



The University of the State of New York

The State Education Department

State Review Officer

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No. 17-072

Application of a STUDENT WITH A DISABILITY, by his parent, for review of a determination of a hearing officer relating to the provision of educational services by the Board of Education of the Massapequa Union Free School District

Appearances:

Guercio & Guercio, LLP, attorneys for respondent, by Randy Glasser, 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 the decision of an impartial hearing officer (IHO) that granted respondent's (the district's) motion to dismiss her due process complaint notice. The appeal must be sustained and, for reasons explained more fully below, the matter remanded to an IHO for further administrative proceedings.

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).¹ 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

The student has been the subject of two prior administrative appeals relating to the same school year (see Application of a Student with a Disability, Appeal No. 17-038; Application of a Student with a Disability, Appeal No. 17-033). Accordingly, the parties' familiarity with the facts and procedural history is assumed; nevertheless, for the purpose of clarity and to provide guidance to the IHO on remand, a review of the extended procedural history of this matter is warranted.

¹ In September 2016, Part 279 of the practice regulations were amended, which amendments became effective January 1, 2017, and are applicable to all appeals served upon an opposing party on or after January 1, 2017 (see N.Y. Reg., Sept. 28, 2016, at pp. 37-38; N.Y. Reg., June 29, 2016, at pp. 49-52; N.Y. Reg., Jan. 27, 2016, at pp. 24-26). Although some of the events at issue in this appeal occurred before the effective date of the 2016 amendments, the new provisions of Part 279 apply, as the request for review was served upon the opposing party after January 1, 2017; therefore, citations contained in this decision are to the amended provisions of Part 279 unless otherwise specified.

A. Prior Administrative Proceedings

The parent filed a due process complaint notice on August 4, 2016, alleging that the district failed to offer the student a free appropriate public education (FAPE) for the 2016-17 school year, which was resolved by a stipulation of settlement executed by the parents on September 14, 2016, and by the district on September 22, 2016 (Dist. Exs. C; D.B at pp. 1-3, 16).² Pursuant to the stipulation of settlement, the district agreed to provide the student with a center-based 18:1+2 integrated program at a particular nonpublic preschool (the NPS), five days per week from 8:30 a.m. to 1:30 p.m., along with the related services recommended in the student's IEP, for the period of September 19, 2016 through June 23, 2017 (Dist. Ex. C at p. 3). Further, the parent waived her right to commence any action or proceeding with respect to the student's IEP, special education program, and related services relative to the student's 2016-17 school year (*id.* at p. 4).

The parent subsequently filed a due process complaint notice, dated December 7, 2016, in which she asserted that a Committee on Preschool Special Education (CPSE) convened on December 7, 2016 and improperly refused to develop an IEP for the student that reflected the placement the student was attending pursuant to the stipulation of settlement and included academic annual goals (Dist. Ex. A at pp. 1-4). The parent requested that the district be required to develop an IEP reflecting the student's placement at the NPS and including academic annual goals (*id.* at p. 17). While administrative proceedings were underway, a CPSE convened on March 22, 2017 and amended the student's IEP to reflect the student's placement in an 18:2+2 "special class in an integrated setting" in a State-approved preschool special education program at the NPS and included annual goals related to the student's academic needs (Dist. Ex. DD.D at pp. 1, 6-7, 11, 13).

The IHO rendered decisions dated February 9, 2017, and March 30, 2017, cumulatively dismissing the parent's December 2016 due process complaint notice on the grounds that the parent was barred from raising issues resolved by the stipulation of settlement and the March 2017 IEP resolved the parent's remaining claim for relief (Dist. Exs. L at pp. 3-4; Q; *see* Dist. Ex. O). The parent appealed from the dismissal of her complaint and, in a decision dated June 26, 2017, the undersigned dismissed the parent's appeal from the IHO's decisions (Application of a Student with a Disability, Appeal No. 17-033). As relevant to the instant appeal, in Application of a Student with a Disability, Appeal No. 17-033, the undersigned held that, since the CPSE had convened in March 2017 and developed an IEP for the student, which included the amendments sought by the parent as relief in her December 2016 due process complaint notice, the parent's claims were moot.

B. Due Process Complaint Notice

By due process complaint notice dated April 6, 2017, the parent alleged that the district did not offer the student a FAPE for the 2016-17 school year "due to a deficient IEP for a majority of

² In both Application of a Student with a Disability, Appeal No. 17-038, and this matter, the parent appealed from IHO decisions that were rendered based on the parties' submissions. No hearing dates have been held and no exhibits have been admitted into evidence by the IHO. For that reason, citations in this decision are to the documents as lettered in the district's letter dated May 12, 2017, and as numbered in the district's letter dated September 1, 2017, transmitting the hearing records to the Office of State Review (Dist. Exs. A-FF; Dist. Exs. 1-10). Citations to exhibits attached to one of these documents are first to the document as identified in the letters from the district, then to the exhibit appended thereto, and if needed, the page(s) (e.g., Dist. Ex. D.B at pp. 1-3, 16).

the school year" (Dist. Ex. BB at p. 4). More specifically, the parent argued that the district failed to develop appropriate educational goals for the student prior to the March 2017 CPSE meeting (id. at pp. 3-4). The parent further alleged that the student's IEP did not reflect a "placement/program" prior to March 24, 2017 (id.). The parent asserted that, due to the deficiencies in the IEP, the student failed to make "appropriate/sufficient/meaningful progress" (id. at p. 3).

The parent acknowledged the "prior filing" relating to the student but indicated that she now sought "compensatory educational hours" based on the "damage that was done due to the district's prohibiting educational goals being created and outlined in [the student's] IEP for more than six months" (Dist. Ex. BB at p. 4). As relief, the parent requested an award of "compensatory educational hours for the exhaustive length of time that [the student's] IEP was deficient in the area of educational goals" (id.). Specifically, the parent sought "637 hours of compensatory special education" (id. at p. 8).

C. Impartial Hearing Officer Decision and Appeal

By decision dated April 17, 2017, the IHO dismissed the parent's due process complaint notice with prejudice (Dist. Ex. EE at p. 4). Initially, the IHO denied the parent's request for a pendency determination (id. at pp. 2-3). The IHO found that pendency was not at issue because the student's current placement at the NPS was not in dispute (id. at p. 3). In addressing the district's motion to dismiss the parent's due process complaint notice, the IHO held that the parent had waived her right to commence the instant action and that she could not engage in "claim splitting" (id.; see Dist. Ex. DD). More specifically, the IHO found that the parent was "trying to re-litigate an issue which ha[d] already been raised and rectified in the prior hearing" (Dist. Ex. EE at p. 4).

The parent appealed from the IHO's April 17, 2017 decision and requested that it be reversed (Application of a Student with a Disability, Appeal No. 17-038). More specifically, she asserted that the IHO erred in dismissing her complaint without addressing her claim that the student-to-teacher ratio reflected in the March 2017 IEP did not match the student-to-teacher ratio outlined in the September 2016 stipulation of settlement. The parent further disputed the IHO's finding that she was attempting to relitigate previously decided claims and that the IHO violated her due process rights by dismissing the complaint without ever establishing an administrative hearing record or receiving testimony. The parent requested remand to a new IHO for a ruling on the student's pendency placement and to establish an appropriate record for review. The parent also requested an award of compensatory special education instruction hours.

In the parent's appeal from the IHO's April 2017 decision, the undersigned agreed with the district and declined to address the parent's allegation that the IHO improperly refused to consider her claim that the student-to-teacher ratio reflected on the March 2017 IEP did not match the student-to-teacher ratio set forth in the September 2016 stipulation of settlement (Application of a Student with a Disability, Appeal No. 17-038). With respect to the IHO's dismissal of the parent's due process complaint notice on the grounds that it was an attempt to relitigate prior claims and constituted "claim splitting," I determined that because I dismissed the parent's December 7, 2016 due process complaint notice on mootness grounds (Application of a Student with a Disability, Appeal No. 17-033), and the parent's April 6, 2017 due process complaint notice contained a new request for compensatory education relief (Application of a Student with a Disability, Appeal No.

17-038), none of the prior proceedings had resulted in an adjudication on the merits of the parent's claims (Application of a Student with a Disability, Appeal No. 17-038).

I, therefore, reversed the IHO's dismissal of the parent's due process complaint notice on those grounds. With regard to the district's alternate argument that the parent waived her right to pursue an impartial hearing against the district for any claims surrounding the 2016-17 school year under the terms of the stipulation of settlement, I noted that, in her February 2017 decision, the IHO found that the parent's requests for the CPSE to update the student's IEP to identify the student's current placement and develop annual goals were not waived by the settlement agreement, which determination the district had not appealed from and which had thus become final and binding (Application of a Student with a Disability, Appeal No. 17-038; see Dist. Ex. L at pp. 3, 4). Furthermore, because the IHO did not rely on language in the stipulation of settlement "which specifically barred the parents from commencing any action or proceeding with respect to the student's IEP during any school year up through and including the 2016-2017 school year," in dismissing the parent's April 2017 due process complaint notice and failed to conduct any analysis of which claims or requests for relief remained viable in light of the terms of the stipulation of settlement, I declined to read a clear determination of waiver of claims into the IHO's decision (Application of a Student with a Disability, Appeal No. 17-038).

Given this lack of clarity from the IHO about the extent to which she found the parent waived her right to pursue the impartial hearing regarding the issues raised and the different relief sought, the matter was remanded back to the IHO for a determination on the merits of the claims raised in the parent's April 2017 due process complaint notice. The IHO was specifically directed to consider (1) whether the stipulation of settlement allowed the relief sought by the parent, taking into the account the IHO's decisions resolving the parent's December 2016 due process complaint notice; (2) whether the CSE's failure to develop an IEP for the student's 2016-17 school prior to March 2017 that set forth the student's placement at the NPS or included academic goals amounted to a denial of a FAPE; and (3) whether compensatory education relief was warranted (Application of a Student with a Disability, Appeal No. 17-038). I suggested that the IHO might find it appropriate to schedule a prehearing conference to ascertain whether the parent had asserted all claims and requests for relief relating to the student's 2016-17 school year.

D. Impartial Hearing Officer Decision After Remand

On remand, the IHO determined to rewrite her April 2017 decision dismissing the parent's due process complaint notice without the benefit of further proceedings (Dist. Ex. 2).

By decision dated July 27, 2017, the IHO determined that the stipulation of settlement did not permit the parent to commence an impartial hearing unless the district attempted to change the student's program and that the parent did not allege that the district attempted to change the student's program from that agreed on in the stipulation (IHO Decision at p. 5). The IHO acknowledged that she earlier determined that the parents could raise claims regarding the district's failure to reconvene the CPSE to memorialize the placement called for by the stipulation on the student's IEP and develop academic goals for the student in that placement, and that the district erred in not amending the student's IEP (*id.* at p. 6). However, the IHO also found that while the CPSE "did not fully grasp the concept that it had to create an IEP " to reflect the stipulation, the student was not harmed by this failure because he was in the placement the parent desired and his classroom teacher developed academic goals, and that the parent's claim that the student had not

made appropriate progress was "without merit" (*id.* at p. 7). Lastly, the IHO determined that the parent had waived her right to seek compensatory relief and, in any event, that there was no denial of a FAPE to the student that would provide a basis on which to award compensatory education (*id.* at p. 8).

IV. Appeal for State-Level Review

The parent appeals and requests that the IHO's decision be reversed and remanded to a new IHO. The parent continues to allege that the student's March 2017 IEP does not reflect the student-to-staff ratio set forth in the stipulation of settlement and that the student attended the NPS without an IEP that reflected his program or included appropriate goals for over six months. The parent also alleges that the IHO refused to allow a hearing, refused to rule on pendency, and violated her due process rights by not allowing a hearing or ruling on pendency. The parent also contends that the IHO demonstrated bias by refusing to hold a hearing.

In an answer, the district generally admits or denies the parent's allegations and requests that the IHO's decision be upheld in its entirety. The district initially argues that the parent's submissions on appeal do not comply with Part 279 of the practice requirements. The district asserts that the parent waived her right to pursue an impartial hearing against the district with regard to any claims arising from the 2016-17 school year pursuant to the stipulation of settlement. The district also contends that a hearing was not necessary. To that end, the district claims that the stipulation bars the parent's requested relief, the student received appropriate services, and that the parent has already received the requested relief, thereby rendering her claims moot. Finally, with respect to the parent's request that this matter be remanded to a new IHO, the district asserts that the parent is engaging in improper "judge shopping."

V. Discussion

A. Form Requirements for Pleadings

The district requests dismissal of the parent's appeal for failure to comply with the practice requirements as set forth in State regulations. More specifically, the district argues that the request for review was defective for the following reasons: (1) the parent failed to verify the request for review; (2) the request for review was not endorsed with the parent's name, mailing address, and telephone number; and (3) the request for review did not contain the requisite information in that the parent failed to clearly identify the findings, conclusions, and orders of the IHO to which she took exception. The district alleges that "[the parent's] failures in this matter amount to more than easily corrected procedural errors or mere technicalities." In addition, the district alleges that this is not the first time that the parent has failed to comply with the practice requirements, demonstrating a "blatant disregard" for the practice requirements.

State regulation provides that a request for review "shall clearly specify the reasons for challenging the [IHO's] decision, identify the findings, conclusions, and order to which exceptions are taken, or the failure or refusal to make a finding, and shall indicate what relief should be granted by the [SRO] to the petitioner" (8 NYCRR 279.4[a]). Additionally, the request for review "must conform to the form requirements in section 279.8 of this Part" (8 NYCRR 279.4[a]). State regulation requires, in pertinent part, that a request for review set forth:

- (1) the specific relief sought in the underlying action or proceeding;

(2) a clear and concise statement of the issues presented for review and the grounds for reversal or modification to be advanced, with each issue numbered and set forth separately, and identifying the precise rulings, failures to rule, or refusals to rule presented for review; and

(3) citations to the record on appeal, and identification of the relevant page number(s) in the hearing decision, hearing transcript, exhibit number or letter and, if the exhibit consists of multiple pages, the exhibit page number.

(8 NYCRR 279.8[c]).

Moreover, all pleadings and papers submitted to an SRO 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]).

In general, the failure to comply with the practice requirements of Part 279 of the State regulations may result in the rejection of the submitted documents or in the dismissal of a request for review by an SRO (8 NYCRR 279.8[a]-[b]; 279.13; see T.W. v. Spencerport Cent. Sch. Dist., 891 F. Supp. 2d 438, 440-41 [W.D.N.Y. 2012] [upholding dismissal of a petition for review that was untimely and exceeded page limitations]). However, "judgments rendered solely on the basis of easily corrected procedural errors or 'mere technicalities,' are generally disfavored" (J.E. v. Chappaqua Cent. Sch. Dist., 2015 WL 4934535, at *4-*6 [S.D.N.Y. Aug. 17, 2015], aff'd, C.E. v. Chappaqua Cent. Sch. Dist., 2017 WL 2569701, at *1-*2 [2d Cir. June 14, 2017], quoting Foman v. Davis, 371 U.S. 178, 181-82 [1962]).

The district first asserts that request for review is not verified; however, the parent filed an affidavit of verification with the Office of State Review together with her request for review. Next, although the request for review is not endorsed with the parent's mailing address and telephone number as required by State regulation (8 NYCRR 279.7[a]), the district has not alleged that the parent's failure in this respect impeded its ability to respond to the request for review. Additionally, the district requested and was granted an extension of time to serve an answer and the district served its answer within its extended time. Finally, with respect to the district's allegation that the parent failed to clearly identify the findings, conclusions, and orders of the IHO to which she took exception, review of the parent's request for review belies this assertion. The parent's request for review includes ten numbered issues which sufficiently specify the grounds on which the parent seeks reversal or modification of the IHO's decision.

While the district correctly submits that the parent failed to comply with all of the form requirements for pleadings set forth in State regulation, even taking into account that the parent has repeated deficiencies found in prior appeals, I decline to exercise my discretion to dismiss the parent's request for review on these grounds. The district was not prevented from answering in a timely manner and there is no indication that it suffered any prejudice as a result (see Application of a Student with a Disability, Appeal No. 15-069; Application of a Student with a Disability, Appeal No. 15-058).

B. Remand

Among the reasons necessitating a remand in the prior appeal was the IHO's disposition of the parent's December 2016 due process complaint notice underlying Application of a Student with a Disability, Appeal No. 17-033. In her interim decision dated February 9, 2017, the IHO found that the parent's claims related to placement and academic goals were not precluded by the stipulation of settlement (Dist. Ex. L at pp. 3-4). In particular, the IHO found that the district "need[ed] to develop an IEP that reflect[ed] the program in which the student is being educated, the services the student is receiving and the goals that the student will be working toward" (*id.* at p. 3). The IHO also noted that "not having an IEP with annual academic goals would be a violation of the IDEA" and that "limiting review of the IEP to Annual Review Meetings would also go against the intent of the IDEA" (*id.*). In view of that determination, and a subsequent letter order from the IHO dated March 1, 2017 (Dist. Ex. O), the district reconvened a CPSE on March 22, 2017, and amended the student's IEP to reflect the student's placement in the NPS and to include academic goals (Dist. Ex. DD.D). The IHO then issued a final decision on March 30, 2017, dismissing the parent's December 2016 due process complaint notice (Dist. Ex. Q).

In her subsequent April 2017 due process complaint notice underlying this proceeding, the parent requested compensatory education as relief for the period of time when the student's IEP did not reflect his current program or contain academic goals (Dist. Ex. BB at pp. 3-4, 8), which would flow from the IHO's statement in the prior impartial hearing that the district was required to develop an IEP that reflected the student's current program and included academic goals. As noted above, the district did not appeal from this determination, and it has become binding on the parties. However, in her decision on remand, the IHO determined, based solely on the parties' submissions, that the student was not harmed by this violation and that he had "no cognitive or academic needs that need[ed] to be addressed through special education" (IHO Decision at pp. 7, 8). At a minimum, an IHO is required to make decisions "on substantive grounds based on a determination of whether the student received a [FAPE]" (8 NYCRR 200.5[j][4]). Further, basic elements of due process are set forth in State regulations, such as the timeline for commencing the impartial hearing, the requirement that an impartial hearing officer maintain and make available to the parties a written or electronic verbatim record of the proceedings, and that the parties shall have the opportunity to present evidence, compel the attendance of witnesses, and to confront and question all witnesses at the hearing (8 NYCRR 200.5[j][3][iii], [v], [xii]).

The IHO did not receive any documentary or testimonial evidence, has not conducted a prehearing conference or hearing in this matter, and has not developed a record consistent with standard legal practice or due process. As such, the IHO's decision improperly addressed the substantive impact of the district's failure to develop an IEP reflecting the student's current program and including academic goals prior to March 2017 without evidence on which to base her determination. The IHO provided no legal or evidentiary basis for these determinations. In light of the above and for the reasons set forth in Application of a Student with a Disability, Appeal No. 17-038, it is necessary to remand this matter again.

The parent requests that this matter be remanded to a new IHO, rather than the IHO who issued the April 2017 and July 2017 decisions that dismissed the parent's April 2017 due process complaint notice. The district argues that this request represents the parent's attempt to engage in "improper judge shopping." The undersigned considered taking evidence at this level of review; however, the parent specifically requested remand to an IHO and the parent should be extended

the benefit of the impartial hearing process as envisioned by the IDEA and State law. In the prior appeal, I determined that it was appropriate for the IHO to consider the district's application for dismissal of the parent's April 2017 due process complaint notice, but found that the IHO's ultimate determination was based on legal error. I further found that there was no indication in the submissions on appeal that the IHO would not address the parent's claims in an impartial and fair manner consistent with the requirements of due process and that there was no basis to order that the matter be remanded to a different IHO. Based on the foregoing, this is no longer the case.

On remand, the district is directed to appoint a different IHO consistent with the rotational selection process described in State regulation (8 NYCRR 200.5[j][3]). The district is also directed to provide the new IHO with copies of each of the IHO's interim and final decisions as well as copies of each of the SRO decisions issued relative to the parent's December 2016 and April 2017 due process complaint notices. Once a new IHO has accepted appointment, the new IHO is directed to schedule an impartial hearing and provide the parties with an opportunity to present evidence consistent with the IDEA and federal and State regulations.

VII. Conclusion

For the reasons stated above, the matter is remanded to a new IHO for a determination on the merits of the issues and/or claims identified in the parent's April 2017 due process complaint notice and requests for review.³

THE APPEAL IS SUSTAINED.

IT IS ORDERED that the IHO's decision, dated July 27, 2017, is reversed;

IT IS FURTHER ORDERED that the matter is remanded to an IHO other than the one who issued the July 27, 2017 decision, to determine the merits of the issue(s) and/or claim(s) arising from the parent's April 6, 2017 due process complaint notice consistent with the body of this decision, and

IT IS FURTHER ORDERED that the district shall appoint an IHO in accordance with the district's rotational selection procedures and State regulations, and shall provide the IHO with copies of each of the IHO decisions and SRO decisions rendered in this matter.

Dated: **Albany, New York**
 October 19, 2017

SARAH L. HARRINGTON
STATE REVIEW OFFICER

³ My prior determination in this matter specifically held that the issue of the ratio of the class placement on the March 2017 IEP not matching the stipulation of settlement was not raised in the April 2017 due process complaint notice; however, I suggested that the parent may wish to seek the district's agreement or the IHO's permission to expand the scope of the impartial hearing or amend her due process complaint notice to include such an issue (Application of a Student with a Disability, Appeal No. 17-038).