The University of the State of New York

The State Education Department
State Review Officer
www.sro.nysed.gov

No. 22-120

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

Appearances:
Staten Island Legal Services, attorneys for petitioners, by M'Ral Broodie-Stewart, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Nathaniel Luken, Esq.

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 parent) appeals from an interim decision of an impartial hearing officer (IHO) which upheld a manifestation determination review (MDR) team's determination that the student's behavior was not a manifestation of her disability and sustained a school imposed disciplinary suspension during the 2021-22 school year. The 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]). In matters involving disciplinary changes in placement of a student having or suspected of having a disability, a parent may request an expedited impartial hearing in which shorter timelines are imposed (see 20 U.S.C. § 1415[k][3][A]; 34 CFR 300.532[c]; 8 NYCRR 201.11[a][3]-[4]). 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). State regulations also authorize an interlocutory appeal to an SRO by a party who has been aggrieved by an IHO's interim decision regarding a student's pendency placement during the impartial hearing (see 8 NYCRR 279.10[d]). 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

Due to the limited nature of the appeal and disposition thereof, a full recitation of the facts and procedural history is not necessary. Briefly, a reevaluation of the student was last conducted in spring 2014 during the 2013-14 school year (second grade) (Parent Ex. B at p. 2). At that time, the student was an English language learner who received English as a Second Language services (id. at p. 1).

On April 14, 2021, a CSE convened to develop the student's IEP for the 2021-22 school year (tenth grade) (Parent Ex. B at p. 14). Finding the student eligible for special education as a student with a speech or language impairment, the CSE recommended a 15:1 special class in English language arts (ELA), mathematics, science, and social studies (id. at pp. 1, 16).[1]

According to the parent, the student began attending a district public high school in-person, for the 2021-22 school year (tenth grade), on September 13, 2021, after receiving instruction remotely for over a year (Parent Ex. A at p. 2; see Parent Exs. I; J). According to the "Dean's Anecdotal Record," the student had several physical and behavioral altercations with students and school staff from September 14, 2021 through December 22, 2021 (see Parent Ex. C at p. 1). Following an incident on February 3, 2022, it was determined that the student had an altercation with several members of the school's staff in which she used her shoulder and both hands to push school staff members (Parent Ex. E at p. 2). On March 1, 2022, an MDR team convened for an MDR (Dist. Ex. 1 at p. 2). The MDR resulted in a finding that "[t]here was no direct or substantial relationship of the student's aggressive behavior to the student's disability" and that the student's IEP was fully implemented (id. at pp. 6-7). After completion of the MDR, the student was suspended for 15 days (Parent Ex. E at p. 4).

On March 7, 2022, a CSE convened to develop the student's IEP for the reminder of the 2021-22 school year (Parent Ex. F at p. 1). Finding the student remained eligible for special education as a student with a speech or language impairment, the CSE continued to recommend a 15:1 special class in ELA, mathematics, science, and social studies (id. at pp. 1, 11).

Following an incident on May 13, 2022, in which it was asserted that the student punched a school staff member, the staff member was taken to the hospital and the student was accompanied to the local precinct (Parent Ex. G). On May 26, 2022, an MDR team convened for an MDR (Dist. Ex. 3). The MDR resulted in a finding that the student's "maladaptive [and] aggressive behavior" was not directly or substantially related to her speech or language impairment and that the student's IEP was fully implemented (id. at pp. 5-6). Following the MDR, the student was suspended for 42 days (Tr. p. 24).

A. Due Process Complaint Notice

In a due process complaint notice dated July 6, 2022, the parent requested an expedited hearing to challenge "violations of [the student's] disciplinary due process rights" (Parent Ex. A at p. 1). The parent alleged that the district failed to comply with the due process rights afforded to the student by the IDEA, the New York State Education law, and section 504 of the Rehabilitation Act of 1973 (section 504) resulting in a denial of a FAPE for the 2021-22 school year (id.).[2] More

[1] The student's eligibility for special education as a student with a speech or language impairment is not in dispute (see 34 CFR 300.8[c][11]; 8 NYCRR 200.1[zz][11]).

[2] State law does not make provision for review of section 504 claims through the State-level appeals process authorized by the IDEA and the Education Law (see Educ. Law § 4404[2] [providing that SROs review IHO determinations "relating to the determination of the nature of a child's handicapping condition, selection of an appropriate special education program or service and the failure to provide such program"]). Therefore, an SRO has no jurisdiction to review any portion of the parents' claims regarding section 504 and such claims by the parent's will not be further discussed herein (see A.M. v. New York City Dep't of Educ., 840 F. Supp. 2d 660,

specifically, the parent alleged that the two MDRs conducted during the 2021-22 school year should be overturned because the teams relied on outdated evaluative information and inappropriate IEPs rather than on recent school records documenting the student's current maladaptive behaviors (id. at p. 7). In addition to challenging the MDR findings , the parent also argued that the district failed to offer the student a FAPE for the 2021-22 and 2022-23 school years by alleging that the student's special education programming was inadequate (id. at pp. 5-6, 8-9). With respect to the 2021-22 school year, the parent alleged that the student's 2021 IEP was insufficient to meet her academic and social/emotional needs (id. at p. 5). The parent contends that the district failed to conduct a functional behavioral assessment (FBA) to understand the student's issues with school avoidance and to develop an appropriate behavioral intervention plan (BIP) (id. at pp. 5-6). In addition, the parent asserted that the IEP contained inappropriate present levels of performance that relied on outdated evaluative information and that the IEP did not contain appropriate annual goals (id. at p. 6). With respect to the 2022-23 school year, the parent asserted that the 2022 IEP was inappropriate because the present levels of performance did not adequately describe the student, omitting information regarding the student's academic performance and failing to note the student's "five school suspensions for alleged aggressive behavior prior to the development of this IEP" (id. at p. 8). The parent further alleged that the 2022 IEP did not include sufficient academic supports or any recommendations to address the student's attendance or maladaptive behaviors (id.). Additionally, the parent raises allegations regarding the appropriateness of the recommended annual goals, the lack of a vocational assessment and the appropriateness of the postsecondary transition plan, and the lack of a recommendation for speech-language therapy (id. at p. 9).

As relief for the alleged denial of FAPE, the parent requested that the district fund private evaluations consisting of: a speech and language evaluation; a neuropsychological evaluation; an independent vocational evaluation; and an FBA and BIP (Parent Ex. A at p. 9). The parent also requested that a CSE develop a new IEP for the student for the 2022-23 school year based on the results of the requested evaluations (id. at p. 10). The parent also requested rescheduling of CSE meetings if either parent is unable to attend, as well as translation and interpretation for all CSE meetings and documents (id.). In addition, for the alleged denial of FAPE for the 2021-22 school year, the parent requested district funding of compensatory 1:1 tutoring by a provider of the parent's choosing at a rate not to exceed $200 per hour (id.).

Additionally, the parent requested reversal of the determinations made by the March 2022 and May 2022 MDR teams and expungement of all of the student's suspensions (Parent Ex. A at p. 10).

B. Impartial Hearing Officer Decision

A hearing convened on July 29, 2022 (Tr. pp. 1-56). At the start of the hearing, the IHO indicated that the hearing was scheduled "for the merits regarding the expedited portion" of the parent's due process complaint notice (Tr. p. 4). While the district limited its opening statement to the MDR determinations, the parent's opening statement—in addition to addressing the MDR

672 n.17 [E.D.N.Y. 2012] ["Under New York State education law, the SRO's jurisdiction is limited to matters arising under the IDEA or its state counterpart"]; see also D.C. v. New York City Dep't of Educ., 950 F. Supp. 2d 494, 507 [S.D.N.Y. 2013]).

determinations—repeated, and expanded on, many of the allegations included in the due process complaint notice regarding the asserted denials of FAPE for the 2021-22 and 2022-23 school years (Tr. pp. 6-12). The IHO then asked counsel for the parent to separate out the relief the parent was requesting for the expedited hearing request, to which counsel for the parent indicated she was requesting reversal of the MDR determinations and an interim order for evaluations (Tr. p. 12). The representative for the district then indicated that there was a resolution meeting and the district offered to conduct evaluations and to hold a new CSE meeting (id.). At that point, the IHO informed the parties that she was "bifurcating the issues" and explained that there were two case numbers, one for the expedited issues and another for "the regular case" (Tr. pp. 12-13). The hearing proceeded with the presentation of the testimony of one witness, the assistant principal for "School Tone & Safety" for the school the student attended, after which both parties rested (Tr. pp. 13-45; Parent Ex. H at p. 1). Following closing statements by both parties, the IHO gave the parties an opportunity to submit additional documents, but indicated that other than the submission of additional documents she was closing the record (Tr. pp. 45-55).

In an interim decision dated August 11, 2022, the IHO found that that the student's conduct described in the March and May 2022 MDR determinations was not caused by a direct or substantial relationship to the student's disability (Interim IHO Decision at p. 7). Specifically, the IHO found that that both the March and May 2022 MDR teams were legally constituted and that the meetings consisted of participants who were knowledgeable of the student's needs and behaviors (id. at pp. 7-8). The IHO also found that both MDR teams considered relevant information about the student and there were multiple IEPs which included evaluative information about the student's present levels of performance (id. at p. 8). Ultimately, the IHO agreed with the MDR teams' determinations that the student's behaviors were not connected to the student's speech or language impairment (id.). According to the IHO, "[t]he purpose of the MDR team [was] not to reevaluate the student for suspected disabilities, but to determine if the behavior in question [was] a manifestation of the known disability" (id.). The IHO further determined that there was no evidence indicating that "the incidents in question were substantially tied to the student's speech and language disability" (id.). Further, the IHO found that there was no evidence to support finding that the student's IEP was not correctly implemented (id. at p. 9). Therefore, the IHO denied the parent's request to reverse the March and May 2022 MDRs (id.).

IV. Appeal for State-Level Review

The parent appeals, arguing that the IHO erred in failing to reverse the determinations made by the March and May 2022 MDR teams.[3] The parent argues that the IHO erred in finding that the district considered all relevant information during both the March and May 2022 MDR

[3] A review of the hearing record reveals that the request for review was not signed by the parent's attorney. State regulations provide that "[a]ll pleadings and papers submitted to a[n] [SRO] in connection with an appeal must be endorsed with the name, mailing address, and telephone number of the party submitting the same or, if a party is represented by counsel, with the name, mailing address, and telephone number of the party's attorney" (8 NYCRR 279.7[a]). All pleadings must be signed by an attorney, or by a party if the party is not represented by an attorney (8 NYCRR 279.8[a][4]). Additionally, all pleadings shall be verified by a party (8 NYCRR 279.7[b]). Also, the verification accompanying the parent's request for review was signed by the parent's attorney, instead of the parent. State regulation requires that "at least one of the petitioners" must verify the request for review (8 NYCRR 279.7[b]). Dismissal on this basis would not lead to a different result, and thus, in future appeals, the parent's attorney is cautioned to review the regulations governing practice before the Office of State Review and to comply with them. Noncompliance with the requirements may result in rejection of a pleading.

meetings. Next, the parent argues that the evidence in the hearing record supports a finding that the disciplinary incidents were a manifestation of the student's disability. Additionally, according to the parent, parental consent was not needed for the district to comply with the disciplinary due process procedures and the IHO erred in finding that the MDR team was not required to reevaluate the student. Lastly, the parent argues that compensatory education services is appropriate relief to make up for the 57 days of instruction the student missed while suspended and that the parent's claims related to the MDR determinations are not moot as it is possible the student might be suspended again upon her return to school.

In an answer, the district responds to the parent's allegations, and generally argues to uphold the IHO's findings. The district asserts that the March and May 2022 MDR teams considered all relevant information regarding the student. The district also argues that the MDR team offered to reevaluate the student but the parent refused to consent to an evaluation. According to the district there is no evidence in the hearing record that the disciplinary incidents were a manifestation of the student's disability. Lastly, the district argues that the hearing record does not include any evidence in support of the parent's request for compensatory services.

V. Applicable Standards

The IDEA includes specific protections with regard to the process by which school officials may seek to effectuate a disciplinary change in placement of a student with a disability who violates a code of student conduct (see 20 U.S.C. § 1415[k]; Educ. Law §§ 3214[3][g]; 4404[1]; 34 CFR 300.530-300.537; 8 NYCRR Part 201). State regulations provide that a disciplinary change in placement means a "suspension or removal from a student's current educational placement that is either: (1) for more than 10 consecutive school days; or (2) for a period of 10 consecutive days or less if the student is subjected to a series of suspensions or removals that constitute a pattern because they cumulate to more than 10 school days in a school year" (8 NYCRR 201.2[e]; see 20 U.S.C. § 1415[k][1][B]; 34 CFR 300.530[b][2], [c]).

If a district is considering a disciplinary change in placement for a student with a disability, the district must conduct an MDR "within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct" (20 U.S.C. § 1415[k][1][E][i]; 34 CFR 300.530[e][1]; 8 NYCRR 201.4[a]). The participants in an MDR must include a district representative, the parents, and the "relevant members" of the CSE, as determined by the parent and the district (20 U.S.C. § 1415[k][1][E][i]; Educ. Law § 3214[3][g][2][ii]; 34 CFR 300.530[e][1]; 8 NYCRR 201.4[b]). The manifestation team must "review all relevant information in the student's file including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine if: "(1) the conduct in question was caused by or had a direct and substantial relationship to the student's disability; or (2) the conduct in question was the direct result of the school district's failure to implement the IEP" (8 NYCRR 201.4[c]; see 20 U.S.C. § 1415[k][1][E]; 34 CFR 300.530[e][1]).

If the result of the MDR is a determination that the student's behavior was a manifestation of his or her disability, the CSE is required to conduct a functional behavioral assessment (FBA) and implement a BIP; or if the student already has a BIP, review the BIP and modify it as necessary to address the behavior (20 U.S.C. § 1415[k][1][F][i]-[ii]; 34 CFR 300.530[f][1][i]-[ii]; 8 NYCRR 201.3). Except under "special circumstances" as defined in the IDEA and State and federal regulations, the district must also return the student to the placement from which he or she was

removed or suspended (20 U.S.C. § 1415[k][1][F][iii]; Educ. Law § 3214[3][g][3][viii]; 34 CFR 300.530[f][2]; 8 NYCRR 201.4[d][2][ii]).[4] If the MDR team determines that the student's conduct was the direct result of the school district's failure to implement the student's IEP, the district must take immediate steps to correct the deficiencies in the implementation of the student's IEP (34 CFR 300.530[e][1][ii], [3]; 8 NYCRR 201.4[e]).

If the parent of a student with a disability disagrees with a school district's decision regarding the student's placement, or a determination of the manifestation team, the parent may request an expedited impartial hearing (20 U.S.C. § 1415[k][3][A]; 34 CFR 300.532[c]; 8 NYCRR 201.11[a][3]-[4]; see Coleman v. Newburgh Enlarged City Sch. Dist., 503 F.3d 198, 201-02 [2d Cir. 2007]).

VI. Discussion and Conclusion

At the outset, the evidence shows that the expedited impartial hearing has occurred with respect to the MDR aspects of the case, but the case continues at the impartial hearing level, thus the parent's contention on appeal is not within the scope of a permissible interlocutory appeal and at this juncture is outside the scope of my review. State regulations governing the practice of appeals from the decisions of IHOs related to matters concerning the provision of a FAPE to a student with a disability or a manifestation determination limit appeals from an IHO's interim determination to those involving pendency (stay-put) disputes (8 NYCRR 279.10[d]; see Educ. Law § 4404[4]). Here, the IHO's interim decision, dated August 11, 2022, did not resolve a pendency dispute, but instead, addressed the parent's request for reversal of the determinations made by the March and May 2022 MDR teams (see Interim IHO Decision at p. 7). Therefore, to the extent that the parent appeals from the IHO's interim decision and State regulation does not allow for an interlocutory appeal on issues other than pendency disputes, the parent's appeal must be dismissed as premature (see Application of a Student with a Disability, Appeal No. 18-075).

Initially, there does not appear to be a stay put dispute between the parties as to the student's placement during the pendency of this proceeding. The student was suspended in May 2022 for 42 days, which the parent asserts was set to end on September 30, 2022 (Tr. p. 24; see Tr. pp. 11, 52; Req. for Rev. ¶24). The assistant principal for school tone and safety at the building the student attended testified that during the student's suspension she was offered placement at an alternate learning center but the student was not attending (Tr. pp. 22, 25-26). Since the suspension period has already elapsed, any reversal in an MDR determination in order to shorten the length of the student's suspension is no longer possible as the student has already completed it.

To the extent that the IHO "bifurcated" the hearing by holding the expedited issue first and reserving the remainder of the parent's claims for a later hearing, this practice is in compliance with State guidance which requires that whenever a parent submits a request for an impartial hearing including both expedited and nonexpedited issues, the district must set up the expedited and nonexpedited issues as two cases with separate timelines ("Changes in the Impartial Hearing Reporting System," Office of Special Educ. [Aug. 2011], available at http://www.p12.nysed.gov/specialed/dueprocess/changes-IHRS-811.htm). An early, expedited

[4] A district and parents may agree to a change in the student's placement (20 U.S.C. § 1415[k][1][F][iii], [G]; 34 CFR 300.530[f][2], [g]; 8 NYCRR 201.7[e], 201.8[a], 201.9[c][3]).

determination from a neutral IHO that addresses issues such as the prospect that a suspended student was not receiving IEP services or that no MDR process was conducted are important procedural protections. However, bifurcation of the hearing into two separate trial stages with separate timelines for addressing the expedited versus the nonexpedited issues does not altogether sever the expedited MDR claims from the parent's due process complaint notice so that they are no longer a part of the same proceeding.[5] Accordingly, the bifurcation of the issues in an impartial hearing into different stages does not permit the filing of an appeal for matters other than the student's placement for the pendency of the proceeding until there is a final decision in the proceeding. The stay-put procedures and suspension/MDR procedures typically have very different timelines. In the former, the student's placement is affected for the duration of due process litigation which is indeterminate in length and can take many months or even years, thus an interlocutory State-level review has been put in place, and the Second Circuit explained that judicial review of stay put disputes without administrative exhaustion is permitted (Doe v. E. Lyme Bd. of Educ., 790 F.3d 440, 455 [2d Cir. 2015]). Suspensions periods, as in this case, are of a more finite duration and typically conclude before the duration of the litigation runs its course, and while remediation is possible when warranted it is more likely after the fact and requires a more fully developed hearing record on the issue of compensatory education services.

While consideration of the parent's allegations on appeal is premature at this juncture, it does not prevent later review of the IHO's interim decision. State regulation provides that a "party may seek review of any interim ruling, decision, or failure or refusal to decide an issue" in an appeal from an IHO's final determination (8 NYCRR 279.10[d]). Thus, if necessary, the parent may appeal from the IHO's August 11, 2022 interim decision after the IHO closes the hearing record and issues her final determination on the remaining issues. The benefit of this approach is that the evidentiary record would benefit from further development with respect to the other aspects of the parent's case (e.g. that the student's 2021-22 IEP was inadequately designed to address alleged behavioral concerns), which if adequately borne out, would be related to the parents concern that the MDR process was flawed due to misapprehension of the student's disability prior to the events leading to the student's suspension.

It makes sense to conduct one proceeding with issues that are closely related as the parent has alleged. But if speed for certain aspects of the case is paramount (and at the cost of the opportunity for a more developed argument of intertwined issues), there are strategic options to consider prior to filing a due process complaint notice. The IDEA does not preclude a parent from filing two separate due process complaint notices on issues separate from each other (34 CFR 300.513[c]). Therefore, had the parent filed two separate due process complaint notices; one for the claims related to the MDR determinations and one for the claims related to the provision of a FAPE, this office would have been permitted to review the expedited hearing consisting of the MDR claim only because it would have been an appeal from an IHO's final determination.

[5] While State regulation explicitly provides for consolidation of multiple due process complaint notices into one proceeding, State regulations are silent as to an IHO separating one due process complaint notice into multiple proceedings (see 200.5[j][3][ii][a]). Additionally, consolidation of two separate due process complaint notices into one proceeding requires a written order by an IHO with consideration of specified relevant factors (200.5[j][3][ii][a][3], [4]). Accordingly, if the severance of issues into multiple proceedings is permissible, it would be expected that it would be done by written order of the IHO with similar considerations. The hearing record in this matter does not include such an order.

Moreover, with respect to the parent's request for compensatory education services, although there is no basis to make such a determination now as this appeal is not a proper appeal from the final determination of an IHO, the IHO should permit the parties to present evidence and develop the hearing record regarding their positions as to what an appropriate award of compensatory education would consist of for both the asserted allegations related to the MDR determinations and to the district's programming for the student for the 2021-22 and 2022-23 school years.

Turning to the parent's contention that he did not deny consent to have the student evaluated by the district, federal and State regulations provide that parental consent is not required to conduct a reevaluation if the district can demonstrate that it "made reasonable efforts to obtain such consent," and the student's parent "failed to respond" (34 CFR 300.300[c][2]; see 8 NYCRR 200.5[b][1][i][b]). Federal and State regulations also permit the use of consent override procedures, specifically due process, if the parent refuses to consent to a reevaluation (34 CFR 300.300[c][1][ii]; 8 NYCRR 200.4[a][8]; 200.5[b][3]). Thus, if the district follows the necessary consent procedures for reevaluation but the parent does not respond, the district is encouraged to reevaluate the student despite the failure to respond.

I have considered the parties' remaining contentions and find that I need not address them in light of the determinations made herein.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
October 21, 2022

JUSTYN P. BATES
STATE REVIEW OFFICER