica C. Darpino, Esq., of counsel

Law Offices of Lauren A. Baum PC, attorneys for respondent, Richard A. Liese, Esq., of counsel

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the district) appeals from the decision of an impartial hearing officer (IHO) which found that it failed to offer an appropriate educational program to respondent's (the parent's) daughter and ordered it to reimburse the parent for her daughter's tuition costs at the Cooke Center Academy (Cooke) and Camp Lee Mar for the 2011-12 school year. The parent cross-appeals certain determinations made by the IHO, as well as her failure to address certain issues raised in the due process complaint notice. The appeal must be sustained. The cross-appeal must be dismissed.

II. Overview—Administrative Procedures

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

§§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[*l*]).

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

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

On February 9, 2011, the CSE convened for the student's annual review and to develop the student's IEP for the 2011-12 school year (Dist. Ex. 4 at pp. 1-2). The CSE determined that the student continued to be eligible for special education services as a student with multiple disabilities and recommended a 12-month 12:1+1 special class placement in a specialized school, special education transportation, and adapted physical education (id. at pp. 1, 6, 12).[1] The CSE also

[1] The student's eligibility for special education programs and services as a student with multiple disabilities is not in dispute in this appeal (34 CFR 300.8[c][7]; 8 NYCRR 200.1[zz][8]).

recommended related services consisting of one 45-minute session per week of 1:1 counseling; three 45-minute sessions per week of 3:1 counseling; three 45-minute sessions per week of 3:1 occupational therapy (OT); one 45-minute session per week of 1:1 physical therapy (PT); and three 45-minute sessions per week of 3:1 speech-language therapy (id. at p. 14). The CSE further recommended that the student be assigned a 1:1 full-time crisis management paraprofessional (id. at pp. 12, 14).

By Notice of Recommended Deferred Placement dated February 9, 2011, the district notified the parent that the CSE recommended deferring placement of the student pursuant to the February 2011 IEP until July 1, 2011 because the IEP had been developed for the 2011-12 school year (Dist. Ex. 11). The notice indicated that the parent would receive a Final Notice of Recommendation (FNR) on or before June 15, 2011 (id.).

By letter dated May 27, 2011 the parent informed the district that she was "awaiting receipt of the district's IEP program/placement recommendation" (Parent Ex. B at p. 2).[2] In the letter, the parent requested that the district "furnish" the student's special education services for the 2011-12 school year at Cooke, as the student "may be enrolled in that program" if the district failed to offer the student a free appropriate public education (FAPE) (id.).[3]

By Final Notice of Recommendation (FNR) dated June 10, 2011 the district summarized the services recommended by the February 2011 CSE and notified the parent of the particular public school site to which the student was assigned and at which her IEP would be implemented for the 2011-12 school year (Dist. Ex. 6).

By letter dated June 15, 2011 the parent notified the district that she had received the FNR, but had not had sufficient time to visit the offered placement to determine whether it would be appropriate for the student (Parent Ex. C at p. 1). In the letter, the parent indicated that, although she would visit the placement "as soon as possible" and advise the district of her decision, in the interim she would send the student to Camp Lee Mar, a private summer camp, for the summer and seek "funding/reimbursement for that placement" (id.).

By letter dated July 27, 2011, the parent informed the district of her visit to the assigned public school site and detailed her objections regarding that site (Parent Ex. D at pp. 3-5). The parent stated that the public school site was "the same placement that was offered last year and which I advised was inappropriate for [the student]" (id. at p. 3). The parent also stated that she would "continue [the student's] enrollment in Camp Lee Mar for the summer and plan to send her to [Cooke] for the fall and will be seeking funding/reimbursement for those programs" (id. at p.

[2] The hearing record contains multiple duplicative exhibits. For purposes of this decision, only parent exhibits were cited in instances where both a parent and district were identical. I remind the IHO that it is her responsibility to exclude evidence that she determines to be irrelevant, immaterial, unreliable or unduly repetitious (8 NYCRR 200.5[j][3][xii][c]).

[3] The May 2011 letter appears to be intended to comply with State requirements relating to the provision of special education programs and services to dually enrolled students attending nonpublic schools who are to be provided with an individualized education service program (IESP) specifying services provided by the public school (see Educ. Law § 3602-c[2]).

5). On April 12, 2011, the parent signed an enrollment contract with Cooke for the 2011-12 school year (Tr. pp. 714-15; Parent Ex. K at p. 2).[4]

A. Due Process Complaint Notice

In a due process complaint notice dated February 20, 2012, the parent alleged that the district failed to offer the student a FAPE (Parent Ex. A). The parent sought tuition reimbursement and direct funding for the student's placement at Cooke, the student's tuition at Camp Lee Mar, related services, and transportation for the 2011-12 school year (id. at p. 4).

Relative to matters concerning the CSE process, the parent first alleged that the CSE was invalidly constituted and asserted that she "reserve[d] the right" to object to the qualifications of or manner in which any CSE member participated in the CSE meeting (Parent Ex. A at pp. 1, 3).[5] Next, the parent alleged that the CSE did not provide her with a meaningful opportunity to participate in the decision-making process (id. at p. 1). Finally, the parent claimed that the CSE did not adequately consider "current, sufficient and appropriate" evaluative data to justify its recommendations (id.).

With regard to the February 2011 IEP, the parent alleged that the IEP did not adequately reflect the student's present levels of performance and did not clearly specify her areas of multiple disabilities (Parent Ex. A at p. 2). The parent contended that the IEP contained an insufficient number of goals to address the student's areas of need (id.). Further, the parent alleged that those annual goals contained in the IEP were "too vague and too generic" and did not provide "appropriate measurable benchmarks" to measure the student's progress toward her annual goals throughout the year (id.). The parent also alleged that some of the goals were not achievable (id.). The parent next asserted that the recommended 12:1+1 special class was too large to provide the level of individual attention from a teacher that the student required to make progress (id. at pp. 2-3). Finally, relative to the IEP's transition plan, the parent alleged that the transition plan was vague and generic, and did not identify the party responsible for providing transition services or the time frame in which the stated goals were to be achieved (id. at p. 2). The parent also alleged that the transition plan failed to provide adequate travel training and that the IEP did not include

[4] Cooke has not been approved by the Commissioner of Education as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

[5] To the extent that the parent "reserve[d] the right to raise any other procedural or substantive issues that may come to her attention during the pendency of the litigation of this matter" (Parent Ex. A at p. 4), such language fails to preserve any argument or claim where, as here, the parent did not seek the district's agreement to expand the scope of the impartial hearing to include additional claim or file an amended due process complaint notice (see T.G. v. New York City Dep't of Educ., 2013 WL 5178300, at *15 [S.D.N.Y. Sept. 16, 2013] [explaining that the parent's "catch-all allegations in her due process complaint . . . did not preserve any of the plaintiff's specific claims about the placement . . . because the allegations fail to inform the Department of a specific problem to be remedied" and instructing that "[t]he due process complaint must list the alleged deficiencies with enough specificity so that the Department is able to understand the problems and attempt to remedy them"]; see also R.E. v. New York City Dep't of Educ., 694 F.3d 167, 187 n.4 [2d Cir. 2012]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 250-51 [2d Cir. 2012]. To hold otherwise would render the IDEA's statutory and regulatory provisions meaningless (see 20 U.S.C. § 1415[f][3][B]; 34 CFR 300.511[d], 300.508[d][3][i]; 8 NYCRR 200.5[j][1][ii]; B.P. and A.P v New York City Dep't of Educ., 841 F. Supp. 2d 605, 611 [E.D.N.Y. 2012] [rejecting the proposition that a general reservation of rights in an impartial hearing request preserves additional procedural arguments later in the proceeding]; Application of a Student with a Disability, Appeal No. 11-010).

appropriate supports to assist the student in transitioning to the recommended program from her then-current school (id.).

Relative to the particular public school site identified by the district, the parent, after visiting the public school site, alleged that school was too large for the student to make progress and that the student would be overwhelmed by anxiety in the "very large, crowded, and noisy" public school (Parent Ex. A at p. 2). The parent also alleged that the public school site could not provide her with any information regarding the other students with whom the student would be grouped if she attended the public school (id. at p. 3). In addition, the parent raised several other concerns relative to the public school, including that: the worksite program lacked adequate supervision and support; there was no assurance that the student would be able to participate in the worksite program due to limited staffing; the duration of the worksite program limited academic instruction to 3 hours per day, which was insufficient to permit the student to make progress; the assigned public school site did not provide a life skills or social skills curriculum and had limited opportunities for community inclusion; and that the assigned public school site was not always able to fulfill related services mandates and, when it could, they were only available during the academic portion of the day, which would lead to the student missing significant portions of her academic instruction (id.).

With regard to the parent's unilateral placement of the student at Camp Lee Mar and Cooke, the parent asserted that both Camp Lee Mar and Cooke addressed the student's needs and enabled her to make academic and social progress (Parent Ex. A. at p. 4). The parent also asserted that equitable considerations favored her request for tuition reimbursement or direct funding for the costs of the student's tuition at Camp Lee Mar and Cooke since she actively cooperated in the CSE and placement process and provided appropriate notice of her concerns with and rejection of the offered program; (id. at pp. 3-4).

B. Impartial Hearing Officer Decision

An impartial hearing was convened on December 12, 2012 and concluded on May 3, 2013, after six nonconsecutive hearing dates (IHO Decision at pp. 1-2; Tr. pp. 1-788). In a decision dated July 18, 2013, the IHO determined that the district failed to offer the student a FAPE for the 2011-12 school year, that Cooke and Camp Lee Mar together constituted an appropriate placement for the student, that equitable considerations favored the parent's request for tuition reimbursement, and that the student's parent was entitled to tuition reimbursement and direct funding of tuition costs associated with the student's placement at Cooke and Camp Lee Mar (IHO Decision at pp. 8-24).

As to sufficiency of the evaluative information before the CSE, the IHO noted that the only new assessment conducted by the district was a classroom observation and that the CSE did not have a written social history or current related service provider reports available to it (IHO Decision at p. 11). The IHO also found that the CSE did not adequately review the evaluative material that was available to it (id. at p. 13). In particular, the IHO found that although the CSE had sufficient information about the student's interfering behaviors to develop an IEP that would appropriately address those behaviors, it did not (id.). The IHO next found that although the written description of the student's present levels of performance in the IEP was consistent with the Cooke progress report available to the CSE, the management needs in the IEP failed to describe or address the student's inappropriate and disruptive behaviors, and the IEP did not contain

strategies to address the student's educational, social, and emotional needs (id. at pp. 12-13). As to the goals in the IEP, the IHO found that the annual goals were "vague and faile[d] to provide meaningful guidance" (id. at p. 13). The IHO also found that there was "credible testimony that the goals were not developed at the meeting with the meaningful participation of the parent and those that were most familiar with the student" (id.). Relative to the placement recommendation, the IHO found that recommendation that the student attend a 12:1+1 special class with a 1:1 crisis management professional "would not provide the student with sufficient support to make educational progress" (id. at p. 15). The IHO further reasoned that the academic management needs set forth in the IEP recommended small group and 1:1 instruction but that the IEP failed to make such an express program recommendation (id.). Further, the IHO noted that the district staff members of the CSE who were "the sole advocates for the recommended program . . . had never met, evaluated, or taught the student and had no independent knowledge of the student's needs" (id. at pp. 15-16). Turning to the IEP's transition plan, the IHO found that the transition plan was inappropriate because it lacked long-term outcomes and because the transition services were vague and generic and "barely referenc[ed] the student's unique needs and interests" (id. at p. 14). The IHO also found that the transition plan failed to designate a responsible party or time frame for the provision of transition services (id.).

With regard to the assigned public school site, the IHO found that the district failed to demonstrate that it could properly implement the student's IEP (IHO Decision at pp. 16-19). More specifically, the IHO found that the district failed to establish that the student would have been appropriately grouped with students with similar needs (id. at pp. 17-18). The IHO also found that the district failed to establish how that student's academic management needs would be met with respect to small group instruction, one-to-one instruction, and transition skills (id. at pp. 18-19). The IHO further found that the district failed to establish that it would have been able to consistently provide the related services recommended in the 2011 IEP (id. at 19).

With regard to the parent's unilateral placements, the IHO found that the student's programs at Cooke and Camp Lee Mar for the 2011-12 school year were appropriate and met the student's educational needs (IHO Decision at pp. 19-23). Turning to the remedy for the district's denial of a FAPE to the student for the 2011-12 school year, the IHO found that equitable considerations did not weight against granting the parent's request for public funding of the student's unilateral placements at Camp Lee Mar and at Cooke and that the parent had established her inability to pay the cost of the student's tuition at Camp Lee Mar and at Cooke, entitling her to an award of direct payment thereof (see id. at pp. 23-24).[6] The IHO found that the hearing record contained no evidence that the parent had not cooperated with the CSE or was unwilling to consider an appropriate district placement (id. at p. 24). The IHO further found that the parent provided evaluations to the district, attended the CSE meeting, visited the assigned public school site placement, and timely notified the district of her intent to place her daughter in a nonpublic school at public expense (id.). Given the foregoing, the IHO ordered the district to reimburse the parent for the amounts she paid toward the costs of tuition at Camp Lee Mar and Cooke and directly fund the balance of the student's tuition costs at Cooke (id. at pp. 24-25).

[6] The IHO also rejected the district's claim that "the parent failed to establish an obligation to pay tuition under the Cooke contract" (IHO Decision at p. 24).

IV. Appeal for State-Level Review

The district appeals, seeking to overturn the IHO's determinations that the district failed to offer the student a FAPE for the 2011-12 school year, that the parent's unilateral placements at Camp Lee Mar and Cooke were appropriate, and that equitable considerations favored the parent's request for relief. First, the district argues that the parent and three representatives from Cooke were afforded an opportunity to participate in the development of the student's IEP at the February 2011 CSE meeting and to express concern with regard to the 12:1+1 special class placement recommendation and other aspects of the IEP.

Second, relative to the content of the February 2011 IEP, the district argues that the IHO erred in finding that the CSE did not review the evaluative material that was available to it at the CSE meeting. Specifically, the district argues that the CSE considered the evaluative information available to it. Third, the district similarly argues that the IHO erred in finding that the CSE did not have sufficient evaluative information at the meeting to develop the IEP.

Fourth, the district contends that the IHO erred in finding that the management needs in the February 2011 IEP failed to describe or address the student's inappropriate and disruptive behaviors and that the IEP did not contain strategies to address the student's educational, social, and emotional needs. The district argues that the student's present levels of performance were accurately reported on the IEP, were consistent with the Cooke progress report, and were not objected to at the CSE meeting.

Fifth, the district argues that the IHO erred in finding that the goals contained within the February 2011 IEP were vague and did not provide meaningful guidance. The district contends that the CSE reviewed the present levels of performance to create the annual goals and short-term objectives for the student; that the goals were largely drawn from the Cooke progress report and input from Cooke representatives who participated at the CSE meeting; and that there were no objections raised by anyone at the CSE meeting as to the goals.

Sixth, the district argues that the IHO erred in finding that placement in a 12:1+1 special class with a 1:1 crisis management professional would not provide the student with sufficient support. The district notes that recommended program was similar to the student's program at Cooke and asserts that the 12:1+1 special class program with an individual paraprofessional would have addressed the student's needs.

Seventh, the district argues that the transition plan in the February 2011 IEP was drafted in accordance with State regulations and that the IEP included an appropriate transition goal. The district also argues that when the CSE discussed the transition plan at the February 2011 meeting, there was no objection from the parent or other members of the CSE.

Eighth, with regard to the parent's challenges to the assigned public school site, the district argues that because the parent rejected the placement and the student never attended the public school, the parent's challenges to the public school are speculative as a matter of law. Alternatively, the district argues that had the student attended the public school, the district would have appropriately implemented the IEP, the student would have been appropriately functionally grouped with similar peers, and that the student would have received 1:1 instruction, travel training, and life skills training.

Ninth, the district argues the IHO erred in finding the parent's unilateral placement appropriate. As to the student's placement at Camp Lee Mar, the district argues that Cooke had a 12-month program and, therefore, the IHO inappropriately awarded tuition reimbursement for the student's enrollment in Camp Lee Mar.[7] Tenth, with regard to the IHO's finding that equitable considerations did not bar tuition reimbursement or direct funding of tuition, the district argues that the IHO erred because the parent failed to provide the district with proper notice of her concerns with the February 2011 IEP when she provided notice of her intention to enroll the student at Cooke and Camp Lee Mar at public expense; the parent had no intention of enrolling the student in a public school; and the parent signed an enrollment contract with Camp Lee Mar prior to the February 2011 CSE meeting and with Cooke prior to her three letters to the district indicating her intention to seek public funding for the student's placement. The district also argues that given the parent's annual income, the parent failed to demonstrate that direct funding was appropriate.

The parent answers, denying the district's assertions on the disputed issues before the IHO and requesting that the IHO's decision be upheld for the reasons stated by the IHO. The parent also cross-appeals. In her cross-appeal, the parent first argues that the IHO failed to address her claim that the CSE did not meaningfully involve the parent in the development of the February 2011 IEP. In support of her argument, the parent contends that the CSE failed to respond to the parent's concerns about the 12:1+1 special class placement recommendation or to discuss other programs options for the student. Second, relative to the student's present levels of performance in the IEP, the parent cross-appeals the IHO's finding that they were consistent with the Cooke progress report. Contrary to the IHO's statement, the parent argues that the IEP failed to adequately describe the student's interfering behaviors and the level of 1:1 attention that the student required; failed to describe the student's balance issues; and failed to sufficiently describe her social/emotional functioning. Third, the parent cross-appeals the failure of the IHO to address her claim regarding the levels of supervision, support, and academic instruction that the public school would have provided the student at a worksite. Fourth, the parent cross-appeals the failure of the IHO to address certain of her claims regarding the appropriateness of the assigned public school site relating to the student's anxiety and balance issues.

In the district's answer to the parent's cross-appeal, the district responds to the parent's four arguments raised in her cross-appeal. The district first contends that the hearing record reflects meaningful and active participation in the development of the IEP by the parent and representatives from Cooke. Second, the district argues that the IHO correctly stated that the student's present levels of performance were consistent with the Cooke progress report. Third, as to the parent's challenge to the public school's worksite program, the district argues that any challenge to the worksite program is speculative as a matter of law and premature since the student would have to be evaluated upon attending the public school and then assigned to an appropriate worksite. Fourth, the district argues that the parent's remaining challenges to the public school site were also speculative as a matter of law because the student never attended the public school. The district alternatively argues that the public school and its staff would have managed the student's anxiety effectively.

[7] The district did not raise any arguments in its petition relative to whether Cooke was an appropriate placement for the student.

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 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., 2010 WL 3242234, at *2 [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, 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, 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, 2012 WL 4946429 [2d Cir. Oct. 18, 2012]; E.G. v. City Sch. Dist. of New Rochelle, 606 F. Supp. 2d 384, 388 [S.D.N.Y. 2009]; Patskin v. Bd. of Educ., 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]).

An appropriate educational program begins with an IEP that includes a statement of the student's present levels of academic achievement and functional performance (see 34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]; Tarlowe v. New York City Bd. of Educ., 2008 WL 2736027, at *6 [S.D.N.Y. July 3, 2008] [noting that a CSE must consider, among other things, the "results of the initial evaluation or most recent evaluation" of the student, as well as the "'academic, developmental, and functional needs'" of the student]), establishes annual goals designed to meet the student's needs resulting from the student's disability and enable him or her to make progress in the general education curriculum (see 34 CFR 300.320[a][2][i], [2][i][A]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (see 34 CFR 300.320[a][4]; 8 NYCRR 200.4[d][2][v]; see also Application of the Dep't of Educ., Appeal No. 07-018; Application of a Child with a Disability, Appeal No. 06-059; Application of the Dep't of Educ., Appeal No. 06-029; Application of a Child with a Disability, Appeal No. 04-046; Application of a Child with a Disability, Appeal No. 02-014; Application of a Child with a Disability, Appeal No. 01-095; Application of a Child Suspected of Having a Disability, Appeal No. 93-9).

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

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

VI. Discussion

A. Appropriateness of the February 2011 IEP

1. CSE Process—Parental Participation

The parent argues in her cross-appeal that the IHO failed to address her claim that she was denied an opportunity to participate in the development of the IEP. Specific to this claim, the parent alleges that CSE failed to meaningfully discuss with the parent and representatives from Cooke: the CSE's proposed 12:1+1 special class recommendation; their concerns regarding the proposed program; and the wording of appropriate annual goals and short-term objectives for the IEP. However, the district argues that the parent and three representatives from Cooke participated in the development of the student's IEP at the CSE meeting. For the reasons that follow, the hearing record does not support a conclusion that the parent was denied an opportunity to participate in the development of the IEP.

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]; see generally Cerra, 427 F.3d at 192-94). 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 & Commc'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, 2006 WL 3697318, at *1 [D.C. Cir. Dec. 6, 2006]).

In this case, the IHO did not render a finding as to whether the parent was significantly impeded in her ability to participate in the development of the February 2011 IEP.[8] For the reasons described below, a review of the hearing record shows that the parent was afforded multiple opportunities to participate in the development of the student's IEP. First, the parent provided the CSE with a privately obtained October 2010 comprehensive psychological evaluation for consideration (Tr. pp. 202, 703-04; see Dist. Ex. 9). Second, the hearing record shows that the parent had the opportunity to voice any concerns that she had at the CSE meeting, which she did when she expressed her concern about the appropriateness of the 12:1+1 special class in a specialized school placement, noting that the same placement had been recommended the previous year (Tr. pp. 34-38, 93, 705, 722) (see J.L. v. City Sch. Dist. of New York, 2013 WL 625064, at *12 [S.D.N.Y. Feb. 20, 2013]; A.E. v. Westport Bd. of Educ., 463 F. Supp. 2d 208, 217 [D. Conn. 2006], aff'd, 2007 WL 3037346 [2d Cir. Oct. 18, 2007]).

[8] As noted above, the IHO did find that "[t]here is ample credible testimony that the goals were not developed at the meeting with the meaningful participation of the parent and those that were most familiar with the student" (IHO Decision at p. 13). Nevertheless, for the reasons stated herein, the hearing record does not support such a finding.

Third, the hearing record indicates that three Cooke representatives who were familiar with the student participated in the CSE meeting and were afforded the opportunity to provide input regarding the student's strengths and needs during the CSE meeting. Specifically, the director of student services at Cooke (the Cooke director) attended the CSE meeting in person, and the student's English language arts (ELA) teacher and a Cooke social worker attended via telephone (Tr. pp. 26, 560-61; Dist. Exs. 4 at p. 2; 5 at p. 1). These Cooke representatives provided the CSE with the student's Cooke progress report, which contributed to portions of the IEP (compare Dist. Ex. 4 at pp. 3, 7-8, and Dist. Ex. 5, with Dist. Ex. 8 at pp. 2, 4, 8, and Dist. Ex. 9). The hearing record also reflects that the student's performance on Cooke literacy program assessments was delineated in the February 2011 IEP, even though these details had not been included in the written reports, thereby providing additional evidence of the Cooke ELA teacher's contribution to the development of the student's 2011-12 IEP (compare Dist. Ex. 4 at p. 3, with Dist. Ex. 8 at pp. 2-3). Moreover, the hearing record reflects that the district special education teacher, who also functioned as the district representative at the February 2011 CSE meeting, testified that she had reviewed "with the [Cooke] teachers the present levels of performance and with the [Cooke] teachers generated goals for the student moving on to the next year" (Tr. p. 35; see also Tr. pp. 38, 43-44, 47-48, 50-52, 58; Dist. Ex. 5). Testimony from the impartial hearing also indicates that each of the annual goals from the 2010-11 IEP was reviewed at the CSE meeting and updated where appropriate, and no CSE member—including the Cooke representatives familiar with the student—voiced any objection (Tr. pp. 69-79, 92, 231-32, 561-64). Additionally, the Cooke director testified that she had the opportunity to and did voice her concerns about the recommended program, including the level of academic and overall support for the student (Tr. pp. 566-68, 571, 574).

Finally, the parent has not persuasively rebutted this evidence by citing to evidence in the hearing record that suggests she was precluded from participating fully in the meeting (see M.W. v. New York City Dep't of Educ., 869 F. Supp. 2d 320, 333 [E.D.N.Y. 2012]). Moreover, although the district's obligation "to permit parental participation in the development of [the student's IEP] should not be trivialized . . ., the IDEA does not require school districts simply to accede to parents' [program] demands" (Blackmon v. Springfield R-XII Sch. Dist., 198 F.3d 648, 657-58 [8th Cir. 1999], citing Rowley, 458 U.S. at 205-06). Based upon the foregoing, the district did not significantly impede the parent from participating in the IEP development process (T.P., 554 F.3d at 253; see J.L., 2013 WL 625064, at *12; M.W., 869 F. Supp. 2d at 333-34; R.R. v. Scarsdale Union Free School Dist., 615 F. Supp. 2d 283, 294 [S.D.N.Y. 2009]).

2. Consideration of Evaluative Information

With regard to the development of the February 2011 IEP, the district argues on appeal that the IHO erred in concluding that the CSE did not review the evaluative material available to it. The IDEA requires a district to conduct an evaluation of students receiving special education or related services at least once every three years unless the parents and the district agree otherwise (see 20 U.S.C. § 1414[a][2][B]). In developing an IEP, a CSE is directed to "review existing evaluation data on the child, including—(i) evaluations and information provided by the parents of the child; (ii) current classroom-based, local, or State assessments, and classroom based observations; and (iii) observations by teachers and related services providers" (id. § 1414[c][1][A]). Further, 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 results of the student's performance on any general State or district-wide assessments; and any special considerations" in federal and State regulations (20 U.S.C. § 1414[d][3][A], [B]; 34 CFR 300.324[a]; 8 NYCRR 200.4[d][2]; see also T.G. v. New York City Dep't of Educ., 2013 WL 5178300, at *18 [S.D.N.Y. Sept. 16, 2013]; E.A.M. v. New York City Dep't of Educ., 2012 WL 4571794, at *9 [S.D.N.Y. Sept. 29, 2012]).

The CSE must also 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]; accord Application of a Student with a Disability, Appeal No. 12-108). Moreover, the IDEA "does not require an IEP to adopt the particular recommendation of an expert; it only requires that that recommendation be considered in developing the IEP" (J.C.S. v. Blind Brook-Rye Union Free Sch. Dist., 2013 WL 3975942, at *11 [E.D.N.Y. Aug. 5, 2013]; see T.G., 2013 WL 5178300, at *18).

In this case, the hearing record demonstrates that in developing the February 2011 IEP, the CSE adequately considered and reviewed an October 2010 psychological evaluation report, the December 2010 Cooke progress report, and the January 2011 classroom observation at Cooke that included comments provided by the student's Cooke classroom teacher (Tr. pp. 28, 32-33; see Dist. Exs. 5; 7; 8; 9). The February 2011 IEP also included anecdotal information provided by Cooke staff who participated in the CSE meeting regarding a favored reading topic as well as a notation that although the student was well-liked by her peers, she required prompting to interact with classmates (Dist. Ex. 4 at pp. 3, 5; see Tr. pp. 472, 582, 648-49).

In concluding that the CSE did not consider the evaluative material that was available to the CSE, the IHO found "credible" the testimony of the Cooke director, the Cooke social worker, and the assistant head of the Cooke Center—all of whom testified that either the specific documents were not reviewed during the meeting or that they could not remember whether the documents were specifically reviewed (see, e.g., Tr. pp. 449, 522-23, 562-63, 579, 703-04). The IHO failed, however, to address the credibility of the district's special education teacher/district representative, who testified that she reviewed the evaluative information—specifically, the Cooke progress report and the 2010 psychological evaluation report—with the representatives from Cooke (see, e.g., Tr. pp. 33-35, 38, 40, 134-35, 148, 202, 207). More importantly, the CSE's consideration of the nontestimonial evaluative documents and information therein, as well as consideration of input from the Cooke staff, is evidenced in the February 2011 IEP itself (Tr. pp. 28-33, 35-42, 50-52, 128-31, 561-66, 578-83, 599-600; Dist. Exs. 4 at pp. 3-5; 7; 8; 9; see Carlisle Area Sch. v. Scott P., 62 F.3d 520, 524, 528-29 [3d Cir. 1995]; M.W. v. New York City Dep't of Educ., 869 F. Supp. 2d 320, 330; Bd. of Educ. v. Schaefer, 84 A.D.3d 795, 796 [2d Dep't 2011]).

First, the hearing record reflects that information from the October 2010 psychological evaluation report appeared in the 2011-12 IEP, which included references to the student's anxiety and her cognitive and social/emotional challenges (Tr. pp. 41-43, 48; Dist. Exs. 4 at pp. 1, 3, 5; 9). Within the present levels of social/emotional performance section of the IEP, it is noted that the

student experienced anxiety, could engage in crying [in response to new tasks/anxiety], and generally preferred to be alone/did not seek to interact with peers, all of which are described in the October 2010 psychological evaluation report (compare Dist. Ex. 4 at p. 5, with Dist. Ex. 9 at p. 4).

Second, the hearing record establishes that the CSE also considered the student's educational progress report prepared by Cooke staff , which were dated two months prior to the February 2011 CSE annual review meeting and provided current information upon which to develop the student's 2011-12 IEP (Dist. Ex. 8). A careful review of the February 2011 IEP reveals that the CSE considered and incorporated aspects of the Cooke progress report. For example, the IEP contained information from the Cooke progress report, including a description of the student's efforts to increase her ability to respond to literature by making predictions and summarizing text (that she had read or that had been read to her) and objectives designed to improve the student's facility with these procedures (see Dist. Exs. 4 at pp. 3, 7; 8 at p. 2).

Third, the February 2011 IEP included information obtained during the district special education teacher's observation of the student at Cooke (see Dist. Exs. 4 at p. 5; 7). For example, although the student was reportedly having "a good day" during the observation, the classroom teacher noted the student's difficulties with anxiety, frustration, and the challenge of redirecting the student when these took precedence (Dist. Ex. 7). These concerns were reflected in the present levels of social/emotional performance section of the IEP (Dist. Ex. 4 at p. 5).

The hearing record also indicates that in developing the February 2011 IEP, the CSE garnered information from the IEP developed for the 2010-11 school year (Tr. p. 41, 129, 180, 211, 213-18). A review of the student's February 2011 IEP and her 2010-11 IEP shows that there is some redundancy in descriptions of her present levels of performance and the focus of some instructional goals and objectives, as well as specific skills she was working on (compare Parent Ex. E at pp. 3-5, 7-11, with Dist. Ex. 4 at pp. 3-5, 7-10). The 2010-11 IEP also notes the student's ability to use a calculator and that she was learning "rounding to the next dollar," information that was carried over to the February 2011 IEP (Dist. Exs. 4 at p. 3; 8 at p. 4).

In sum, the hearing record establishes that the evaluative information available to and considered by the February 2011 CSE included the student's overall levels of cognitive development and adaptive behavior skills, her challenges with maladaptive functioning, a description of Cooke's curriculum/instructional focus for this student and her expected/achieved learning outcomes, as well as a sampling of her behavior within her then-current educational setting (Tr. pp. 28-33, 39-40, 704; Dist. Exs. 7; 8; 9).

Moreover, to the extent that certain evaluative documents might not have been expressly reviewed in detail during the CSE meeting, I note that the IDEA "'does not require that the [CSE] review every single item of data available, nor has case law interpreted it to mean such'" (T.G., 2013 WL 5178300, at *19, quoting F.B. v. New York City Dep't of Educ., 923 F. Supp. 2d 570, 581-82 [S.D.N.Y. 2013] [rejecting parents' claim that because an evaluation report "was not physically present at the CSE meeting, it was never consulted by any party to that meeting"]; see also J.C.S., 2013 WL 3975942, at *10). Nor is there any provision under the IDEA or the federal or State regulations requiring that each of the recommendations of an evaluator be included in an IEP. Based on the foregoing, I find that the evidence contained in the hearing record does not support the IHO's conclusion that the February 2011 CSE did not adequately consider the

documentary information that was made available to the CSE such that it denied the student a FAPE for the 2011-12 school year.

3. Sufficiency of Evaluative Information

The parties also dispute whether the CSE failed to ensure that it had sufficient evaluative information to consider at the time of the February 2011 CSE meeting. The district argues on appeal that the IHO erred in finding that that the CSE did not have sufficient evaluative information because it failed to obtain a written social history or current related service provider reports in the areas of PT, OT, and counseling. The district also disputes the IHO's finding that it was required to conduct a vocational assessment. For the reasons that follow, the IHO erred in finding that the CSE failed to ensure that it had sufficient evaluative information before it.

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 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]-[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 services 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 this case, notwithstanding the lack of a written social history or current related service provider reports in the areas of PT, OT, and counseling, the hearing record establishes that the CSE had before it sufficiently comprehensive functional, developmental, and academic information about the student and her individual needs to enable it to develop the February 2011 IEP. The evaluative information available to the Februarary 2011 CSE included three documents, one of which was the privately obtained October 2010 psychological evaluation report that the parent provided to the CSE for consideration (Tr. pp. 40-41, 704; Dist. Ex. 9 at p. 1). The psychological evaluation report documented the student's psychological and psychiatric history, including the diagnoses of mental retardation, a pervasive developmental disorder, not otherwise specified (PDD-NOS), and anxiety; medical interventions such as the use of prescription medications to address anxiety; and a brief history of the special education services that the student

had received (Dist. Ex. 9 at p. 1).[9] The psychological evaluation report also provided insight into the student's home life, where daily respite services were provided and sibling discord was described as a nightly occurrence (id.). The evaluation report also noted that the student had engaged in physical aggression with her parent, who expressed interest in obtaining an after-school program and residential placement for the student (Tr. p. 186; Dist. Ex. 9 at p. 1).

The October 2010 psychological evaluation report indicated that the student's performance on a standardized measure of cognitive functioning was well below the first percentile and, as described in more detail below, that her adaptive behavior skills were similarly deficient (Dist. Ex. 9 at pp. 3-4). In addition, the evaluation report noted that the student showed a marked level of maladaptive behaviors, which yielded a standardized score within the "clinically significant" range (id. at p. 4).

The October 2010 psychological evaluation report also included a survey of adaptive behavior skills, completed through an interview with the parent (Dist. Ex. 9 at pp. 3-4). The results of the "adaptive" scales for daily living skills and socialization fell below the first percentile and were considered to be within the "low" range (id. at p. 3). With regard to communication skills, the student followed instructions with two actions or one action and two objects, stated the month and day of her birth, and recited her telephone number (id.). The results of the survey also indicated that the student read simple stories aloud and printed three-to-four word sentences (id.). Within the daily living skills domain, the student reportedly bathed and dried herself independently, but required assistance with buttoning and using a public restroom (id.). The rating scales also revealed the student's ability to put away clean clothes and sweep, mop, and vacuum floors thoroughly (id.). The student's socialization skills also appeared within the "low" range, as she demonstrated a preference for certain friends and/or had a close friend and "imitate[d] relatively complex actions" several hours after she had observed someone else performing them, but did not demonstrate friendship-seeking behaviors or speak to others about common interests (id. at p. 4). The survey also indicated that the student was able to play simple board games, act appropriately when introduced to strangers, and modulate her voice level depending upon location or situation (id.).

Second, the February 2011 CSE also had before it the student's December 2010 Cooke progress report, which included content goals, process goals, and descriptions of the student's skills (Dist. Ex. 8). The progress report also included indicators of the student's level of proficiency and independence for accomplishing the targeted skills and included occasional instructor comments (id.). Finally, the report provided a brief synopsis of the focus of instruction in each domain, including literacy, functional mathematics, technology, art, vocational skills, speech-language, and adaptive skills (id.).

In addition, the Cooke progress report offered considerable detail and supportive information regarding the instructional needs and goals of the student and insights into the student's day-to-day instructional setting (see, e.g., Dist. Ex. 8 at p. 2). The Cooke progress report also noted the student's level of independence in the use or application of targeted literacy, functional

[9] The term mental retardation was replaced by the term intellectual disability in State regulations as of March 2011, but the definition of the term intellectual disability is the same as the previous definition of mental retardation (see 8 NYCRR 200.1[zz][7]; N.Y. Reg., Mar. 30, 2011, at pp. 22-23; see generally, Talavera v. Astrue, 697 F.3d 145, 148 n.2 [2d Cir. 2012]).

mathematics, and vocational skills (id. at pp. 2, 4, 7). For example, the student's progress toward independent use of specific skills ranged from relatively strong skills as "demonstrated skill with a minimum level of prompts/cues" to "demonstrated skill with HOH [hand over hand] assistance/direct models" (id.). Moreover, the speech-language portion of the report's description of the student's need for prompting in social situations was carried over to the February 2011 IEP (compare Dist. Ex. 4 at p. 5, with Dist. Ex. 8 at p. 8).

Third, the CSE had available a classroom observation report, dated January 5, 2011, completed in preparation for the February 2011 CSE meeting by the district's special education teacher (Dist. Ex. 7). The report indicated that the student was observed in her Cooke classroom during a group read-aloud lesson, which included (1) a review of previously read text; (2) an oral reading (by the teacher) of new text; and (3) with input from the class, a teacher-scribed summary of that day's reading (id.). The classroom observation report included a description of the student as sitting "quietly and attentively" during the read-aloud activity, as well as a statement that the student had not participated in the shared writing portion of the lesson (id.). The report noted that the student's paraprofessional sat beside the student, but no interaction was observed during the session (id.). When dismissed from the group lesson, the student independently obtained her writing materials, went to her seat and began her work (id.). The report also noted the Cooke classroom teacher's comment that the student was having a "good day" but added that when the student became frustrated, she could be difficult to redirect (id.). The report also stated that the student tended to work best in a small group setting or with one-to-one adult support (id.).

In sum, the evaluative information available to the CSE at the time of February 2011 meeting included the student's overall levels of cognitive development and adaptive behavior skills, her challenges with maladaptive functioning, a description of Cooke's curriculum/instructional focus for this student, and her expected/achieved learning outcomes, as well as a sampling of her behavior within her then-current educational setting (Tr. pp. 28-33, 39-40, 704; Dist. Exs. 4; 5; 7; 8; 9). Thus, an independent review of the hearing record reflects that the evaluative information considered by the February 2011 CSE and the direct input from the student's special education teacher from Cooke provided the CSE with sufficient functional, developmental, and academic information about the student and her individual needs to enable it to develop her 2011-12 IEP (D.B. v. New York City Dep't of Educ., 2011 WL 4916435, at *8 [S.D.N.Y. Oct. 12, 2011]; Application of the Dep't of Educ., Appeal No. 11-147; Application of a Student with a Disability, Appeal No. 11-041; Application of a Student with a Disability, Appeal No. 10-100; Application of a Student with a Disability, Appeal No. 08-015; Application of the Dep't of Educ., Appeal No. 07-098; Application of a Child with a Disability, Appeal No. 94-2).

Moreover, while the IDEA and New York law prohibit school districts from using a "single measure or assessment as the sole criterion for determining . . . an appropriate educational program for the child" (20 U.S.C. § 1414[b][2][B]; 8 NYCRR 200.4[b][6][v]; F.B., 923 F. Supp. 2d at 582 [explaining that the IDEA "does not require that the [CSE] review every single item of data available, nor has case law interpreted it to mean such"]; E.A.M., 2012 WL 4571794, at *9;), here the February 2011 CSE reviewed an appropriate variety of sources to ascertain information about the student required to develop the student's February 2011 IEP. Accordingly, the CSE did not require additional information to develop the student's IEP, and the development of the IEP based upon the materials available to it did not constitute a denial of a FAPE (see A.M. v. New York City Dep't of Educ., 2013 WL 4056216, at *7-*8 [S.D.N.Y. Aug. 9, 2013] [concluding that under the circumstances the CSE did not require additional evaluative information beyond a

pyschoeducational evaluation, a Cooke progress report, and a medical history to develop the student's IEP]).

4. Present Levels of Performance

The district argues on appeal that the IHO erred in finding that the IEP failed to accurately reflect the results of the evaluative information available to the CSE and to provide for appropriate special education services. The district also argues that the IHO erred in finding that the IEP failed to adequately describe the student's maladaptive behaviors, cognitive deficits, and delays in language processing and adaptive skills. The parent cross-appeals, the IHO's finding that the description of the student's present levels of performance was consistent with the Cooke progress report, arguing that the IEP failed to adequately describe the student's interfering behaviors and the level of 1:1 attention that the student required to understand and complete tasks.[10] A review of the February 2011 IEP in conjunction with the evaluative information available to the February 2011 CSE demonstrates that the CSE carefully and accurately described the student's present levels of academic achievement, social development, physical development, and management needs and that the description of the student's needs was consistent with the evaluative information and Cooke reports 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., 2013 WL 4437247, at *9).

In this case, the hearing record reflects, as noted above, that the February 2011 CSE considered evaluative reports provided by Cooke and the parent, a classroom observation report completed by the district special education teacher, and the student's IEP developed by the district

[10] Although the parent alleged in her due process complaint notice that the "IEP classified [the student] as having multiple disabilities" and that the IEP did "not clearly specify her areas of multiple disability," the hearing record establishes that there was no dispute as to the student's classification (Tr. p. 42). For the reasons stated in the body of this decision, I find that the student's IEP adequately specified the student's needs arising from her disability. Moreover, to the extent that the parent argued that the IEP should have listed each of the student's diagnoses (IHO Ex. ii at p. 9), although an IEP must "indicate the classification of the disability pursuant to" State regulations, there is no requirement that an IEP indicate each condition with which a student has been diagnosed (see 8 NYCRR 200.4[d][2][ii]; see also 20 U.S.C. § 1414[d][1][A][ii][I] [the IDEA shall not be construed to require "that additional information be included in a child's IEP beyond what is explicitly required"]). The February 2011 IEP satisfied the State requirement of indicating the student's disability classification (Dist. Ex. 4 at p. 1).

for the 2010-11 school year (Tr. pp. 28-33, 38, 40-42, 128-31, 561-66, 578-83; Dist. Exs. 4; 5; 7; 8; 9; Parent Ex. F). A review of the February 2011 IEP shows that it contained information from the evaluation reports as well as additional information about the student's achievement and functional performance levels provided verbally at the CSE meeting (Tr. pp. 28-29, 32-33, 35-36, 38, 458-459; Dist. Exs. 4 at pp. 3-6; 5; Parent Ex. F at pp. 3-6). For example, as detailed above, the present levels of performance in the February 2011 IEP included information from the Cooke progress report regarding the student's current levels of reading, writing and math and according to CSE meeting minutes, included academic performance information provided by Cooke staff who participated in the February 2011 CSE meeting (Tr. pp. 49-51; Dist. Ex. 4 at pp. 2, 3-5; see generally Parent Exs. G; H; I). The CSE meeting minutes also reflect discussion that the student's reading skills and math computation skills were estimated at a second grade instructional level, and math problem solving skills at a mid-first grade level, information included in the IEP (Tr. p. 51; Dist. Exs. 4 at p. 3; 5 at p. 1).[11] The IEP also included information regarding the student's reliance on, and need for, her paraprofessional to help her complete tasks and repeat instructions, the student's inconsistent participation in math class, and her preference for nonfiction books (Dist. Exs. 4 at p. 3; 5; see Tr. pp. 172-73, 468-69, 549).

The February 2011 IEP also contained information about the student's academic management needs, which included small group instruction (Dist. Ex. 4 at p. 3). The student's management needs also indicated that the student benefited from one-to-one instruction in math and required repetition and rephrasing of directions, scaffolding, teacher modeling, multisensory approach, visual and auditory cues, additional time to respond to questions, graphic organizers/charts/checklists, and use of a calculator (id.).

Although the IHO determined the IEP failed to sufficiently describe the student's maladaptive behaviors, the February 2011 IEP identified the student's interfering behaviors, including her difficulties with becoming nervous and experiencing anxiety, which could lead the student to "shut down," engage in crying, screaming, and/or picking at her skin (Dist. Ex. 4 at pp. 3, 5). The present levels of performance included insights into situations that could exacerbate the student's anxiety or nervousness, such as when she was asked a question or to "fix something," and when confronted with public transportation during travel training (id.). The IEP included references to the student's inconsistent participation in classroom activities, her need to build her conversation skills, and her need to expand her tolerance for being with others in a group setting (id. at pp. 3-4). The IEP also indicated that "staying on-topic is a goal for [the student]" (id. at p. 4).

The February 2011 IEP also noted the student's need for medication to address her anxiety and recommended that the student participate in adapted physical education (Dist. Ex. 4 at p. 6).

[11] For the 2011-12 school year, the student was instructed at Cooke by a different literacy and math teacher than the one who participated in the CSE meeting, who testified that the student's functional literacy and math development were at a kindergarten level (Tr. pp. 626-27, 637; see also Tr. p. 458). However, because the student's literacy and math teacher at Cooke for the 2011-12 school year neither attended the CSE meeting nor provided evaluative information to the CSE, her testimony does not call into question the accuracy of the present levels of performance or any other aspect of the IEP (see D.A.B. v. New York City Dep't of Educ., 2013 WL 5178267, at *13 [S.D.N.Y. Sept. 16, 2013] [finding that where certain witnesses were not present at the CSE meeting, did not submit exhibits to the CSE, and did not examine the student prior to the CSE meeting, "their testimony should not be considered as a basis to declare the IEP substantively inadequate"]; see also R.E., 694 F.3d at 186-88).

While the parent also contends in her cross-appeal that the IEP failed to adequately describe the student's needs relating to balance, including her need for an elevator, the documentation available to the CSE at the time of the February 2011 meeting was absent of reference to either a balance problem or the need for an elevator (see Dist. Exs. 4; 5; 7; 8; 9).[12] Indeed, although the parent and student's then-current teachers from Cooke had the opportunity to participate at the meeting and raise any concerns that they had with regard to the student's present levels of performance, the district special education teacher testified that neither the parent nor the participating Cooke representatives mentioned the student's difficulties with balance and/or required access to an elevator (Tr. pp.139-41). Nonetheless, the February 2011 IEP included a recommendation that the student receive PT and included a goal to address the student's balance, which the special education teacher testified was derived from information provided by the Cooke director, was continued from the 2010-11 IEP, and was endorsed by the parent (Tr. pp. 78-79, 215-16; Dist. Ex. 4 at pp. 10, 14).[13]

A review of the information considered by the February 2011 CSE and discussed at the CSE meeting as detailed above, shows that the district adequately and accurately reflected the student's present levels of academic achievement and functional performance—including the teacher estimates of the student's current skills levels—in an IEP that appropriately indicated the student's special education needs arising from her disability (34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]; see also P.G. v. New York City Dep't of Educ., 2013 WL 4055697, at *11 [S.D.N.Y. July 22, 2013] [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 is "designed to address precisely those issues"]).

5. Adequacy of Annual Goals

Relative to the parties' dispute concerning the substantive adequacy of the annual goals and short-term objectives set forth in the February 2011 IEP, State and federal regulations require that 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 case, the district argues that the IHO erred in finding that the annual goals contained within the February 2011 IEP were vague and failed to provide meaningful guidance. A review of the hearing record does not support the conclusion that the student was denied a FAPE due to

[12] The parent testified that PT was originally recommended because the student's anxiety could cause her to "get so shaky that her knees would give out" (Tr. p. 703). In her letter rejecting the assigned public school site, the parent informed the district that the lack of elevators at the assigned public school site was a concern because the student's "anxiety is exacerbated by crowds, louds conversation and loud or unexpected sounds" (Parent Ex. D at p. 3). As noted above, the IEP referenced the student's difficulties with anxiety.

[13] The Cooke director testified that PT goals were not discussed with her at the meeting (Tr. p. 565).

inadequate goals on the IEP. An independent review of the February 2011 IEP demonstrates that the CSE developed seven annual goals and, consistent with the CSE's determination of the student's eligibility to participate in the New York State alternate assessment, approximately 43 short-term objectives to address the student's academic, communication, fine and gross motor skills, social/emotional functioning, and repertoire of transition skills in preparation for meeting the student's post-secondary goals (Dist. Ex. 4 at pp. 7-11). The IEP also included an annual goal/short-term objective dedicated to promoting the student's greater independence and engagement in classroom activities with the support of her 1:1 paraprofessional (id. at p. 11). Further, the annual goals set forth in the February 2011 IEP delineated objectives for the student to achieve by the end of the school year, each short-term objective included evaluative criteria (e.g., 80 percent) and evaluation procedures (e.g., teacher observation, discrete trials), and some included a schedule used to measure progress (e.g., 10-week intervals) (id. at pp. 7-11). The IEP indicated that the parent would receive three reports of progress toward the student's annual goals and short-term objectives during the school year (id.).

In addition, the IHO's analysis failed to account for testimony by the district's special education teacher that the CSE developed the annual goals and short-term objectives to address the student's needs in the areas of math, reading, communication, fine and gross motor, social, and transition skills with input from the Cooke representatives at the CSE and guidance from the Cooke progress report and the psychological evaluation report submitted by the parent (Tr. pp. 66-82, 139-43, 154-64, 192-95, 202-17; Dist. Ex. 4 at pp. 7-11).[14]

The hearing record also establishes that the goals and short-term objectives were created, in part, from the evaluative information that the CSE had before it. While the annual goals and objectives in the February 2011 IEP were not authored in the same curriculum-based language as the student's Cooke progress report, they nonetheless share a common focus on content and skills (compare Dist. Ex. 4 at pp. 7-11, with Dist. Ex. 8 at pp. 2-10). For example, making predictions about an upcoming story event was indicated as part of the student's daily instructional routine at Cooke, and this same skill was targeted by a short-term objective within the reading domain of the February 2011 IEP (Dist. Exs. 4 at p. 7; 8 at p. 2). Within the math domain, the February 2011 IEP included a short-term objective to "round up to the next dollar," which was also noted in the instructor's comment within the Cooke progress report: "[the student] is working towards greater independence with the math skills involved in shopping, particularly in rounding prices to the next dollar" (Dist. Exs. 4 at p. 7; 8 at p. 4). Additional overlap exists between the Cooke progress report and the annual goals and short-term objectives contained in the February 2011 IEP, reflecting similarities in targeted skills despite differences in some of the language used to describe the goals and short-term objectives (Dist Exs. 4 at pp. 7-8; 8 at pp. 8-9).

Overall the annual goals and short-term objectives contained on the student's February 2011 IEP, when read together, target the student's identified areas of need and provide information sufficient to guide a teacher in instructing the student and measuring her progress (see D.A.B. v. New York City Dep't of Educ., 2013 WL 5178267, at *11 [S.D.N.Y. Sept. 16, 2013]; E.F. v. New

[14] The Cooke social worker, who served as the student's crisis counselor and adaptive skills instructor, attended the CSE meeting and testified that she contributed to the Cooke progress report, but not to the discussion at the CSE (Tr. pp. 522-23). The social worker, however, later testified that at the CSE meeting "a series of goals" were read to the social worker, who indicated whether the student "needed to continue to work on" those goals proposed by the CSE (Tr. p. 545).

York City Dep't of Educ., 2013 WL 4495676, at *18-*19 [E.D.N.Y. Aug. 19, 2013]; D.B. v. New York City Dep't of Educ., 2013 WL 4437247, at *13-*14 [S.D.N.Y. Aug. 19, 2013]; 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]).

6. 12:1+1 Special Class Placement with 1:1 Paraprofessional Services

The parties also dispute on appeal whether the IEP's provision of a 12:1+1 special class setting with a full-time crisis management paraprofessional was appropriate to address the student's educational needs. Specifically, the district argues that the IHO erred in finding that the placement would not provide the student with sufficient support and individualized instruction to make educational progress. For the reasons that follow, the hearing record does not support the IHO's finding that a 12:1+1 class with the services of a 1:1 paraprofessional would not have met the student's needs.

State regulations provide that a 12:1+1 special class placement is designed to address students "whose management needs interfere with the instructional process, to the extent that an additional adult is needed within the classroom to assist in the instruction of such students" (8 NYCRR 200.6[h][4][i]). Consistent with State regulation regarding students "whose management needs interfere with the instructional process," for the 2011-12 school year, the February 2011 CSE recommended placement of the student in a 12:1+1 special class in a specialized school (Dist. Ex. 4 at p. 1). An independent review of the hearing record also confirms that this placement was appropriate for the student for the 2011-12 school year.

Here, consistent with the student's present levels of performance articulated in the February 2011 IEP, the CSE recommended a 12:1+1 placement—containing one teacher and a classroom paraprofessional—because the student's academic needs were closely aligned with those of students typically enrolled in a 12:1+1 special class in a specialized school placement, which would include students who were also "functioning between kindergarten and second grade, maybe third grade academically" (Tr. pp 44-45, 144-46). In addition, the district special education teacher testified that students enrolled in the 12:1+1 special class "would typically have similar language processing problems. It would be similar to how [the student] presents" (Tr. p. 146). With regard to the IHO's finding that the student would not receive an appropriate amount of individualized attention in a 12:1+1 classroom setting, the IHO's analysis fails to take into account the district special education teacher's observation that the teacher in the 12:1+1 classroom "would have the opportunity to work on a one-to-one basis with the student" (Tr. pp. 136-38). Moreover, the district special education teacher also described the ways in which a teacher in this type of setting would work with small groups within the larger group and how the teacher could pull students aside to provide individual instruction as needed because of the presence of the classroom paraprofessional (Tr. pp. 189-90).

Consistent with the February 2011 IEP, the hearing record affirms the student's need for a 1:1 paraprofessional. The hearing record demonstrates that the student's need for the support of a 1:1 crisis management paraprofessional was actively discussed at the CSE meeting, which led to

the CSE's recommendation for the provision of a full-time 1:1 crisis management paraprofessional (Tr. pp. 45-46, 58, 187-88). When describing the role of the 1:1 paraprofessional, district staff indicated that this individual would be responsible for assisting the student with paying attention in class; keeping her safe; comforting the student; and helping her control her anxiety—all of which are needs that the Cooke representatives testified that the student demonstrated (Tr. pp. 58, 118, 136-37, 261, 337).[15]

In addition to the supports available in a 12:1+1 special class and by the 1:1 paraprofessional, the February 2011 IEP provided the student with academic and social/emotional strategies including small group instruction, with a notation that she benefitted from "one-to-one instruction in math," directions repeated and rephrased as needed, scaffolding, teacher modeling/cues/redirection, a multisensory approach, visual and auditory cues, extra time to respond to questions, graphic organizers/charts/graphs/checklists, a calculator, positive reinforcement, and redirection (Dist. Ex. 4 at pp. 3, 5). To additionally support the student's needs, as stated previously, the IEP recommended that she receive one session of PT, three sessions of OT, three sessions of speech-language therapy, and four sessions of counseling per week (id. at p. 14).

Here, the February 2011 IEP indicated that "[o]ther special programs within [specialized schools] were discussed but rejected as being inappropriate for [the student's] academic[and] social/emotional needs" (Dist. Ex. 4 at p. 13). Contrary to the parent's argument that the CSE failed to consider other programs for the student, the hearing record establishes that given the student's educational needs as delineated in the present levels of performance in the IEP, the CSE "considered the 6:1:1 or the 8:1:1 or the 12:1:4, but found them not to be appropriate" (Tr. p. 118). The district special education teacher specifically testified that an 8:1+1 program would have been inappropriate because students in these classes generally exhibited "behavior management needs, which [wa]s not necessarily the correct program for [the student]" (Tr. p. 138).

While a CSE must consider parents' suggestions or input offered from privately retained experts, the CSE is not required to merely adopt such recommendations for different programming (see J.C.S., 2013 WL 3975942, at *11; Watson v. Kingston City Sch. Dist., 325 F. Supp. 2d 141, 145 [N.D.N.Y. 2004]; see also E.S. v. Katonah-Lewisboro Sch. Dist., 742 F. Supp. 2d 417, 436 [S.D.N.Y. 2010]; Z.D. v. Niskayuna Cent. Sch. Dist., 2009 WL 1748794, at *6 [N.D.N.Y. Jun. 19, 2009]). Moreover, the IDEA does not require the district to offer the student what some may view as the "best opportunities" for the student (Watson, 325 F. Supp. 2d at 144) or "everything that might be thought desirable by loving parents" (Walczak, 142 F.3d at 132). Here, despite the parent's preference for Cooke, evidence of the alleged appropriateness of a private school placement does not establish that the program offered by a school district is inappropriate (M.H. v. New York City Dep't. of Educ., 2011 WL 609880, at * 11 [S.D.N.Y. Dec. 16, 2011]; see also B.M. v. Encinitas Union Sch. Dist., 2013 WL 593417, at *8 [S.D. Cal., Feb. 14, 2013] [noting that even if the services requested by the parents would better serve the student's needs than the services offered in an IEP, this does not mean that the services offered are inappropriate, so long as the IEP is reasonably calculated to provide the student with educational benefits]).

[15] The hearing record also indicates that the parent believed the student required the support of a 1:1 paraprofessional (Dist. Ex. 1 at p. 1).

Based on the foregoing, I find that the February 2011 CSE's decision to recommend a 12:1+1 special class with a 1:1 full-time crisis management paraprofessional, in conjunction with the supports and related services provided in the February 2011 IEP, was reasonably calculated to enable the student to receive educational benefits in the LRE (see Rowley, 458 U.S. at 206-07; Cerra, 427 F.3d at 192).

7. Transition Plan

The IDEA—to the extent appropriate for each individual student—requires that an IEP must focus on providing instruction and experiences that enables the student to prepare for later post-school activities, including postsecondary education, employment, and independent living (20 U.S.C. § 1401[34][A]; see Educ. Law § 4401[9]; 34 CFR 300.43; 8 NYCRR 200.1[fff]). Transition services must be "based on the individual child's needs, taking into account the child's strengths, preferences, and interests" and must include "instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation" (20 U.S.C. § 1401[34][B]-[C]; 8 NYCRR 200.1[fff]). 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) 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][viii]; 34 CFR 300.320[b]; 8 NYCRR 200.4[d][2][ix]). It must also include the transition services needed to assist the student in reaching those goals (id.). As recently noted by one district court, "the failure to provide a transition plan is a procedural flaw" (M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6, *9 [S.D.N.Y. Mar. 21, 2013], citing Klein Indep. Sch. Dist. v. Hovem, 690 F.3d 390, 398 [5th Cir. 2012] and Bd. of Educ. v. Ross, 486 F.3d 267, 276 [7th Cir. 2007]).

Here, where the district offered a transition plan as part of the student's February 2011 IEP, the issue in dispute is whether the transition plan was adequate and, if not, whether the inadequacy rose to the level of denying the student a FAPE. For the following reasons, the hearing record does not support the IHO's finding that the transition plan recommended by the CSE was inappropriate. Further, any alleged procedural defects with the transition plan did not rise to such a level that the student was denied a FAPE.

In this case, the long-term adult outcomes outlined in the transition plan provided that the student would integrate into the community with maximum supports, attend a post-secondary vocational training program, live independently with maximum supports, and be employed with maximum supports (Dist. Ex. 4 at p. 15). The transition plan identified the student's diploma objective as an "IEP Diploma" (id.).[16] Consistent with regulatory mandates, the student's transition plan also indicated that the student's instructional activities included participating in an instructional program that supports long-term adult outcomes (id.). In the area of community integration, the transition plan indicated that the student would learn about community agencies

[16] Beginning with the 2013-14 school year, the New York State IEP diploma was replaced by the "Skills and Achievement Commencement Credential" for students with severe disabilities who are eligible to take the New York State Alternate Assessment (Skills and Achievement Commencement Credential for Students with Severe Disabilities, Office of Special Education, Special Education Field Advisory [April 2012], available at http://www.p12.nysed.gov/specialed/publications/SACCmemo.htm).

and their functions, and that she would integrate into her community and develop positive social interactions (id.). Post high school service needs for the student included learning about post-secondary opportunities that matched her interests and abilities and highlighted her interest in drawing, dancing, singing, and being "social" (id.). Within the domain of independent living, the student's transition service needs included learning about housing, employment, and recreation within her community, with supports (id.). Finally, in the area of daily living skills, the transition plan specified the student's need to develop awareness of self-care skills (id.). Given the foregoing, the transition plan adequately set forth the student's transition needs and goals consistent with the federal and State regulations.[17]

Relative to the provision of specific transition services, although required by State regulations, the CSE in this case failed to designate the party responsible for implementing each transition service and the applicable time frame for such implementation (see 8 NYCRR 200.4[d][2][ix][e]) (Tr. p. 223).[18] This procedural defect with the IEP's transition plan in this case, however, is less severe than the circumstances present in other cases arising under the IDEA where courts have found an IEP as a whole appropriate despite defects in a transition plan. For example, in M.Z. the Court found that deficiencies including "the lack of detail in the description of the transition services and the failure to identify the party responsible for those services[,] did not deny the Student a FAPE when viewed in the context of the IEP as a whole" (2013 WL 1314992, at * 9, citing Karl v. Bd. of Educ., 736 F.2d 873, 877 [2d Cir. 1984], [internal citation omitted]; see also K.C. v. Nazareth Area Sch. Dist., 806 F. Supp. 2d 806, 822-26 [E.D. Pa. 2011]).

On the facts of this case, the hearing record establishes that the IHO erred in finding that the transition plan, albeit incomplete regarding the responsible party for each element, was inappropriate. Moreover, the technical defects with the transition plan in the February 2011 IEP did not render the transition plan, or the IEP as a whole, inappropriate for the student and did not rise to a level of a denial of a FAPE (M.Z., 2013 WL 1314992, at *9; Application of a Student with a Disability, Appeal No. 11-154; Application of the Bd. of Educ., 11-147).

B. Challenges to the Assigned Public School Site

The parent made several additional assertions in her due process complaint notice and in her cross-appeal that were based not on the IEP, but with regard to her observations of service delivery to other students in the specific classroom and public school site to which the student had been assigned.

The IDEA and State regulations require that a district must have an IEP in effect at the beginning of each school year for each child in its jurisdiction with a disability (34 CFR 300.323[a]; 8 NYCRR 200.4[e][1][ii]; Cerra, 427 F.3d at 194; Tarlowe, 2008 WL 2736027, at

[17] The hearing record also establishes that no member of the CSE objected to the transition goal in the February 2011 IEP, and that the development of the transition plan was based in part on the discussion between the parent and the district special education teacher (Tr. pp. 81, 83-92, 243-44).

[18] Although the section of the transition plan regarding the respective parties who would be responsible for implementing the services in the student's transition plan were not filled out by the February 2011 CSE, this omission did not result in a denial of a FAPE to the student for the reasons stated herein. To avoid needless disputes, I caution the district to complete the appropriate sections of the transition plan.

*6).[19] The IDEA and State regulations also provide parents with the opportunity to offer input in the development of a student's IEP, but they do not permit parents to direct through veto a district's efforts to implement each student's IEP (see T.Y. v. New York City Dep't of Educ., 584 F.3d at 420 [2d Cir. 2009], cert. denied, 130 S. Ct. 3277 [2010]; see also Deer Val. Unified Sch. Dist. v L.P., 2013 WL 1790320, at *7-*9 [D. Ariz. Mar. 21, 2013]). 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). With regard to the implementation of a student's IEP, a denial of a FAPE occurs if the district deviates from substantial or significant provisions of the student's IEP in a material way (A.P. v. Woodstock Bd. of Educ., 2010 WL 1049297 [2d Cir. Mar. 23, 2010]; see 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 at 349 [5th Cir. 2000]).

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 a parent's "[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. v. New York City Dep't of Educ., 2012 WL 4891748, at *14-*16 [S.D.N.Y. Oct. 16, 2012]; Ganje v. Depew Union Free Sch. Dist., 2012 WL 5473491, at *15 [W.D.N.Y. Sept. 26, 2012] [finding the parents' pre-implementation arguments that the district would fail to adhere to the IEP were speculative and therefore misplaced], adopted, 2012 WL 5473485 [W.D.N.Y. Nov. 9, 2012]; see also K.L. v. New York City Dep't of Educ., 2013 WL 3814669, at *6 [2d Cir. July 24, 2013]; Reyes v. New York City Dep't of Educ., 2012 WL 6136493, at *7 [S.D.N.Y. Dec. 11, 2012]; R.C. v. Byram Hills Sch. Dist., 906 F. Supp. 2d 256, 273 [S.D.N.Y. 2012] [explaining that "[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 in which a student would be placed where the parent rejected an IEP before the student's classroom arrangements were even made]; Peter G. v. Chicago Pub. Sch. Dist. No. 299 Bd. of Educ., 2003 WL 121932, at *19 [N.D. Ill. Jan. 13, 2003] [noting that the court would not speculate regarding the adequacy of the student's services where the parent removed the student from the public school before the IEP services were implemented]).

While several district courts have, since R.E. was decided, continued to wrestle with this difficult issue regarding challenges to the implementation of an IEP made before the student begins attending the school and taking services under the IEP (see D.C. v. New York City Dep't of Educ., 2013 WL 1234864, at *11-*16 [S.D.N.Y. Mar. 26, 2013] [holding that the district must establish that it can implement the student's IEP at the assigned school at the time the parent is required to determine whether to accept the IEP or unilaterally place the student]; B.R. v. New York City Dep't of Educ., 2012 WL 6691046, at *5-*7 [S.D.N.Y. Dec. 26, 2012] [same]; E.A.M., 2012 WL 4571794, at *11 [holding that parents may prospectively challenge the adequacy of a "placement classroom" when a child has not enrolled in the school because districts are not permitted to assign

[19] In New York State, the school year is defined as the "period commencing on the first day of July in each year and ending on the thirtieth day of June next following" (N.Y. Educ. Law § 2[15]).

a child to a public school that cannot satisfy the requirements of an IEP]), I now find it necessary to depart from those cases. Since these prospective implementation cases were decided in the district courts, 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., (Region 4), 2013 WL 2158587, at *4 [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., 2013 WL 3814669, at *6 [rejecting as improper the parents' claims related to how the proposed IEP would have been implemented], quoting R.E., 694 F.3d at 187). 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]

As explained more recently, "[t]he Second Circuit has been clear, however, that where a parent enrolls the child in a private placement before the time that the district would have been obligated to implement the IEP placement, the validity of proposed placement is to be judged on the face of the IEP, rather than from evidence introduced later concerning how the IEP might have been, or allegedly would have been, implemented (A.M., 2013 WL 4056216, at *13; see R.B. v. New York City Dep't of Educ., 2013 WL 5438605, at *17 [S.D.N.Y. Sept. 27, 2013]; T.G., 2013 WL 5178300 at *21; N.K. v. New York City Dep't of Educ., 2013 WL 4436528, at *9 [S.D.N.Y. Aug. 13, 2013] [citing R.E. and rejecting challenges to placement in a specific classroom because '[t]he appropriate inquiry is into the nature of the program actually offered in the written plan']; Luo v. Baldwin Union Free Sch. Dist., 2013 WL 1182232, at *5 [E.D.N.Y. Mar. 21, 2013] [finding that parents do "not have a procedural right in the specific locational placement of [their] child[ren], as opposed to the educational placement"]). In view of the foregoing and under the circumstances of this case, I find that the parent cannot prevail on the claims that the district would have failed to implement the IEP at the public school site because a retrospective analysis of how the district would have executed the student's July 2012 IEP at the assigned school is not an appropriate inquiry under the circumstances of this case (R.E., 694 F3d at 186 [2d Cir. 2012]; K.L., 2013 WL 3814669 at *6; R.C., 906 F. Supp. 2d at 273).

Moreover, assuming for the sake of argument that the student had attended the district's recommended program at the assigned public school site, the evidence in the hearing record would not support the conclusion that the district would have violated the FAPE legal standard related to IEP implementation. As more fully discussed below, the evidence shows that the 12:1+1 special

[20] The Second Circuit has also made clear that just because a district is not required to place implementation details such as the particular 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 T.Y. v. New York City Dep't of Educ., 584 F.3d 412, 420 [2d Cir. 2009] [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.

class at the assigned district public school site was capable of providing the student with a suitable classroom environment and appropriate grouping, and the evidence does not support the conclusion that the district would have deviated from the student's IEP in a material or substantial way (A.P., 2010 WL 1049297; Van Duyn, 502 F.3d at 822; see T.L. v. Dep't of Educ., 2012 WL 1107652, at *14 [E.D.N.Y. Mar. 30, 2012]; D.D.-S. v. Southold Union Free Sch. Dist., 2011 WL 3919040, at *13 [E.D.N.Y. Sept. 2, 2011], aff'd, 2012 WL 6684585 [2d Cir. Dec. 26, 2012]; A.L. v. New York City Dep't of Educ., 812 F. Supp. 2d 492, 502 [S.D.N.Y. 2011]; Savoy v. District of Columbia, 844 F. Supp. 2d 23, 31 [D.D.C. 2012]; Wilson v. District of Columbia, 770 F. Supp. 2d 270, 274 [D.D.C. 2011] [focusing on the "proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld"]; Catalan v. Dist. of Columbia, 478 F. Supp. 2d 73 [D.D.C. 2007]; see also L.J. v. School Bd. of Broward County, 850 F. Supp. 2d 1315, 1319 [S.D. Fla. 2012] [explaining that a different standard of review is used to address implementation claims which is materially distinct from the standard used to measure the adequacy of an IEP]).

1. 12:1+1 Special Class—Functional Grouping

In this case, the IHO found that district failed to establish that student would have been appropriately grouped with individuals of similar needs (IHO Decision at p. 16). Specifically, the IHO found that there was no testimony or evidence "offered regarding the age range of the students in any of the available 12:1:1 classes, or the student's range of cognitive abilities or social and emotional development in any of the available classes" (id. at p. 17). State regulations require that in special classes, students must be suitably grouped for instructional purposes with other students having similar individual needs (8 NYCRR 200.1[ww][3][ii], 200.6[a][3], [h][3]; see Walczak, 142 F.3d at 133 [approving an IEP that placed a student in a classroom with students of different intellectual, social, and behavioral needs, where sufficient similarities existed]; Application of the Dep't of Educ., Appeal No. 11-113; Application of a Student with a Disability, Appeal No. 09-082; Application of the Dep't of Educ., Appeal No. 08-095; Application of the Dep't of Educ., Appeal No. 08-018; Application of a Child with a Disability, Appeal No. 07-068; Application of a Child with a Disability, Appeal No. 05-102). State regulations further provide that determinations regarding the size and composition of a special class shall be based on the similarity of the individual needs of the students according to: levels of academic or educational achievement and learning characteristics; levels of social development; levels of physical development; and the management needs of the students in the classroom (8 NYCRR 200.6[h][2]; see 8 NYCRR 200.1[ww][3][i][a]-[d]). The social and physical levels of development of the individual students shall be considered to ensure beneficial growth to each student, although neither should be a sole basis for determining placement (8 NYCRR 200.6[a][3][ii], [iii]). Further, the management needs of students may vary and the modifications, adaptations and other resources are to be provided to students so that they do not detract from the opportunities of the other students in the class (8 NYCRR 200.6[a][3][iv]). As the district argues on appeal, the IHO's findings that the district has made only a "bare assertion that students are functionally grouped" and that the student would not be appropriately grouped are not supported by the hearing record and must be annulled. First, the principal of the assigned public school site testified that the school had "many" students at the same functional level as the student (Tr. p. 272). Second, according to the principal, as students were assigned to the public school, class rosters could be adjusted to form more appropriate groupings of students (Tr. p. 295). Third, the hearing record establishes that following the public school's intake process, the student would have been functionally grouped in either a transition

(worksite) or high school (non-worksite) "band" according to ability, age, needs, and interests (Tr. pp. 290-95, 307-11, 318-20, 363-65, 388, 391-93, 413-15).[21]

Accordingly, the hearing record does not support the IHO's finding that the student would not have been appropriately grouped with individuals of similar needs or, more importantly, a conclusion that the district would have deviated from substantial or significant provisions of the student's IEP in a material way (Rowley, 458 U.S. at 206-07; A.P., 2010 WL 1049297; Cerra, 427 F.3d at 192 [2d Cir. 2005]; see Van Duyn, 502 F.3d at 821-25; Houston Independent School District v. Bobby R., 200 F.3d 341 at 349 [5th Cir. 2000]; see also Catalan v. Dist. of Columbia, 478 F. Supp. 2d 73 [D.D.C. 2007]).

2. Remaining Challenges to the Assigned Public School Site

Notwithstanding the speculative nature of the parent's challenges to the public school as explained above, the district argues that the IHO erred in finding that the district failed to establish how the student's management needs, related services, life skills, and travel training needs could be met at the assigned public school site. The district maintains that the student would have been provided with life skills and vocational training. In her cross-appeal, the parent challenges the IHO's failure to address her other claims relative to the public school. Specifically, the parent argues that the worksites lacked adequate supervision and support and that the district did not specify how academic instruction would be provided at the worksites. The parent also argues that the IHO failed to address her claims regarding the inappropriateness of the public school, including the inappropriateness of the settings for arrival and dismissal, the size and safety of the building, and the lack of an elevator, due to the student's anxiety and balance issues.

Although the parent's challenges to the public school are speculative for the reasons stated above, once more, assuming for the sake of argument that the student had attended the public school and the district had been required to implement the student's IEP, the evidence in the hearing record neither supports the parent's challenges to the public school nor the IHO's finding that the district failed to establish that it would not have deviated from substantial or significant provisions of the student's IEP had the IEP been implemented.

Contrary to the IHO's finding the district failed to establish how the student's management needs, related services, life skills, and travel training could be met, the hearing record establishes that students are provided with life skills and vocational training in both the public school's transition and high school program or "bands" (Tr. pp. 262-66, 278-82, 291, 314, 327-30, 402). For example, the transition band includes areas of "functional" or life-skills instruction in English language arts, math, social studies, science, how to prepare for a job interview, and individual banking (Tr. pp. 262-63). Further, the principal of the public school testified that life and social skills are part of the curriculum, which includes instruction regarding budgeting, independent living, drafting resumes, appropriate behavior in public settings, traveling, and conversing with

[21] Regarding the IHO's finding regarding the district's failure to establish an age range of the student's in any particular class to which the student may have been assigned had she attended the public school site, State regulations provide that "[t]he chronological age range within special classes of students with disabilities who are less than 16 years of age shall not exceed 36 months. The chronological age range within special classes of students with disabilities who are 16 years of age and older is not limited " (8 NYCRR 200.6[h][5]). As the student was over 16 years of age at the time the IEP would have been implemented, I find that State regulations regarding grouping by age do not apply by their own terms.

others (Tr. pp. 278-80). As to the student's management needs, the student would have received the services of a full-time 1:1 crisis management paraprofessional consistent with her IEP, and in addition to the counseling services recommended in the IEP, there is sufficient evidence in the hearing record demonstrating that the public school could have addressed the student's emotional needs and would have implemented her goals (Tr. pp. 189, 192, 272, 342; Dist. Ex. 4 at p. 14). In addition, relative to the provision of related services at the public school, the hearing record demonstrates that the student's related service providers often "go to the worksite with the child or meet the child there," while other related service providers will work with the student in the classroom and "support the academics that are going on in the classroom while they work on the skills that the students need" (Tr. p. 267). As to travel training, the hearing record further establishes that students are provided with a 1:1 "nationally recognized travel training program" that is "housed" within the public school (Tr. pp. 268-71, 316, 388, 408-11).[22] In the travel training program, a "trained professional travels with the student," works towards the goal of independent travel, and trains the student on "troubleshooting," which would include instruction on, for example, what the student should do if "train service goes out" (Tr. pp. 408-11, 431). The travel training program also focused on examining and correcting unsafe student travel behaviors (Tr. p. 410). At times, a teacher and a paraprofessional will travel with the student depending upon that student's needs (Tr. pp. 277-78).

Relative to the parties' dispute regarding the worksites, although the IHO failed to render a finding as to the appropriateness of the worksite program, the hearing record establishes that the worksite program provided adequate supervision and support because "all of [the school's] worksites [had] more than one paraprofessional" (Tr. pp. 277-78, 398). Moreover, the principal testified that academic instruction is further effectuated in the worksite programs, and given the student's present levels of performance, transition plan, and goals in her IEP, the "functional academics" provided through the worksite program would have been more than appropriate and tailored for this student (Tr. pp. 290-93). Indeed, when identifying an optimal worksite placement, the principal indicated that "we see what [the student's] interest is, what their ability is, and where we have those sites" (Tr. p. 293).

As to the parent's concern regarding the size and structure of the public school, the hearing record does not establish that the size or structure of the school would prevent the public school from appropriately implementing the student's IEP or that the student would be denied a FAPE. For example, the principal testified that there are doors within the building that separate the other schools in the building and restrict those school's students from crossing over (Tr. pp. 323, 340; see generally Tr. pp. 272, 285-88). The hearing record also established that there are "three to four" security guards in the public school to maintain order and provide security to the students and staff (Tr. p. 385).

As to the parent's concern that the public school did not have an elevator required for managing the student's "balance issues" and anxiety, the evidence in the hearing record and available to the CSE at the time of the February 2011 did not indicate that an elevator would be

[22] According to the hearing record, the travel training program is "nationally acclaimed" because the individual responsible for creating the program has "presented at national conferences" and "been asked to share their training with other organizations outside of [the city]" in which the program was developed (Tr. p. 410). There is also an indication in the hearing record that the travel training program was "recognized by some organization" (Tr. p. 430).

required to address any difficulties with the student's balance or anxiety (see Dist. Exs. 4; 5 at pp. 1-2; 7; 8 at pp. 9-10; 9 at pp. 1-5). Moreover, the assistant principal testified that the student's anxiety could be addressed by limiting the student's travel throughout the school and by staggering the student's transition times so the student could avoid large crowds (Tr. p. 379). The hearing record also establishes that paraprofessionals assist the students in the school with regard to safety, and staff at the public school usher students out of the building at dismissal "in a very orderly and safe fashion" (Tr. pp. 381, 386).

In view of the foregoing evidence regarding the provision of services at the public school, there is insufficient evidence to conclude that the district would have deviated from substantial or significant provisions of the student's IEP in a material way and thereby precluded the student from the opportunity to receive educational benefits (Rowley, 458 U.S. at 206-07; A.P., 2010 WL 1049297; Cerra, 427 F.3d at 192 [2d Cir. 2005]; see Van Duyn, 502 F.3d at 821-25; Houston Independent School District v. Bobby R., 200 F.3d 341 at 349 [5th Cir. 2000]; see also Catalan v. Dist. of Columbia, 478 F. Supp. 2d 73 [D.D.C. 2007]).

VII. Conclusion

Having found that the district offered the student a FAPE for the 2011-12 school year, the necessary inquiry is at an end, and no determination is required with regard to the appropriateness of the student's unilateral placement or whether equitable considerations support the parent's request for reimbursement (see M.C. v. Voluntown, 226 F.3d 60, 66 [2d Cir. 2000]; C.F. v. New York City Dep't of Educ., 2011 WL 5130101, at *12 [S.D.N.Y. Oct. 28, 2011]; D.D.-S., 2011 WL 3919040, at *13). The parties' remaining contentions have been considered and need not be addressed in light of the determinations made herein.

THE APPEAL IS SUSTAINED.

THE CROSS-APPEAL IS DISMISSED.

IT IS ORDERED that the IHO's decision dated July 18, 2013 is modified, by reversing those portions which found that the February 2011 IEP did not offer the student a FAPE and ordered the district to reimburse the parent for or directly fund the costs of the student's tuition at Camp Lee Mar and Cooke for the 2011-12 school year.

Dated: **Albany, New York**
November 14, 2013

JUSTYN P. BATES
STATE REVIEW OFFICER