

## FINDINGS OF FACT AND DECISION

Case Number: 160159

Student's Name:

Date of Birth:

District:

Hearing Requested By: Parent

Date of Hearing:

June 21, 2016  
August 31, 2016  
September 7, 2016  
September 8, 2016  
September 23, 2016

Actual Record Closed Date: January 27, 2017

Hearing Officer:

Andrea Cohen, Esq.

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NAMES AND TITLES OF PERSONS WHO APPEARED ON JUNE 21, 2016

For the Student:

, Attorney

, Parent

, Intern

For the Department of Education:

, Attorney

NAMES AND TITLES OF PERSONS WHO APPEARED ON AUGUST 31, 2016

For the Student:

, Attorney

, Parent

,      (Via Telephone)

For the Department of Education:

District Attorney

NAMES AND TITLES OF PERSONS WHO APPEARED ON SEPTEMBER 7, 2016

For the Student:

, Attorney

, Parent

,       (Via Telephone)

For the Department of Education:

, Attorney

NAMES AND TITLES OF PERSONS WHO APPEARED ON SEPTEMBER 8, 2016

For the Student:

, Attorney

, Parent

,  (Via Telephone)

For the Department of Education:

, Attorney

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NAMES AND TITLES OF PERSONS WHO APPEARED ON SEPTEMBER 23, 2016

For the Student:

, Attorney

, Witness (Via Telephone)

, Parent

For the Department of Education:

, Attorney

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This Final Decision And Order in the matter of Student ("□") against the New York City Department of Education ("Respondent" or "DOE") is rendered upon consideration of Petitioner's Due Process Request; prior proceedings in this matter and the federal Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq., and its implementing regulations, 34 C.F.R. § 300 et seq., and the New York State Education Law Educ. Law § 4404 et seq., and its implementing regulations, 8 NYCRR § 200.5 et seq.

### **Procedural Background**

This matter was commenced on behalf of "□" ("Petitioner") a student with a disability, on April 4, 2016. by filing a Due Process Complaint ("Complaint") against the New York City Department of Education ("DOE") pursuant to the Individuals with Disabilities Education Act ("IDEA"). This Hearing Officer was appointed to preside over this case on April 4, 2016. Pre-Hearing Conferences were held on May 13 and May 17, 2016. The matter was heard on August 31, 2016, September 7, 2016, September 8, 2016 and September 23, 2016.

### **Petitioner's Position and Relief Sought**

1. The DOE was obligated to provide □ with a FAPE for the 2015/2016 school year.
2. The DOE failed to provide a FAPE to □ for the 2015/2016 school year.
3. The parents unilaterally placed □ into appropriate educational programs for the 2015/2016 school year.
4. Equitable considerations favor petitioner.
5. The DOE failed to provide □ with Notice and Exit Summary.
6. Remedy: Reimbursement by the DOE to parents for their expenditures for □'s private placements for the 2015/2016 school year.

### **The Doe's Position and Relief Sought**

1. The DOE concedes it did not provide □ with a FAPE for the 2015/2016 school year.
2. The DOE's obligation to provide □ with a FAPE terminated prior to the 2015/2016 school year.

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3. The Parents' unilateral placements for the 2015/2016 school year were not appropriate for .
4. The equities do not favor the Parent; they did not act reasonably.
5. Parents should not be awarded reimbursement of their expenditures for 's private  placements for the 2015/2016 school year.

### **Issues**

As to the 2015/2016 School Year:

1. Whether or not the DOE was obligated to provide a FAPE to  for the 2015/2016 school year.
2. If the DOE was so obligated, whether or not:
  - a. the DOE failed in its obligation to provide a FAPE to  for the 2015/2016 school year.
  - b. the schools chosen by Parents were appropriate.
  - c. the equities are such to reduce or eliminate an award of a remedy to Parents.
  - d. Parents should be awarded reimbursement of their expenditures for 's private  placements for the 2015/2016 school year.

### **Witnesses**

(""), Parent, testified in person September 23, 2016. She testified credibly and knowledgeably, was responsive to questions and able to provide additional details and clarification when asked.

(),           testified by telephone on September 7, 2016. She testified credibly and knowledgeably, was responsive to questions and able to provide additional details and clarification when asked. Her testimony as to her education and professional experience showed her to have the appropriate expertise and competency for testifying in this matter.

### **Testimony and Evidence**

was born on . She attended New York City public schools from  through .

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testified that the DOE knew   
 (Tr. 718, 774. 1).  further testified that   
  
. (Tr. 719).<sup>2</sup>

attended a public  located in  (Tr. 719-720).  
 testified that           
  
 (Tr. 712).

. .   
 and  testified that 's parents  
 were ultimately told that   
 (P-23-1; Tr. 722, 726).

In May, 2014, 's parents had her evaluated by an independent  
, who determined that        
         
         
  
 (P-4-16).

's parent wrote to the CSE requesting that it consider the extent of  
   and that it convene for purposes of creating an  
 appropriate IEP and placement recommendation (P-3-2).

On May 16, 2014, the CSE held an IEP meeting and determined that   
 should maintain her disability classification of  (P-23-1). The IEP noted that  
  
  
 (Id.). The CSE team made a Placement Recommendation of a   
 NYSED-Approved non-Public School . (Exh. P-23-10).

<sup>1</sup> Petitioner's brief cites Exhibits P-1, P-2, and P-3, which are all letters drafted on Petitioner's behalf by Petitioner's attorney. They are not probative as to the veracity of the statements contained within these documents and will not be included in this Decision.

<sup>2</sup> There is some uncertainty as to whether  included  or  and the date  entered .

The 2014 IEP also delineated [redacted] goals for [redacted] including [redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted] (P-23-4, 23-8).

The IEP listed [redacted] as agencies responsible for the [redacted] [redacted] relating to [redacted] [redacted] [redacted] [redacted].

[redacted] testified that [redacted]'s parents never heard back from the CSE (Tr. 198, 200); that they enrolled [redacted] in a [redacted] program for the [redacted] 2014 (Tr. 377, 735, 764); that in September of 2014, they unilaterally placed [redacted] into a program at the [redacted] where she [redacted]; and that in October 15, 2015 (Tr. 380-383), she transferred to the [redacted] based upon the progress she had made while at [redacted] (Tr. 409, 412, 419-20).

The academic component of    is administered through

3 As noted in Petitioner's brief, the academic component of [redacted] is administered through [redacted] which, for all relevant purposes, is one and the same as [redacted] (Tr. 404). The academic part of the program is based on [redacted] and [redacted]'s class size was equivalent to a program having a ratio of [redacted] (Tr. 405, 435).

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[redacted]'s transcript from her time at [redacted] (Exhibit R. 18 [redacted] 0009; attached hereto as IHO Exhibit 1) sets forth [redacted]'s academic record from Grades [redacted]. It shows that [redacted]. It shows that [redacted]. [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted]. Significantly, for [redacted] [redacted], the Transcript sets forth: "[redacted]" [redacted].

In a letter from [redacted], dated June 30, 2016, (Exhibit R. 18 [redacted] 0009; attached hereto as IHO Exhibit 1) [redacted] advises that [redacted] was enrolled in classes for the following terms: [redacted].

There has been no assertion and there is no evidence that [redacted] required or took any [redacted] classes after the [redacted] term at [redacted].

[redacted]'s report cards from [redacted] showed [redacted]. (P-11; P-12, Exhibit R. 18 [redacted] 0001-0009). On her application to [redacted], [redacted] [redacted]. (Exhibit R.4-10). Petitioner's witness, Ms. [redacted] agreed that [redacted] [redacted] (Tr. 420).

As the record shows, and as noted in Petitioner's brief, "[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted]  
[redacted]  
[redacted]"

[redacted] [redacted] testified that the recommendation that [redacted] [redacted] [redacted] [redacted] [redacted] is not based solely on [redacted] (Tr. 418). At the time [redacted] transferred to [redacted], [redacted] took the position that [redacted] "[redacted] [redacted] [redacted] [redacted]" that she was not "[redacted] [redacted] [redacted] [redacted]" Accordingly, [redacted]

MS. [redacted]: -- [redacted] [redacted] [redacted] [redacted]

[redacted]  
[redacted]  
[redacted]



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(TR. 418-420)

The [ ] developed at [ ] set forth the following as the reason for [ ]'s admission: to "[ ]  
[ ]  
[ ]  
[ ]  
[ ]"

(Exhibit P.24-1).

There has been no assertion and there is no evidence that [ ]  
[ ].

While at [ ], [ ]  
[ ]. [ ]  
[ ]. (P.19, Tr.572, 578, 611-612, 639, 690-691, 693). Additionally, [ ]  
[ ].

There has been no assertion and there is no evidence that [ ]  
[ ]. There has been no assertion and there is no evidence that [ ]

**Statement of Law**

The Individuals with Disabilities Education Act ("IDEA") provides that a child with a disability is entitled to a free and appropriate public education ("FAPE"), and ensures that included special education and related services are designed to meet "their unique needs to prepare the child for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). The FAPE providing this individualization must also conform to an individualized education program ("IEP"). 34 C.F.R. § 300.320.

The IEP must be reviewed periodically, but not less than annually, to determine

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whether the annual goals for the child are being achieved. 34 C.F.R. § 300.324(b)(1)(i); 8 NYCRR § 200.4(f). The IEP must be revised to address: 1) any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate; 2) the results of any reevaluation; 3) information about the child provided to, or by, the parents; the child's anticipated needs; or other matters. 34 C.F.R. § 300.324(b)(1)(ii); 8 NYCRR § 200.4(f)(2).

The IDEA mandates that an IEP be based on the results of the most recent evaluation of a student.<sup>4</sup>

The United States Supreme Court established a three pronged test to determine whether school district may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parent: (1) were the services offered by the board of education inadequate or inappropriate, (2) are the services selected by the parent appropriate, and (3) do equitable considerations support the parent's claim (*Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359 [1985]; *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 [1993]; *Cerra v. Pawling Cent. Sch. Dist.*, 427 F.3d 186, 192 [2d Cir. Sept. 28, 2005]).

Parents seeking reimbursement “bear the burden of demonstrating that their private placement was appropriate. (*Gagliardo v. Arlington Cent. Sch. Dist.*, 489 F.3d 105 at 112 [2d Cir. 2007]).

When determining whether the parents' unilateral placement is appropriate, “[u]ltimately, the issue turns on” whether that placement is “reasonably calculated to enable the child to receive educational benefit” (*Frank G.*, 459 F.3d at 364; see also *Gagliardo*, 489 F.3d at 112), i.e., whether it provides ‘education instruction specifically designed to meet the unique needs of a handicapped child’” (*Gagliardo*, 489 F.3d at 365).

OSEP advises that, “based upon the facts and circumstances of each individual case, an impartial hearing officer has the authority to grant any relief he/she deems necessary, inclusive of compensatory education, to ensure that a child receives the FAPE to which he/she is entitled.” (*Letter to Kohn*, 17 IDELR 522 (OSEP 1991). See also *Letter*

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<sup>4</sup> 34 C.F.R. §§ 300.324(a)(1) and (2); see also 8 NYCRR §§ 200.4(d)(2) and (3).

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to Riffel, 34 IDELR 292 (OSEP 2000) (discussing a hearing officer's authority to grant compensatory education services).

Where a school system fails to provide special education or related services to a disabled student, the student is entitled to compensatory education.<sup>5</sup>

A compensatory education "award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place."<sup>6</sup>

A compensatory education award is an equitable remedy that "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA."<sup>7</sup>

"Because compensatory education is a remedy for past deficiencies in a student's educational program," a finding as to whether a student was denied a FAPE in the relevant time period is a "necessary prerequisite to a compensatory education award."<sup>8</sup>

It is reasonable to determine that a child's right to compensatory education begins when a school district knew, or should have known, that a child's Individualized Education Program ("IEP") did not provide FAPE. (The Third Circuit has addressed and upheld this view; see *M.C. v. Cent. Reg'l School dist.* 81 F.3d 389, 395, 396-397 (C.A.3 (N.J. 1996), ("An award of compensatory education may be available for the time when the District knew or should have known of a denial of FAPE.") *D.F. v. Collingswood Public Schools*, USCA for Third Circuit No.11-2410 (12/9/2011) (Appeal from USDC NJ).

Case law in New York has applied a balancing of the equities in terms of reducing or eliminating an award in cases of net unreasonable parental conduct.<sup>9</sup>

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<sup>5</sup> *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005).

<sup>6</sup> *Reid*, 401 F.3d at 524.

<sup>7</sup> *Reid*, 401 F.3d at 518. See also *Somoza v. New York City Dep't of Educ.*, 538 F.2d 106, 109 n.2 (2d Cir. 2008) ("prospective equitable relief, requiring a school district to fund education beyond the expiration of a child's eligibility as a remedy for any earlier deprivations in the child's education"). The SRO has reached the same definition under the rubric of "compensatory additional services." See, e.g., N.Y. SRO Decision No. 13-048 (Sept. 18, 2013); N.Y. SRO Decision No. 12-235 (Sept. 3, 2013) ("an equitable remedy that is tailored to meet the Unique circumstances of each case," citing *Wenger v. Canastota*, 979 F. Supp. 147 (N.D.N.Y. 1997)).

<sup>8</sup> *Peak v. District of Columbia*, 526 F. Supp. 2d 32, 36 (D.D.C. 2007).

<sup>9</sup> See, e.g., *French v. New York State Educ. Dep't*, 476 F. App'x 468 (2d Cir. 2011); *J.G. v. Kiryas Joel Sch. Dist.*, 777 F. Supp. 2d 606 (S.D.N.Y. 2011); N.Y. SRO Decision No. 11-027 (Apr. 29, 2011).

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Under federal law, the obligation to make FAPE available to all children with disabilities does not apply to those children who have graduated from high school with a regular high school diploma (34 C.F.R. § 300.102(a)(3)(i)).

Similarly, under New York law, “a student who is otherwise eligible as a student with a disability, may continue to obtain services under the IDEA until he or she receives either a local or Regents high school diploma (34 C.F.R. § 300.102[a][3][i]; 8 NYCRR 100.5[b][7][iii]; Application of the Bd. of Educ., Appeal No. 05- 084; Application of the Bd. of Educ., Appeal No. 05-037), or until the conclusion of the ten- month or until the conclusion of the ten- month school year in which he or she turns age 21 (Educ. Law §§3202[1], 4401[1], 4402[5][b]; 8 NYCRR 100.9[e], 200.1[zz]; see 34 C.F.R. §300.102[a][1], [a][3][ii]; Application of a Child with a Disability, Appeal No. 04-100).” (Application of a Student With a Disability, Appeal No. 11-132 (March 1, 2021.)

Transition services means a coordinated set of activities for a child with a disability that is designed to be within a results-oriented process focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities (e.g., postsecondary education, vocational education, integrated employment, independent living, or community participation). 34 C.F.R. § 30043(a)(1); 8 NYCRR § 200.1(fff) and 8 NYCRR § 200.4 (d).<sup>10</sup>

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<sup>10</sup> 8 NYCRR § 200; Regulations of the Commissioner of Education - Parts 200 and 201  
<http://www.p12.nysed.gov/specialed/lawsregs/sect2004.htm> Section 200.4 Procedures for referral, evaluation,

individualized education program (IEP) development, placement and review  
 Section 200.4 (d) (2) (ix)

Transition services. For those students beginning not later than the first IEP to be in effect when the student is age 15 (and at a younger age, if determined appropriate), and updated annually, the IEP shall, under the applicable components of the student’s IEP, include:

- (a) under the student’s present levels of performance, a statement of the student’s needs, taking into account the student’s strengths, preferences and interests, as they relate to transition from school to post-school activities as defined in section 200.1(fff) of this Part;
- (b) appropriate measurable postsecondary goals based upon age appropriate transition assessments relating to training, education, employment and, where appropriate, independent living skills;

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Under the IDEA, when the student is no older than 16 (15 or younger in New York), the IEP team/CSE must conduct appropriate transition assessments relating to training, education, employment, and where appropriate independent living skills. 34 C.F.R. § 300.320(b)(1); 8 NYCRR § 200.4(d)(2)(ix)(b). Thereafter, the IEP must include appropriate, measurable postsecondary goals (based on the results of the assessments) and transition services (including courses of study) needed to assist the child in reaching those goals. 34 C.F.R. § 300.320(b)(2); 8 NYCRR §§ 200.4(d)(2)(ix)(b) and (c).

Post-secondary goals are required in the IEP in the areas of training, education, and employment. (Analysis and Comments to the Regulations, Federal Register, Vol. 71, No. 156, Page 46668 (August 14, 2006). *L.O. v. N.Y.City Dept. of Educ.*, 94 F. Supp3d 530 S.D.N.Y. 2015.)

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(c) a statement of the transition service needs of the student that focuses on the student's courses of study, such as participation in advanced-placement courses or a vocational education program;

(d) needed activities to facilitate the student's movement from school to post-school activities, including instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, when appropriate, acquisition of daily living skills and functional vocational evaluation; and

(e) a statement of the responsibilities of the school district and, when applicable, participating agencies for the provision of such services and activities that promote movement from school to post-school opportunities, or both, before the student leaves the school setting.

#### Section 200.4 (d)(4) (c)

If the purpose of the meeting is to consider the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals, the school district shall invite the student. If the student does not attend, the district shall take steps to ensure that the student's preferences and interests are considered. To the extent appropriate and with parental consent or consent of a student 18 years of age or older, the school district must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the district should take steps to involve the other agency in the planning of any transition services;

#### Section 200.4 (d)(4)(e) (6)

If a participating agency fails to provide agreed-upon transition services contained in the student's IEP, the district responsible for the student's education shall, as soon as possible, initiate a meeting to identify alternative strategies to meet the transition objectives and, if necessary, revise the student's IEP. Nothing in this Part shall relieve any participating agency of its responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet its eligibility criteria.

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Post-secondary goals are not required in the area of independent living, unless appropriate. It is up to the child's IEP team to determine whether IEP goals related to the development of independent living skills are appropriate and necessary for the child to receive FAPE. (Analysis and Comments to the Regulations, cited immediately above.)

The DOE must provide written notice of the date upon which the student will no longer be entitled to receive tuition free educational services by reason of receipt of a high school diploma.<sup>11</sup>

Upon graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law, the school district must provide the child with a summary of the child's academic achievement and functional performance, which must include recommendations on how to assist the child in meeting the child's postsecondary goals. (34 C.F.R. § 300.305(e)(3).

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<sup>11</sup> 8 NYCRR § 200; Section 200.4(i)

Written notice upon graduation or aging out. Pursuant to Education Law, section 4402(1)(b)(5), the committee on special education or, in the case of a State-operated school, the multidisciplinary team, shall provide written notice to the parents or guardian of each student specified in subparagraphs (1)(i) and (ii) of this subdivision and, if such student is 18 years of age or older, to the student, of the date upon which the student will no longer be entitled to receive tuition free educational services by reason of receipt of a high school diploma or in accordance with Education Law, section 4402(5), whichever is earlier.

(2) The notice, which shall be in a form prescribed by the Commissioner of Education, shall:

(i) describe in detail the opportunity and procedure for obtaining from a State agency specified in Education Law, section 4402(1)(b)(5)(a), at least six months before such student attains the age of 21, a determination of the student's need for adult services and a recommendation of all appropriate programs operated, approved, authorized, or licensed by that agency which may be available when the student becomes ineligible for tuition-free educational services;

(ii) provide that:

(b) the committee on special education or multidisciplinary team, upon receipt of consent, shall forward the student's name and other relevant information in a report to the Commissioner of Mental Health, Commissioner of the Office for People With Developmental Disabilities, Commissioner of Social Services or Commissioner of Education or their designees. The committee on special education or multidisciplinary team shall determine which commissioner shall receive the report; and

(c) such information shall be released to the Council on Children and Families if there is a dispute as to the appropriate agency;

<sup>12</sup> (8 NYCRR § 200.4(c)(4)).

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New York State must, and does, comply.<sup>12</sup> New York State Education Department (“NYSED”) advises:

The Individuals with Disabilities Education Act (IDEA) §614(c)(5) and State regulations (§200.4(c)(4)) require the local educational agency (LEA) to provide a student with a disability with a summary of the student’s academic achievement and functional performance, which must include recommendations on how to assist the student in meeting his or her postsecondary goals. This Student Exit Summary must be provided to a student whose eligibility for special education services terminates due to graduation from secondary school with a regular diploma or due to exceeding the age eligibility for a free appropriate public education (FAPE) under State law. This includes students exiting school with a Regents, local, and Individualized Education Program (IEP) Diploma. The New York State Education Department recommends that a Student Exit Summary also be completed for students exiting with a High School Equivalency Diploma.

The purpose of the Student Exit Summary is to provide the student with a written report that provides essential information to consider as the student transitions from secondary school. The Student Exit Summary should be a useful and relevant document that summarizes individual student abilities, skills, needs and limitations and provides recommendations to support successful transition to adult living, learning and working. The Student Exit Summary should be designed to assist the student in establishing eligibility for reasonable accommodations and supports in postsecondary settings, the workplace and the community and to aid the student in accessing adult services as appropriate. It should help the student better understand the impact of his/her disability and articulate

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<sup>12</sup> (8 NYCRR § 200.4(c)(4).).



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individual strengths and needs as well as supports that would be helpful in post-school life. (8 NYCRR § 200.4(c)(4).)<sup>13</sup>

A procedural violation alone without a showing that the child's education was substantively affected, does not establish a failure to provide a FAPE. See, e.g., *A.C. v. Bd. of Educ.*, 553 F.3d 165 (2d Cir. 2009) (the failure to complete an evaluation in a timely manner did not result in substantive harm to the child).

In matters alleging a procedural violation, an IDEA claim is viable only if those procedural violations affected the student's substantive rights.<sup>14</sup>

A hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies--

- (i) Impeded the child's right to a FAPE;
- (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
- (iii) Caused a deprivation of educational benefit.<sup>15</sup>

In New York, if a student earns a diploma from an out-of-state school, this ends his/her eligibility for schooling with New York State if the diploma is considered a regular high school diploma.<sup>16</sup>

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<sup>13</sup> NYSED / P-12: EMSC / Special Education / Individuals with Disabilities Education Act / Student Exit Summary

<sup>14</sup> *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).

<sup>15</sup> 34 C.F.R. § 300.513 (a)(2).

<sup>16</sup> The New York State Education Field Policy Memorandum, James DiLorenzo; March 2014: Attachment 1: Questions and Answers: **Q** - If a student earns a diploma from an out-of-State school, does this end his/her eligibility for schooling with NYS? **A** – Yes if the diploma is considered a regular high school diploma. <http://www.p12.nysed.gov/specialed/applications/outofstate/att1-QA.htm>

<sup>17</sup> This matter addresses the 2015/2016 school year.

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[redacted]

While at [redacted], [redacted]

[redacted]

[redacted]

[redacted].

The DOE failed to provide an [redacted] and failed to provide [redacted]

[redacted]

[redacted].

[redacted] suffered no deprivation of educational benefit because of these failures.

### CONCLUSIONS

The May 16, 2014, IEP ("5/2014 IEP") was sufficient and appropriate. The Placement Recommendation, [redacted] Goals, and [redacted] set forth in the IEP were sufficient and appropriate for [redacted]'s 2014/2015 school year.

[redacted]:

- [redacted]  
[redacted].
- [redacted].
- [redacted] records and testimony note that [redacted] made sufficient progress at [redacted].
- [redacted]  
[redacted]  
[redacted].
- [redacted]  
[redacted].
- [redacted]  
[redacted].
- After leaving [redacted], [redacted] attended [redacted]  
[redacted].

The equities are such to reduce or eliminate an award of a remedy to Parents. The Parents' argument is not reasonable. It would be unreasonable to uphold Petitioner's position that [REDACTED], particularly in light of the findings set forth immediately above. Moreover, it would be an absurd conclusion that would support inconsistent and unreasonable actions: If [REDACTED] insists that [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], Moreover, if [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], the DOE would be [REDACTED]. The DOE has no such obligation.

CA's policy - [REDACTED]  
[REDACTED] - is not determinative of  
whether [REDACTED]. Additionally, it seems somewhat vague  
and arbitrarily applied, particularly in the present matter.

Moreover, Petitioner misconstrues the law. Under IDEA and New York law, a school district is obligated to provide special education academic services, and related services, and transition services until the student is 21 or graduates with a regents or local diploma. Petitioner erroneously asserts the DOE is so obligated until such time as a student has earn a diploma and *has achieved all related and transitional goals*. That is not the law.

The issue of appropriateness of any program ☐ attended during the time at issue in this matter, the 2015/2016 school year, is rendered moot upon the determination that ☐

The DOE's failure to provide an [redacted] and [redacted] are procedural violations that do not rise to a denial of FAPE and do not support an award of

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reimbursement to Petitioner under these facts, applicable law or equitable considerations: the obligation to provide a FAPE had terminated; [redacted]  
[redacted]; it would have been unreasonable for [redacted]'s parents or [redacted] to believe that the DOE was obligated to pay a facility that provided no educational instruction, or to pay for [redacted]  
[redacted]; [redacted] suffered no deprivation of educational benefit.

Neither the facts nor the equities support a holding that the failure to provide the documents noted above was a denial of FAPE for the 2015/2016 school year. Accordingly, there is no support for a monetary award of reimbursement.

Compensatory services are not to be awarded here where there is no finding that the DOE failed to provide a FAPE to an eligible student. The disabled individual may still require services, and there may be a public agency that provides such service. However, such services do not include a FAPE and are not to be provided by the DOE.

The remedy in this case is to provide to [redacted] an [redacted] in compliance with 8 NYCRR § 200.4(c)(4).); as well as any still useful information that would have been set forth in the Notice required by 8 NYCRR §200.4(i). The purpose, usefulness and the content of these documents is set forth above in footnotes 11 and 12 and in the related text.

**FINAL ORDER:**

- 1) **THE DOE IS ORDERED** to provide to [redacted] an [redacted] in compliance with 8 NYCRR § 200.4(c)(4).); as well as any still useful information that would have been set forth in the Notice required by 8 NYCRR §200.4(i).
- 2) **I HEREBY DISMISS** all other claims set forth in Petitioner's April 4, 2017 Due Process Request.

This is a FINAL ORDER; this matter is resolved and is to be closed.

Dated: February 2, 2017

AC: [redacted]

[redacted]  
ANDREA COHEN, ESQ.  
Impartial Hearing Officer

Case No. 160159

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**PLEASE TAKE NOTICE**

**Within 35 days of the date of this decision, the parent and/or the New York City Department of Education has a right to appeal the decision to the State Review Officer of the New York State Education Department under Section 4404 of the Education Law and the Individuals with Disabilities Education Act.**

**“The notice of intention to seek review shall be served upon the school district not less than 10 days before service of a copy of the petition for review upon such school district, and within 25 days from the date of the decision sought to be reviewed. The petition for review shall be served upon the school district within 35 days from the date of the decision sought to be reviewed. If the decision has been served by mail upon petitioner, the date of mailing and the four days subsequent thereto shall be excluded in computing the 25- or 35-day period.” (8NYCRR279.2[b]) Failure to file the notice of intention to seek review is a waiver of the right to appeal this decision.**

**Directions and sample forms for filing an appeal are included with this decision. Directions and forms can also be found in the Office of State Review website: [www.sro.nysed.gov/appeals.htm](http://www.sro.nysed.gov/appeals.htm).**

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DOCUMENTATION ENTERED INTO THE RECORD

PARENT

- A Parent notice of intention- 6/16/15, four pages
- B Parent notice of 9/29/15, four pages
- C Impartial hearing request - 4/4/16, seven pages
- D [ ] evaluation - 5/13/14, 39 pages
- E Affidavit from 10/19/15, one page
- F [ ] attendance 11/10/15, one page
- G [ ], 11/10/15, 1pp
- H [ ], one page
- I [ ] dated 10/14/14; 18 pages
- J [ ] - 11/5/15, five pages
- K [ ] progress report- summer 2015, two pages
- L [ ] progress report - fall 2015, two pages
- M [ ] - 6/1/15, two pages
- N Affidavit from [ ] - 12/7/15, one page
- O [ ] attendance record, one page
- P [ ] enrollment agreement - 9/4/15, two pages
- Q [ ] weekly schedule, one page
- R [ ] description, one page
- S [ ] progress reports -winter-spring 2016, six pages
- T [ ] - 6/6/16, nine pages
- U [ ] payment affidavit -10/12/15-6/9/16, one page
- V [ ] attendance record -10/19/15-6/29/16, one page
- W IEP - 5/16/14, 12 pp

DEPARTMENT OF EDUCATION

- 1 Parent enrolment packet from [ ] - 9/4/2015, 11 pages
- 2 Student enrollment packet from [ ] -9/11/15, 12 pages
- 3 [ ], undated, six pages
- 4 Student application from [ ] - 9/11/15, 13 pages

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- 5 Sample schedule from [REDACTED], one page
  - 6 Parent application from [REDACTED] - 9/12/15, nine pages
  - 7 [REDACTED] -6/9/16, three pages
  - 8 [REDACTED] - 6/15/16, two pages
  - 9 [REDACTED] description, one page
  - 10 [REDACTED] internet download number, 31 pages
  - 11 [REDACTED] internet download number, 21 pages
  - 12 Due process complaint 2014/'15 school year -1/29/15, six pages
  - 13 HIPAA authorization -7/14/16, one page
  - 14 Appendix to the documents produced by [REDACTED], two pages
  - 15 [REDACTED] -9/21/14, eight pages
  - 16 [REDACTED], one page
  - 17 [REDACTED] admissions agreement - 9/21/14, two pages
- IHO
- I Transcript- [REDACTED], 7/1/16, 1pp
- II Letter, 6/30/16, 1pp